Agonistic Pluralism and Stakeholder Engagement

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ABSTRACT: This paper argues that, although stakeholder engagement occurs within the context of power, neither market-centered CSR nor the deliberative model of political CSR adequately addresses the specter of power asymmetries and the inevitability of conflict in stakeholder relations, particularly for powerless stakeholders. Noting that the objective of stakeholder engagement should not be benevolence toward stakeholders, but mechanisms that address power asymmetries such that stakeholders are able to protect their own interests, I present a framework of stakeholder engagement based on agonistic pluralism that seeks to structure and utilize discord rather than reduce or eliminate it. I then propose arbitration as an agonistic mechanism to address power asymmetries in stakeholder engagement and explore its implications.

KEY WORDS: agonism, stakeholder engagement, political CSR, power, corporate accountability, arbitration

I. INTRODUCTION

TRANSNATIONAL CORPORATIONS (TNCS) AND NATIONS that lack the will or capacity to regulate them pose continuing challenges for CSR and business ethics research. In a global economy, business firms should be subject to greater democratic accountability; the difficulty in developing means of oversight leads to a deficit that can only be offset by new mechanisms (Matten & Crane, 2005; Scherer & Palazzo, 2007). One important measure of corporate oversight is stakeholder engagement and consent—participation in governance processes that guide the policies and practices of the firm (Van Buren, 2001). Ideally, consent emanates from engagement and is akin to Hirschman's (1970) concept of voice: the ability to change, rather than accept or escape from, an unfavorable state of affairs. Appropriately applied consent provides the means with which to embrace free market capitalism within moral limits, while tempering its excesses. There are two prominent steams in the literature addressing stakeholder engagement that represent market-centered or political CSR frameworks, respectively.

Market-centered approaches to stakeholder engagement tend to be premised on the notion that moral engagement is integral to success in the capitalist enterprise. For example, Noland and Phillips (2010) argue that 'viewed rightly' (which is quite a caveat), sound corporate strategy necessarily entails ethical management of stake-holder interests because the purpose of the firm in a capitalist system is to create

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value for all stakeholders. I use the term *market-centered* because the analysis and prescriptions are anchored in the assumptions of free market capitalism. However, Greenwood and Van Buren (2010) are critical of the overpositive assumptions regarding the market and stakeholder relations and aptly note that the moral test of corporate activity is in its impact on powerless stakeholders rather than on powerful stakeholders who can protect their own interests. Powerful stakeholders who cocreate financial value with the firm may be comfortable touting the workings of the free market and the managerial capacity to produce win-win outcomes, but powerless stakeholder groups tend to be less optimistic (Freeman & Rogers, 2006). Hence, it can be argued that market-centered approaches to engagement lack sensitivity to the plight of powerless stakeholders and tolerate power asymmetries such that firms and their shareholders have an outsized role in defining the character of corporate social responsibility.

Leading notions of political CSR (e.g., Scherer & Palazzo, 2007) characterize stakeholder engagement through Habermas's conception of deliberative democracy, which prizes consensus derived through the joint communicative efforts of the actors. The deliberative model of political CSR can be conceived as an expanded version of the normative stakeholder model of corporate governance that includes not only 'core' stakeholders such as employees, customers, suppliers, and shareholders, but also civil society representatives such as NGOs and community groups (Whelan, 2012). As such, it tends to redress the coarse laissez-faire ethical tendencies of market-centered CSR by directing attention to those lacking the market power necessary to protect their own interests. However, given the emphasis on consensus, the less powerful party in the interaction bears the risk that legitimate dialogue will not remove strategic considerations or afford managers the will or capacity to act in good faith. The possibility still remains that the actors will not achieve consensus. Nevertheless, political CSR has emerged as a credible alternative to market-centered CSR. But does it go far enough? The question remains—after deliberation, then what?

The recent spate of papers on stakeholder pluralism, agonistic relations, and dissensus (e.g., Burchell & Cook, 2013; Scherer, Palazzo, & Seidl, 2013; Whelan, 2013) question whether the market-centered CSR or deliberative approaches are entirely sufficient and, coupled with the historically low legitimacy levels for business (Porter & Kramer, 2011: 64), suggest the need for an alternative framing of stakeholder engagement that tempers the idealism of deliberative democracy with the realities of power asymmetries and conflict. Hence, the objective of this paper is not simply to dispute market-centered notions of stakeholder engagement but to advance an alternative to deliberative democracy that addresses stakeholder power asymmetries and their impact on stakeholder relations. Agonistic pluralists, Chantal Mouffe (1999) among them, contend that conflict is inescapable, and society benefits when conflict is explicitly acknowledged and accommodated. Building on the premise that framing processes and mobilizing structures enable stakeholder influence (King, 2008), I will extend the discussion of stakeholder engagement to include notions of power, contestation, and hegemony from agonistic pluralism; further, I will argue that the objective of stakeholder engagement should not be

benevolence toward stakeholders, but agonistic processes and structures to contest corporate prerogative such that stakeholders are able to protect their own interests.

In order to provide for a more vigorous notion of stakeholder engagement and consent in a context generally permeated by power, this article focuses attention on less powerful stakeholders and suggests that agonistic pluralism provides for a useful alternative conceptualization of stakeholder relations. I begin in Section II of this article by briefly describing power and how it gives rise to conflict in stakeholder relations. In Section III, I survey the terrain of stakeholder engagement and argue that market-centered and deliberative democracy strains of CSR lean too heavily on ideals of optimal market function and consensus, respectively. Section IV provides a description of agonistic pluralism and its implications for stakeholder engagement, and Section V proposes arbitration as an agonistic vehicle to enhance stakeholder engagement. I conclude in Section VI by briefly discussing the implications of arbitration and an agonistic framework for stakeholder engagement and consent.

II. THE PREVALENCE OF POWER AND CONFLICT IN STAKEHOLDER RELATIONS

An ethically sensitive firm will seek consent from its stakeholders and provide a substantive hearing for their concerns, but this engagement occurs within a context of power and conflict. Kant's principle of respect for persons (e.g., Arnold & Bowie, 2003), the doctrine of fair contracts (Evan & Freeman, 1993), and Habermas's theory of communicative action (Gilbert & Rasche, 2007; Scherer & Palazzo, 2007) all imply that the moral legitimacy of corporate activities is largely derived from the consent garnered through engagement with stakeholders. Hence, the firm has moral obligations to stakeholders, but there is no assurance that they will be met, particularly for stakeholders who find themselves in positions of unequal bargaining power with corporations. Given the impact of power on the manner and outcome of stakeholder engagement, in order to legitimately engage with powerless stakeholders, it is necessary to identify power imbalances, trace their effects, and offer proposals to mitigate them (Greenwood & Van Buren, 2010). Indeed, the disconnect between normative corporate obligations and stakeholders' capacity for consent places stakeholder relations within the context of power, despite any preference to the contrary.

The concept of power is central to an examination of stakeholder relations, so a clear definition is a prerequisite for this discussion. Common treatments of power in the CSR and business ethics literatures tend to be based on the conceptualizations of Max Weber (1978) and Robert Dahl (1961), who describe power as the capacity or ability of one actor to exert influence despite another actor's efforts to the contrary. Their notions of *power to* and *power over* conceive of power as a quantitative capacity or a commodity to be possessed (Dean, 2012) and are prominent in CSR and related research. The focus in this literature is on managerial perspectives and interests: how managers perceive and react to the power of stakeholders, and how managers can better understand stakeholder interests and fuse them with their own (e.g., Foster & Jonker, 2005; Heugens, van den Bosch, & van Reil, 2002; Madariaga & Valor, 2007). With some exceptions (e.g., Calton, 2006; Rhodes & Harvey, 2012;

Stoney & Winstanley, 2001), stakeholder research adopts resource-dependence and resource-exchange conceptions of power to describe stakeholder relations (e.g., Clarkson, 1995; Oliver, 1991; Pfeffer & Salancik, 1978). For example, Mitchell, Agle, and Wood (1997: 865) build on resource-dependence theory to propose that a stakeholder has power to the extent that it can 'gain access to coercive, utilitarian, or normative means to impose its will in the relationship.' The general supposition is that when an actor employs resources to achieve its ends to the detriment of another, it is morally and practically acceptable for the other actor to do likewise.

There is, however, relatively less attention to *relations of power*, how an actor acquires the capacity to impose its will on another or establishes, legitimates, and cultivates a system of domination. A more expansive view of power and the relations of power underscores its subtleties and illuminates its potential impacts. Foucault defines power not as a commodity but as a 'way of acting upon one or more acting subjects by virtue of their acting or being capable of action' (1982, 220), which implies capturing the potential or capability of another (Dean, 2012). He characterizes power as a diffuse matrix of relations embedded in the mores of communal life such that being subject to the power of others and exercising power over others is an inescapable aspect of human relations (Foucault, 1970, 1977). Relations of power connote that power is more than the capacity to control resources; it also entails practices that support specific alignments of interests and identities, and is constituted in the discretion to *take* actions, not just the actions themselves. Consequently, when power relations are embedded in the communal mores through means such as discourse, they alternately enable and constrain various actions.

Building on Foucault's notion of power relations, Lukes (1974) and Clegg (1989) theorize that power is revealed not only in overt expressions of political preferences but also in covert connections between stated preferences and real preferences. Those that are subject to covert expressions of power are often unaware of its presence, and covert power can mask disparate interests. Thus, power can produce quiescence by shaping actors' perceptions to the extent that they adopt or accept positions that contradict their own interests. Accordingly, stakeholders who are not sensitive to power relations may be more tolerant of corporate prerogative, and quiescence is more likely when stakeholders view power relations as overt and sporadic rather than covert and continual.

If one accepts the prevalence of power, then regardless of whether a firm exploits power relations to the detriment of specific stakeholders, it might reasonably do so, and this implies conflict. Unless an actor challenges or contravenes another's objectives, even the presence of power is in doubt. Power asymmetries also give rise to opportunism (Axelrod, 1981; Axelrod & Hamilton, 1981); particularly in an environment of conflicting interests, if one possesses (or lacks) resources, there is a predisposition to act accordingly. It follows that failing to appropriately acknowledge conflictual relations in the stakeholder context contributes to a relative disregard for their prevalence and perpetuates the supposition that stakeholder engagement is or should be consensual (e.g., Friedman & Miles, 2002; Mäkinen & Kourula, 2012; Marens, 2010; Whelan, 2012). Although management is only one player in the contested political terrain of the workplace, managerial discourse obscures the

often-contrary interests of involved actors (e.g., Banerjee, 2007; Fleming & Jones, 2013) and legitimizes power asymmetries that expand managerial prerogative (Delbridge & Keenoy, 2010; Rhodes & Harvey, 2012). Broader conceptualizations of power, such as that of Foucault, highlight the prevalence of power and conflict in stakeholder relations. Hence, stakeholders need the capacity to explicitly contest the content of CSR, and unless they appreciate the conflictual context of their relations with corporations, they mischaracterize their condition.

III. PROMINENT VIEWS OF STAKEHOLDER ENGAGEMENT

I have argued that stakeholder engagement occurs against the backdrop of power and conflict. The political philosophical foundations underpinning stakeholder engagement are reflected in the following three assertions: (1) economic concepts developed for the purpose of analyzing phenomena of scarcity and resource allocation are not sufficient to explain political phenomena such as power (Hirschman, 1970); (2) business firms are prominent distributors of benefits and burdens in society (Moriarty, 2005; Palazzo & Scherer, 2006); and (3) political assumptions have a clear impact on perception and analysis. The two most prominent depictions of stakeholder engagement stem from market-based CSR and deliberative democracy. The overview that follows does not map all of the parameters of market-centered or political CSR; rather, it emphasizes research that focuses specifically on stakeholder engagement.

Market-Centered CSR

Free market capitalism is characterized by private ownership, the profit motive, and competitive markets in which the parties to a transaction typically dictate the terms of exchange (Furubotn & Richter, 2000). Stakeholder engagement harkens back to Evan and Freeman's (1993) doctrine of fair contracts that encourages firms to provide opportunities for stakeholders to represent their own interests and renegotiate their association in view of unanticipated outcomes. Market-centered CSR theorists tend to emphasize a reasoned expectation that improvement or reform can be achieved within the current parameters of the market. Their view of stakeholder engagement is that business, *when properly framed,* addresses the concerns of stakeholders, and engagement follows from this premise. Freeman, Martin, and Parmar (2007) argue that traditional narratives of capitalism wrongly underscore the assumptions of competition, limited resources, and a winner-take-all mentality, rather than freedom, rights, and the consensual creation of positive obligations. That is, market actors need not be naïvely self-interested, and morality need not be distinct from prosperity. Similarly, Noland and Phillips (2010) argue that the engagement of stakeholders, and moral behavior generally, must be integral to a firm's strategy if it is to achieve real success. This vein of research is critical of treatments of power in what are deemed to be errant notions of capitalism and stakeholder relations yet fails to directly address power in its own proposals. One is left to question whether power asymmetries are benign aspects of competitive markets, and whether power is of any consequence when markets function appropriately.

Some researchers, however, have noted that stakeholder agency—the capacity to make choices—is inadequate and have voiced disquiet about the issue of power in stakeholder engagement. Van Buren (2001) locates the problem of stakeholder engagement in the power differentials between stakeholders and the firm, suggesting that stakeholder participation in the governance processes of the firm, when enacted as an ethical minimum, provides greater assurance that the interests of powerless stakeholders will be considered. Greenwood (2007) criticizes 'the simplistic assumption' that engagement equates to acting in stakeholders' interests, and directs attention instead to the outcomes of engagement. The need to emphasize a distinction that is, on its face, self-evident highlights how tepid the notion of engagement has become. Greenwood and Van Buren (2010) propose that stakeholder engagement be characterized by trustworthiness, such that firms gain the trust of vulnerable stakeholders by acting nonopportunistically and addressing their rights and interests fairly. In a similar vein, Dawkins (2014) has suggested that firms submit certain issues to arbitration as an indication of good faith engagement in stakeholder relations. The common thread in this stream of research is the recognition of power asymmetries and appeals to corporations to take action to reduce them, but within the current free market paradigm. Given this disquiet, deliberative democracy has emerged as a distinct alternative to market-centered notions of stakeholder engagement.

Deliberative Democracy and Political CSR

In Jürgen Habermas's (1984, 1987) writings on deliberative democracy, the process of authentic deliberation, rather than voting or political power, is the primary source of authority and legitimacy for decision making. According to Habermas, 'power corresponds to the human ability to act in concert' (1996a: 170) and, as the medium for expressing the collective will, the *communicative power* of citizens is at the heart of the political process. He asserts that when morally autonomous subjects engage in political discourse, the normative force of shared beliefs produced by an agreement generates communicative power (Habermas, 1996b: 157). Consequently, actors should focus on the objective of reaching understanding, and when they embrace this objective, they will engage in communicative action rather than strategic forms of decision making. Strategic action (i.e., self-interested behavior) succeeds to the extent that actors achieve their individual goals, but communicative action succeeds insofar as the actors engage in reasoned deliberation toward intersubjective agreement—the capacity of different persons to accurately understand and communicate both their positions and those of the other.

When the hearer rejects the speaker's claim, the interaction shifts from communicative action to discourse, wherein claims are tested for rational accuracy under terms of the ideal speech situation (Habermas, 1984: 177–78). Habermas (1998b) states that a decision draws its validity from the communicative presuppositions that secure fair processes and allow better arguments to emerge during deliberation. Therefore, moral engagement requires specific conditions of communication that prevent corruption by power differences and strategic motivations. In order to protect the deliberation from force disguised as reason, conditions (i.e., the ideal speech

condition) are established to neutralize power imbalances: inclusion of relevant actors, the absence of intimidation, and the capacity for all actors to question and extend discussion (Schlosberg, 1995).[1] This manner of discourse enables the parties to evaluate claims and interests and commence an ethical strategy through consensus rather than by majority vote (Habermas, 1990, 2003), which is an exertion of power by the majority over the minority. Scherer and Palazzo (2007) note that, applied to CSR, the ideal speech situation means that in contrast to free market remedies, the corporation is embedded in democratic processes of defining rules and tackling global political challenges.

Habermas's (1984, 1987) deliberative democracy is a political philosophical doctrine that recognizes problems of power asymmetries and provides a broad formulation of moral and rational conflict resolution geared to fundamental disagreements over universal values (Flyvbjerg, 1998), but it is insufficient to tackle the specific types of conflicts that arise in a fluid global marketplace. For example, Habermas's (1990, 2003) principle of universalization indicates that a course of action is justified and valid only if all concerned can jointly accept it without coercion. Commentators are skeptical of the consensualist presumption that issues have, in principle, a single right answer, or a set of discursively valid conditions upon which to forge a broadly acceptable compromise (Bohman, 1998). Ajzner (1994) argues that discourse cannot always gain the reasonable agreement of all affected parties (e.g., the natural environment) and some issues involve irreconcilable conflicts of interest. Indeed, even if all parties are committed to rational argumentation, prudence requires procedures for addressing conflicts that cannot be resolved.

The Need for an Alternative (to the Alternative)

Market-centered prescriptions of stakeholder engagement suffer from unrealized ideals of *real* success and *correct* views of capitalism and the role of business. Clearly, there are occasions when business leaders demonstrate that they do not view the firm or capitalism correctly, and when they fail to act as though moral engagement is integral to their success or that their role is to create value for all stakeholders. When they do not embrace and/or achieve the ideals of market-based capitalism, they can do great harm to stakeholder interests. Beelitz and Merkl-Davies (2012) suggest that firms use the discourse of stakeholder engagement strategically to signal change and manufacture the consent of relevant audiences, all while maintaining the status quo. Others have offered that the mutuality of corporate and stakeholder goals is overstated, and stakeholder engagement is employed as a tool for containment or quiescence (e.g., Beelitz & Merkl-Davies, 2012; Burchell & Cook, 2006). Consequently, there is the persistent lack of stakeholder agency, and firms appropriate the moral legitimacy of engagement while escaping substantive accountability regarding its content.

While deliberative democracy recognizes the impact of power asymmetries on business leaders' capacity to make moral decisions, its prescriptions lean too heavily on consensus and do not address the likely specter of failed discourse. Business firms must be willing to set aside their considerable prerogative to

operate as equal and willing interlocutors that seek consensus on stakeholder issues. It is, however, to be expected that the value systems of capital markets (focused primarily on profit) and those of various stakeholders (focused on other interests) will clash. Therefore, an objective of consensual stakeholder relations in a system that is based on competition—conflict shaped and contained by mutually accepted rules—does not fit well with this model. A substantive notion of stakeholder engagement cannot consist solely of consensus because such a condition rarely exists; it must, therefore, include means for conflict resolution that extend beyond the capacity for dialogue.

Neither the research in market-centered CSR nor the deliberative model of political CSR sufficiently problematizes the notion of power in stakeholder engagement. Because power is fundamental to stakeholder relations, the failure to identify its impact ignores the conflicting interests that are often present and implicitly accepts structures that favor corporations. Consequently, powerless stakeholders bear the risks that business leaders will not create value for stakeholders or give ethical considerations their proper strategic import, or that the actors will not reach consensus. The limited theoretical framing leads to limited options for analysis such that neither market-centered remedies, appeals for self-regulation, nor consensus fully capture the power dynamics of stakeholder engagement. There is a need to cultivate modes of stakeholder engagement that are both normative and forceful, and that provide the theoretical and conceptual framing to address the specter of power and the conflictual aspects of stakeholder relations.

IV. AGONISTIC PLURALISM

Unlike deliberative democracy, agonistic pluralism embraces the notion of struggle and contestation among those with differing values. *Agonism* is derived from the root word *agōn*, loosely translated as *struggle* (Kalyvas, 2009), and agonists contend that politics in pluralistic societies are inherently conflictual. Deliberative appeals to consensus, with its tenets of public reason and reciprocity, are viewed as subtly hegemonic undertakings that exacerbate oppression and injustice by silencing struggle and papering over deep moral disagreements (Glover, 2012). Agonists attempt to structure and utilize dissensus, challenging the established order with a profoundly distinct alternative (Rancière, 2010) rather than seeking to reduce or eliminate it. They insist that the extant system can be revitalized by reframing its rules and suppositions, extending debate, and challenging the assumption that success lies in the elimination of dissonance (Connolly, 1995; Honig, 1993).

The prominent agonist theorists Chantal Mouffe (1999) and Ernesto Laclau (2001) are highly skeptical of the prevailing hegemony and point to its capacity to capture or taint institutional means of conflict resolution. Hegemony occurs when one socially dominant group is successful in promulgating its reality, such that others accept it as the only sensible perspective (Mouffe, 1999 and Laclau, 2001). They note that every hegemonic order is susceptible to counter-hegemonic challenges, and the continual objective of agonism is not only to contest and disarticulate (i.e., discredit) existing

institutions but also to establish new institutional forms, values, and practices—an alternative hegemony (Mouffe, 2008). They do not seek to dismantle free market capitalism, but rather to disarticulate the current hegemony and replace it with another that more closely reflects egalitarian ideals:

> We had therefore abandoned the idea of a need for a radical break with the previous society—the idea of revolution. We began to understand our politics as a radicalisation of ideas and values which were already present, although unfulfilled in liberal capitalism. I think there is nothing more radical than asserting liberty and equality for all. The problem was that these ideas were not put into practice in the societies which claimed to follow them. What a left-wing project should do is to try to force those societies to really put those ideas into practice (Mouffe, 1998).

Thus, agonism has three general characteristics: deep skepticism of underscrutinized notions of public interest and the common good; a preference for the constructive role of contentious engagement over consensus-focused discourse; and a favorable view of discord as a reflection of the tumult of political life rather than as a problem to be overcome.

Mouffe (1999) follows Foucault in deriving an understanding of power relations from how society is constituted and organized. She appreciates the role of power relations and seeks to reconstitute them such that they are more compatible with democratic values. Under terms of *the political*, the dimension of hostility and antagonism that is an ever-present possibility in all human society, there is no expectation of compromise or consensus; groups are simply seeking to 'domesticate hostility' and gain a position of hegemonic control (Mouffe, 2008). It is important to note that domesticating hostility does not entail achieving consensus over values and goals; it requires that disputants reach an accommodation on *how* they will resolve their disputes. This basic agreement is at the heart of Mouffe's (2005) goal of turning *enemies* (a term that indicates a failure to acknowledge the legitimacy of the other party) into *adversaries* (who recognize the other's legitimacy but hold profoundly different values and goals). Rather than *critique as withdrawal from,* she characterizes her aim as *critique as engagement with* and urges that existing institutions can only be disarticulated if social movements, political parties, trade unions, and others forge the collective will to engage and discredit them (Mouffe, 2008). To use Hirschman's (1970) terminology, Mouffe argues for 'voice' rather than 'exit'.

Because of its emphasis on dissensual opinion and ineradicable conflict, agonistic pluralism attains to a normative standard. Increasing the agency of less powerful actors in matters that affect them is consistent with human dignity and procedural and distributive justice. The capacity for the individual to change rather than accept an unfavorable state of affairs furthers human dignity; it should not be solely conditioned on the actions or prerogative of another actor, even if that actor is well meaning. Despite the aspirations of deliberative democracy, it is highly unlikely that managers will consistently contain their own strategic self-interest and make objective determinations regarding stakeholder interests. If the firm has moral obligations to

stakeholders such that engagement and consent follow, then a moral imperative for means to meet those obligations follows as well, and agonism advances that premise.

Agonistic Pluralism versus Deliberative Democracy

Deliberative democracy and agonistic pluralism recognize the problems of power asymmetries. For example, Habermas's contention that the morality of a community not only lays down how its members should act but also provides grounds for consensual resolution of relevant conflicts (Habermas, 1998a, 4) is consistent with Mouffe's idea of domesticating hostility. They differ, however, on how to domesticate hostility. Agonistic pluralism extends deliberative democracy in several ways. First, deliberative democracy acquiesces to relaxed demands on deliberation as suboptimal, and this preference is laudable, but agonism anticipates irreconcilable differences and highlights dissensus as the preferred means of addressing them. For instance, oil firms want to build a pipeline from Alberta, Canada, down through the United States to oil refineries along the Gulf of Mexico, but some stakeholder groups categorically oppose the pipeline due to environmental concerns. It is difficult to imagine a superordinate alternative for the opposing positions, and agonists will applaud the difference because it provides a clear confrontation of values.

Second, agonists fear that the objective of consensus sought in deliberative democracy may actually be achieved at the expense of marginalized groups. In their view, hegemonic power is inescapable because social order requires that some practices, meanings, and values receive preference over others. Therefore, seeking consensus within a power-neutral context is unrealistic—even counterproductive—because it can mask inequity and reinforce the current hegemony (Laclau & Mouffe, 1985). For example, corporations vastly outspend the community groups and NGOs that challenge their practices (Brown & Dillard, 2013; Purcell, 2009). It defies reason that a fair discourse around ideas can occur when large power asymmetries enable one party to dominate the discussion.

Third, agonistic pluralists posit that the central roles of passion and identity in developing values and fostering democracy cannot be discounted. Passion can be understood as affect born of strong commitment to an identity, ideal, or value. The goal of rational discussion from a neutral position fails to account for the differences in status and hierarchy that shape communication (Sanders, 1997), but passionate actors are more likely to contest an issue and agonism accounts for this factor. Additionally, passionate actors tend to move the discourse beyond artifice, to congeal support, and to provide a unique view of shortcomings and remedies. They are more likely to contest an issue than their impartial peers and, as such, they can serve as an important vanguard for particular interests. Identity emanates from personal characteristics such as gender, race, or ethnicity—powerful connections that render the individual and a particular issue largely inseparable. For example, environmental racism occurs when hazardous materials are disproportionately situated near particular racial or ethnic communities (Soliman, Derosa, Mielke, & Bota, 1993). Habermas acknowledges that poverty, degradation, and the lack of crucial institutions are barriers to discursive decision making, but he has little to

say about the relations of power that create those barriers or how power relations can be changed to reduce them (Flyvbjerg, 1998). Whereas Habermas has been criticized for his superficial treatment of identity issues (Eley, 1992; Ryan, 1992), Mouffe (1999) argues that one should not separate persons from the social and power relations, language, and culture that shape their individuality.

An Agonistic View of Stakeholder Relations

Extrapolating agonistic pluralism to the business context, stakeholder-corporation conflicts are sometimes ineradicable, occur within the context of power relations, involve manipulations of discourse, and entail aspects of passion and identity. Moreover, corporations and their stakeholders can have adversarial relationships but still share a fundamental belief in the principle of free market commerce, most likely disagreeing on its provisions and constraints while wanting their view to become hegemonic. Indeed, many conflicts between stakeholders and corporations are not existential; they center on societal rules and processes for distribution of the business product—positive and negative—rather than on the legitimacy of capitalism.

Agonistic pluralism has three primary implications for substantive stakeholder engagement: prizing discordant perspectives, advancing countervailing voice, and augmenting input legitimacy, the sum of which suggest a fair fight between opposing interests. First, it is necessary to value—rather than merely tolerate—the role of discord. Dissensual communication and conflict are typical occurrences because firms and stakeholders will, at least occasionally, be prepared to engage in dialogue but have a principled inflexibility regarding acceptable outcomes. Calton (2006) contends that a pluralist process of moral sense-making should offer more room for ongoing dialogue between parties with different conceptions of the right, rather than insisting a priori that majority rule or managerial property rights carry the day.[2] The doctrine of fair contracts in stakeholder theory aligns with deliberative democracy in constraining property rights so that a disputant should not impose an outcome to the detriment of the other absent dialogue (Evan & Freeman, 1993). An agonistic conception extends this constraint more fully into the realm of stakeholder relations.

Second, because agonism encourages dissensus as a check on hegemony, there is a clear need for countervailing voice that represents disparate stakeholder views and balances the influence of one group with that of others. Corporate hegemony entails, but is not constrained to, suppositions such as market profitability portends of individual profitability, and minimally constrained markets will suitably address negative externalities. The liberal theory of pluralism posits that multiple centers of power coupled with dialogue and conflict are means of realizing the common good (Dahl, 1961; Lipset, 1985). Similarly, Edward and Willmott (2008) argue that viable deliberative democracy must be accompanied by a 'radical democratic element' to assure that the undemocratic aspects of the free market remain visible and are not accepted as commonplace. While conceding that noncommunicative stakeholder strategies of resistance are sometimes necessary for creating public awareness and corporate engagement, some deliberative perspectives (e.g., Palazzo & Scherer, 2006) might discourage noncommunicative stakeholder pressure as a means of moral

legitimacy. However, noncommunicative pressure by stakeholder groups can result in public discourse; this, in fact, is often the objective. For example, at the height of the AIDS pandemic, Oxfam became weary of discussions and castigated the pharmaceutical industry as *morally bankrupt* for resisting efforts to make generic AIDS medications available in developing countries. The action was broadly embraced and resulted in greater dialogue between the industry and its stakeholders.

Third, rather than accepting current levels of input legitimacy and the structure of deliberation, an agonistic framework emphasizes reframing the rules and conventions of conflict such that legitimate stakeholders have a viable opportunity to prevail. Mena and Palazzo (2012) state that input legitimacy addresses whether regulations are perceived as justified or credible with respect to inclusion, procedural fairness, consensual orientation, and transparency. Clearly, input legitimacy alone does not promise a suitable outcome. On the one hand, corporations are broadly embracing initiatives such as citizenship reports, responsibility ratings, and 'green' initiatives (Kolk, 2008; Kolk, van der Veen, & Hay, 2002), while, on the other, workers are enduring greater workplace stress, increased low-wage work, and weakened unions. It follows that some NGOs are skeptical of the capacity of input-oriented CSR initiatives to influence corporate behavior (Hamann, Sinha, Kapfudzaruwa, & Schild, 2009; Kinley & Tadaki, 2004). However, by targeting outcomes and input processes that are more proximate to outcomes, stakeholders are likely to have greater impact on how conflicts are resolved. Hauenstein, McGonigle, and Flinder's (2001) meta-analysis of the relationship between respondents' perceptions of procedural and distributive justice revealed a very strong correlation ($r = .64$ to $.72$), and stakeholders tend to intuit this relationship (Lind, 2001). Agonism can bolster input legitimacy because it fosters dissent and accounts for power asymmetries.

Finally, given the nature and prevalence of conflict in stakeholder relations, agonism implies a fair fight. A fair fight entails voicing *and* contesting differences under conditions that recognize power relations and, rather than ignoring or attempting to eliminate them, promotes conventions and ethics of action that reduce undue preference. It follows from Mouffe's notion of domesticating—recognizing, legitimating, and defusing—conflict through means of contestation based upon fundamental values held in common by the disputants. Agonistic stakeholder engagement also extends Habermas's principle that strategic resources should not determine the outcome of a contest by reducing bias toward particular capabilities or resources, such that the merit of varying positions becomes more determinative. The objective is to augment and advance mechanisms that permit stakeholders to mount a viable defense of their interests in the presence of corporate autonomy. For example, picket lines were places of violence and intimidation (i.e., antagonism) through the mid-1900s in the United States, partly because the power asymmetry between labor unions and employers left workers with very little chance to influence outcomes. However, after obtaining collective bargaining rights, power asymmetries between unions and employers decreased and, although conflictual relations remained (i.e., agonism), labor-related violence was significantly curtailed (Dulles & Dubofsky, 1984). The fair fight respects both the stakeholders' capacity to contest practices that are contrary to their interests *and* the corporations' property rights.

This discussion of agonistic stakeholder relations raises questions of how to reduce power asymmetries and provide the conditions for a fair fight. Rather than attempting to convince firms to monitor and restrict their exercise of prerogative, the stakeholders challenge that power and build dissensus such that it benefits those that lack adequate voice. As noted earlier, Mouffe calls upon unions, NGOs, and other aspects of civil society to disarticulate and reframe the current hegemony. These groups comprise what Sandra Waddock (2008) terms the 'emergent institutional infrastructure' of civil society and organizational actors that are attempting to define the role of business in society and to increase corporate responsibility and account-ability. There remains, however, a need for mechanisms that potentially sanction opportunistic behavior or that provide definitive means of redress for corporate wrongdoing. Firms are currently capable of escaping substantive accountability (Hess, 2007), which underscores the need for agonistic mechanisms that reduce power asymmetries between firms and stakeholders and are more proximate to outcome legitimacy.

V. ARBITRATION AS AN AGONISTIC MEASURE

Assuming there is an acceptable case for an agonistic measure, how would it look? I propose that when deliberation fails to deliver consensus, the firm and its stake-holders present their arguments to an arbitrator who assesses them and renders a public fact-finding report with recommendations for settling the dispute. While arbitration is not a complete embodiment of agonist ideals, it is a tool that can be employed to agonistic purposes on behalf of stakeholders. In the stakeholder relations context, arbitration evinces agonism by tempering the impact of financial resources on dispute resolution, contradicting the supposition of superordinate solutions, and proposing resolutions of specific issues that do not remove ongoing contestation. With respect to addressing the persistent problems of corporate power asymmetries and powerless stakeholders, arbitration may prove useful as an agonistic comple-ment to other stakeholder initiatives and agreements. There are risks—including institutionalization and co-optation—and hence I will explore the theoretical and practical implications of arbitration as an agonistic mechanism.

A Proposal for Arbitration of Stakeholder Issues

Unlike mediation, which attempts to assist the disputants in reaching consensus, arbitration is the process of conducting a hearing and rendering a decision (Elkouri & Elkouri, 2003). An arbitrator is the neutral actor who administers the hearing and renders a decision, and an arbitration panel is a group of actors that perform those functions (I will use the term *arbitrator* in both instances). Systems of arbitration differ across the world; the treatment in this article is based on the U.S. model. In the stakeholder relations context, arbitration can be constructed as an ad hoc process wherein the disputants determine the procedure and select an arbitrator from a wide range of third-party neutrals, including individuals, NGOs, or other mutually acceptable entities. If the disputants cannot agree on an arbitrator, they can alternately strike candidates from an odd-numbered list to arrive at the least

objectionable choice. Arbitration is generally regarded as unbiased, independent, and credible (Bingham, 1997; Drahozal & Zyontz, 2010), and is relatively insulated from political capture and corruption (Lewin, 1999; Slater, 2013).

Initially prevalent in labor relations, arbitration is employed broadly from commercial and consumer transactions to environmental and securities industry disputes. Approximately 20 percent of U.S. firms use binding arbitration to resolve disputes with workers and consumers while avoiding legal costs, jury trials, and publicity (Tyler, 2013; Wall, 2000). Arbitration can be used as a stand-alone measure or to complement other agreements; it is more likely to be employed toward executing an agreement (i.e., rights arbitration) than toward determining the agreement itself (i.e., interest arbitration). For example, a number of retailers signed on to the Bangladesh Accord[3] negotiated with the International Labor Organization (ILO), IndustriALL Global Union, and others that included arbitration of differences *under the agreement* (Banjo & Passariello, 2013; Greenhouse, 2012). The World Trade Organization (WTO) makes extensive use of arbitration through its primary enforcement arm, the Dispute Settlement Body (DSB), which is comprised of panels of corporate and trade lawyers and officials, and rules on disputes ranging from subsidies and dumping, to human rights, culture, and the natural environment (WTO, 2012).[4]

The primary advantage of arbitration is that it provides a definitive resolution to a dispute. Arbitration can be binding or nonbinding, and both actors must generally consent (Elkouri & Elkouri, 2003): this is a key characteristic that separates it from litigation. The nonbinding form of arbitration is also called 'fact-finding' and is prevalent in public-sector union disputes, but the focus here is on binding arbitration. Consent is a controversial aspect of arbitration: if it is not present, then the arbitration becomes compulsory and can vastly exacerbate power differences. When U.S. firms unilaterally place binding arbitration of disputes into employment and consumer contracts in lieu of litigation, worker and consumer advocates complain that the process is unjust; workers and consumers have no voice in structuring the process, no right to appeal or to a court hearing, and their efforts generally meet with failure.[5] Even in these instances, arbitration technically—if not practically—remains a noncompulsory exercise. That is, consumers and workers can refuse to patronize or work for corporations that compel them to arbitrate disputes.

Hence, compulsory arbitration has been employed largely as a corporate expedient in consumer and employee transactions, and consumer advocates argue that business firms rarely use compulsory arbitration in their interactions with each other (NACA, 2014). In view of legitimate objections to how it is used, extending compulsory arbitration to the stakeholder context would lend credence to a practice that is ethically fraught. Actors should only be compelled to decline their right to legal due process when there is a principle that supersedes that access. For example, because public safety is paramount, unionized firefighters and police are frequently compelled to subject their differences with their employers to binding arbitration.[6] Finally, the practice of arbitration is consistent with the normative premise of stakeholder engagement. The noncompulsory aspect of arbitration does not imply an absence of force or coercion, only the preference that they are applied normatively rather than legally.

Once the involved actors consent to arbitration, however, it is certainly reasonable to expect that they be bound by its outcomes. The most viable prospect is a non-compulsory binding arbitration vehicle that approximates soft law in its normative bearing. *Soft law* is most commonly defined to include hortatory, rather than legally binding, obligations (Guzman & Meyer, 2010; Pariotti, 2009), and arbitration of stakeholder issues would reflect a similar normative authority. Firms comply with soft law (e.g., ILO conventions) because it is widely accepted as exemplifying principles and standards of good practice; while providing many of the advantages of hard law, it is considerably less complex in terms of obligation, precision, and enforcement (Abbott & Snidal, 2000). Just as with legal awards, there will be challenges in assuring that the disputants act in accordance with the arbitrator's rulings. For example, the Exxon Valdez oil spill settlement was finalized decades ago, but there is ongoing litigation concerning whether the legal obligations to stakeholders have been satisfied (Kroh, 2013). Notwithstanding, arbitration can potentially help resolve disputes by establishing a set of unbiased terms with which to frame the dispute, shaping stakeholders' expectations regarding legitimate outcomes, creating de facto obligations, and engaging the glare of publicity to push the parties toward compliance with arbitration decisions.

Arbitration of stakeholder issues can play a key role in giving a political tone and character to corporate activity that is focused not only on economics and commerce but on the methods corporations employ to get, keep, and use power in society. By contesting the power of corporations not simply in particular instances but more broadly terms of prevalence and impact, it is possible to open and legitimize new arenas of contestation that less powerful stakeholders can use to engage and be heard. Arbitration is one among a range of mechanisms that can help move stakeholder engagement away from legalistic and contractual perspectives and frame the discussion more in terms of values, responsibilities, and social contribution.[7]

Having proposed noncompulsory binding arbitration of corporate-stakeholder disputes as an agonistic mechanism to address the problems posed by power asymmetries in stakeholder engagement, I will now turn to the ethical, theoretical, and pragmatic implications of that proposal.

Ethical Implications

Ethical conviction regarding justice and fairness can be a factor in business leaders' decisions to arbitrate stakeholder issues. Arbitration meets the requisites of procedural justice through its due process attributes, and it exerts an impact on distributive justice through its capacity to influence the actions of the disputants going forward. Costco and Southwest Airlines do not oppose their employees' desire to bargain collectively (Harris, 2008; Frey, 2004), which entails the countervailing power of a labor union and arbitration of grievances. In essence, the question posed to business leaders is, Do you believe that a neutral reading of the facts supports your actions? They are left to ponder the advantage of current power asymmetries, their convictions regarding the technical merits of their actions, and their moral convictions regarding stakeholder engagement. Conversely, business leaders can extol their

expertise and argue that it, and property rights, elevate their opinions above those of a given stakeholder. Walmart led a coalition of retailers that did not sign on to the Bangladesh Accord because, in part, they believed their individual remedies to be superior to the provisions of the Accord, and because they did not wish to expose themselves to future arbitration or other challenges. The ethical shortcoming in such an argument is that it fails to acknowledge that an appropriate response to an inept or negligent exercise of autonomy is reduced autonomy. The arbitration provisions in the Bangladesh Accord are just: they reduce corporate autonomy in the wake of misplaced trust.

From the deontological perspective, corporations are not justified in making exceptions of themselves, and it is certainly reasonable for those that require their workers to forego litigation and its accompanying safeguards to do so themselves when their activities are called into question. As major actors in the free market, business firms demonstrate an inconsistent disposition toward arbitration in that they seldom employ it against one another, rail against the WTO arbitration rulings and the loss of property rights they entail, and yet compel its use upon consumers and workers. Arbitration also reflects long-standing norms and expectations of reciprocity and good faith in cooperative relationships. Phillips and Johnson-Cramer's (2006) principle of stakeholder discourse indicates that, 'particularly in times of conflict and transition, [the involved] parties must contract to create systems for the exercise of voice.' An ethically credible firm should permit means of challenge to its policies because sound ethical practice requires a check on the corrupting influence of power that often entails dissensus.

Theoretical Implications

The market-based, deliberative, and agonistic theoretical frameworks described in this article imply different assessments of arbitration. Given the utilitarian character of the free market, an arbitrator acts as the *ideal observer* in determining the most provident outcome for all concerned. Managers can reduce their exposure to the regulatory constraints that would be necessary to address the many disagreements and unforeseen circumstances that accompany business practice. There is additional free market utility in arbitration because global commerce requires public confidence, and just outcomes in stakeholder disputes increase that confidence and help to compensate for market shortcomings. Just as corporate property rights are limited to facilitate market access and profitability (i.e., the WTO), they can be constrained on behalf of stakeholders and the global commons.

In terms of deliberative democracy, even the prospect of arbitration implies a failure in design or execution of the ideal speech condition. There is limited research on the prospect of arbitration in deliberative democracy. Kadlec and Friedman (2007) suggest that deliberative democracy can better address power asymmetries by enlisting the aid of nonpartisan intermediary organizations, as well as cultivating and mobilizing multipartisan leadership coalitions that facilitate deliberative processes. Their remedy is, however, more emblematic of mediation than arbitration: the intermediary attempts to move the parties toward consensus

but stops short of rendering an opinion. More important, a process that includes intermediaries has less moral force because the remedy involves an entity that is external to the deliberations rather than emerging from the communicative power of free and rational actors. Esposito and Martire (2012) are largely critical of arbitration and build on discourse theory to posit that arbitration can be improved by giving greater consideration to transcultural differences and being more inclusive of different socio-legal systems. Habermas (1996a) does not suggest that every specific event in society needs to be guided by a consensual orientation; he does contend, however, that the institutions of a given society are only legitimate if they are derived consensually. Providing that the decision of the involved actors regarding arbitration is consensual, there is no reason to believe that arbitration is necessarily inconsistent with deliberative democracy.

As agonism is a political perspective, arbitration is not a characteristic but it has potential advantages when employed to agonistic effect. First, it preserves the role of dissensus, an essential aspect of identifying and challenging hegemony, because it is does not seek consensus or to alter actors' ideological positions. Stakeholders usually do not wish to dismantle the structure that provides them with products, services, and employment; they seek instead to contest that structure and to obtain a more suitable share of its benefits. Second, arbitration constrains hegemony by providing a transparent forum under which contestation is accommodated and valued. Third, arbitration augments input legitimacy by reducing power asymmetries between the involved parties while respecting them as legitimate adversaries.

On the other hand, as arbitration of stakeholder disputes grows, it can achieve higher levels of participation and compliance. This is a two-edged sword. The process of norm development and validation (Finnemore & Sikkink, 1998; Suchman, 1995) and an apparatus of authority can perpetuate the *taken-for-grantedness* of the prevalent hegemony, thus raising the specter of institutionalization. Levy (2008) cautions that hegemonic actors frequently respond to pressure from challengers, but in a way that preserves or reinforces the current structure. Consider the current use of arbitration with consumers or the tendency among firms to opt for arbitration on lesser issues but refuse it on issues of greater significance or when they are most culpable. In addition, the supposition of the arbitration proposal considered here is that less powerful stakeholders are unable to effectively engage or negotiate with large firms. Agonists will be uncomfortable with the resolution of a matter that does not more directly and substantively challenge the corporate hegemony that precipitates power asymmetries. Hence, it is possible that arbitration will favor the status quo, perpetuate power disparities, and be amenable to, rather than radically disruptive of, the hegemony that it purports to challenge.

These limitations raise the persistent quandary of exit or voice as means of social change for agonists. Mouffe (2005), in her choice of *critique as engagement with,* argues for voice rather than exit. She finds fault with contemporary social critics such as Hardt and Negri (2000, 2004), who characterize radical politics in terms of desertion and exit. Mouffe's dismissal of 'a radical break with the previous society' highlights important questions: What does one exit to? What is the alternative? Disparate responses to those questions highlight the difficulty in developing

mechanisms such as arbitration that operationalize contestation without granting powerful actors license to co-opt the process. Just as deliberative democracy struggles with the question of what happens at the end of deliberation, agonists must struggle with questions of voice and exit.

Pragmatic Implications

For stakeholders, the tension between voice and exit often presents itself in the threat of co-optation. Actors are co-opted when they are caressed into routinizing and codifying their claims in lieu of more disruptive forms of activism that threaten the established order (Coy & Hedeen, 2005; Jaffee, 2012; Morgan, 2007). In some quarters, new vehicles employed to address stakeholder issues will be viewed skeptically—as perhaps a ploy to blunt efforts for substantive change. However, while some stakeholder groups disregard engagement with business firms altogether and maintain critical distance, others argue that co-optation is a risk of engagement but far from an inevitable outcome (Unerman & O'Dwyer, 2006; Burchell & Cook, 2012, 2013). Indeed, it appears that the *true believers* among civil society actors are as eager to confront other actors they believe are being co-opted as the corporate interests in question. For example, Global Witness criticized other NGOs for shoddy compromises and withdrew from the Kimberley Process, an multi-stakeholder initiative (MSI) established to prevent the purchase of conflict diamonds (Eligon, 2011; Gooch, 2011). Because agonism values dissent, it is entirely consistent (rather than inconsistent) that some stakeholders exercise voice through engagement while others balk and maintain a needed vanguard against co-optation. As with any mechanism meant to influence corporate behavior, a guarded stance is prudent. Arbitration is most likely to be effective in limited situations and in conjunction with other agreements among the involved parties.

A second pragmatic issue concerns power relations: it is not in the strategic interest of corporations to participate in a process that diminishes their advantage. In describing transformative justice, McMahon (1999) indicates that because rights cannot become operative without power, it is important to determine how much power is necessary to exercise those rights. Frooman (1999) identifies two tactics that stakeholders can employ to disrupt corporate power relations: (1) withholding strategies, which determine whether the firm gets the resources it needs; and (2) usage strategies, which attach conditions to the continued supply of resources. These modes of persuasion apply most closely to powerful stakeholders who can have a direct impact on the supply of resources. Frooman also provides for pathway or indirect strategies, which are critical means through which powerless stakeholders who lack the capacity to withhold or condition resources can leverage their relationships with powerful stakeholders. Hence, the power relations are disrupted in a twofold manner: conditioning the supply of resources and strengthening linkages between weaker and more powerful stakeholders.

Although powerless stakeholders are unable to reduce the power asymmetries or insist on arbitration directly, they can assert themselves through linkages with more powerful stakeholders. Mouffe (1999) calls upon civil society organizations to

reshape the current hegemony; broad stakeholder coalitions are critical components in those efforts. Workers and labor activists in Bangladesh benefited from their linkage with the ILO and labor unions such that retail firms agreed to arbitration of disagreements in the Bangladesh Accord. The Bangladesh case is also instructive because arbitration is not directed toward a specific policy,[8] but is employed as a premise of future engagement regarding potential issues and disagreements. Consequently, it is instructive of how the practice of arbitration can be employed broadly to assure the involved parties that there are appropriate means of redress. The Bangladesh Accord also demonstrates that firms are more likely to comply with demands for arbitration when a crisis calls corporate prerogative into question and coalitions of stakeholders make common cause. Pathway strategies for influencing corporations assume favorable relationships between stakeholders, which will not always be the case, and forming relationships can be a barrier for powerless stakeholders. If, however, powerless stakeholders can maintain build linkages with powerful stakeholders, then arbitration can contribute to reducing power asymmetries between corporations and less powerful stakeholders.

Caveats and Preconditions

This work comes with two caveats regarding theoretical development. First, it bears acknowledgement that some agonists will differ with the interpretation of agonism proffered here. A likely contention is that any mechanism that operates under the framework and suppositions of the current hegemony is, by definition, co-opted or subject to co-optation. More specifically, because agonism always challenges hegemony, it must remain apart from institutionalized systems and structures. The import of this concern is illustrated by how arbitration is currently used (or abused) by a number of corporate actors. While appreciating this concern, the paradox of adopting a doctrinaire position is that it only leaves exit as an option and, as such, ultimately continues to advance the free market as the sole arbiter of disputes. Perhaps it is fitting that proponents of agonism will likely struggle amongst themselves over the manner in which they should struggle. Second, with respect to engaging with Foucault's notions of power, the breadth of his perspective and characterization can be quite difficult to apply in specific interactions between parties to a dispute. Admittedly, this challenge has raised some ontological complications and a tendency to meld Foucault's depiction of power with the more prevalent 'power as commodity' conceptualizations.

There are boundary conditions regarding arbitration of stakeholder issues. The first is stakeholder legitimacy, which can be derived from contract, exchange, legal or moral right, at-risk status, or moral interest in the harms and benefits generated by corporate activity (Clarkson, 1995; Mitchell et al., 1997; Savage, Nix, Whitehead, & Blair, 1991). Stakeholders must also be willing to engage in an agonistic, rather than antagonistic, manner. For example, the environmental group Sea Shepherd has been roundly denounced for dangerous tactics in its efforts to prevent whaling. Baur and Palazzo (2011) indicate that commitment to civil behavior, discursive orientation, and disposition toward consensual behavior are requisites of moral legitimacy for stakeholders. I accept those stipulations but caution that they should not preclude

conflictual, nondiscursive, and nonconsensual stakeholder actions that place pressure on a corporation. Justifying corporate actions opposed by legitimate stakeholders is a reasonable consequence of conducting business in the public space. Second, there is the reciprocal need for corporate legitimacy that entails lawful operation, good faith interactions with stakeholders, and avoiding coercion.

Third, there is an issue regarding the credibility of stakeholders to engage in arbitration. Some stakeholder groups lack a conventional organizational structure (e.g., unity of command), but this need not be disqualifying unless it has bearing on the legitimacy of their claims. A disjointed stakeholder group is less likely to comply with the arbitrator's decision regarding an issue, but stakeholders bear a similar risk with respect to changes in corporate strategy or leadership. A final caveat regards the lodging of frivolous and unwarranted requests for arbitration. An arbitrator can, of course, refuse involvement, and stakeholders who make baseless requests will lose credibility. Nevertheless, there can be no determinative body that decides what issues warrant arbitration, nor can there be a bright-line test for substantive stakeholder complaints. There will be baseless complaints the types of which regularly accompany business activities, but definitive measures are easily manipulated and regulatory structures are subject to capture. Ideally, agonism will promote an ethical respect for one's adversary, and parties will exercise discretion in pressing their claims (Connolly, 1995).

VI. CONCLUSION

The central premise of agonistic stakeholder engagement is that conflict—i.e., nonconsensual actions taken to resolve a difference, arising from irreconcilable corporate and stakeholder interests—is to be expected in modern industrial societies. Rather than wishing it away or rhetorically reframing those interests in terms of shared value, it is more useful to develop means such as arbitration that allow stakeholders to pursue just resolutions of conflict. A more active role is preferable to having stakeholders stand by as managers develop a more ethical conception of the firm, or to count solely on achieving consensual outcomes to their differences with corporations. An agonistic characterization of stakeholder relations promotes the notion that the objective of stakeholder engagement should not only be consensus (which is often unattainable) but should also be mitigating power asymmetries such that stakeholders can protect their own interests. Even so, agonistic stakeholder relations works to augment rather than preclude efforts to develop ethical management practices and consensus-based dispute resolution procedures.

There appears to be some agreement in the CSR literature that the means of stakeholder engagement are deficient; how to address the problem has not yet been determined. Phillips, Freeman, and Wicks (2003, 30) point out that, although stakeholder theory is concerned with who has input, the method of stakeholder input is *an open question;* meanwhile, critics of market-centered CSR argue for greater attention to procedures that facilitate the task of identifying, investigating, and seeking redress for corporate misconduct (e.g., Utting, 2005; Reed, 1999; Rasche & Esser, 2006). I do not suggest that firms and stakeholders maintain

a permanent condition of discord, in the sense of class conflict, but rather an adversarial condition that can be latent or active, but is never completely absent. Dialogue is desirable, but firms and their stakeholders regularly talk, then fight, or they fight, then talk; hence, it is preferable to have a fair fight. Contestation will not always result in a favorable resolution of difference, but emblematic of the invisible hand, disparate stakeholder groups can increase parity by pursuing their own values and disputing those of others. A suitable mix of confrontation and cooperation will not surface from an evolving consensus of values regarding corporate activity; it will emerge instead because corporations recognize their inability to dominate their stakeholders and the need for a different approach.

My argument for agonistic pluralism and arbitration as key aspects of stakeholder engagement requires refinement. For instance, adherents of radical democracy advocate attempts to involve all citizens in public decisions. Habermas (1998b) argues that such a goal is impractical and therefore highlights a shortcoming of agonistic pluralism. Ultimately, it is short on specifics: What types of institutional changes are required, and what characterizes a new or ideal hegemony? While agonism may be difficult or untenable in terms of policy, it nonetheless proffers principles and points of reference that advance the discussion of stakeholder engagement. Undue wariness of challenging the win-win orthodoxy can result in discounting the value of the loyal opposition or failing to carefully examine the conditions under which the paradox of conflictual relations can actually serve the common good.

Because their impacts are so widespread, corporations have a moral obligation to substantively engage with stakeholders regarding their operations, but a moral premise cannot thrive absent pragmatic means for its attainment. Arbitration can be a useful contribution in the direction of agonism for specific disagreements. It follows that disarticulating a deeply entrenched corporate hegemony is a piecemeal task that is perhaps best accomplished by stakeholders developing vehicles such as arbitration that alter power asymmetries. An evolutionary strategy that links small-scale initiatives such as arbitration and corporate rankings and reporting is a more reasonable means to increase the scope and viability of corporate oversight than a single overarching vehicle. Because stakeholders will find themselves in circumstances that they cannot reasonably exit, realizing the notion of consent and developing the capacity to alter a condition that they find untenable is of enduring importance. Hence, it is necessary not only to encourage corporate leaders to frame business success differently and do well by all of their stakeholders but also to develop viable means through which this can occur.

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NOTES

1. Habermas stipulates that these conditions are counterfactual; actual discourses can rarely realize—and can never empirically certify—full inclusion, noncoercion, and symmetry.

2.   Managerial property rights emanate from the premise that managers are entitled to direct share-holder assets to maximize profits; see Fligstein, N. 2001. *The Architecture of Markets*. Princeton, NJ: Princeton University Press, and Smith, D. G. 1998. The shareholder primacy norm. *Journal of Corporation Law*, 23: 277–323.

3.   The Accord on Fire and Building Safety in Bangladesh is an independent agreement designed to make garment factories in Bangladesh safe workplaces, and it includes independent safety inspections at factories and public reporting of the results. See http://www.bangladeshaccord.org/.

4.   The Burma Case: Human Rights Affected by Finance and Investment Challenge by the European Community (EC) and Japan against the U.S. [Case WT/DS88/1], Canada's Attempt to Save Its Magazines Challenge by the U.S. against Canada [Case WT/DS31], United States Regulations on Reformulated Gasoline Cleanliness Challenge by Venezuela and Brazil against the U.S. [Cases WT/DS2 and WT/DS4].

5.   The U.S. Supreme Court. Circuit City Stores, Inc. v. Saint Clair Adams, No. 99-1379, 2001 WL 273205, March 21, 2001. Herb Weisbaum**,** Consumer Groups Rip Mandatory Arbitration Ruling. *NBC News*. Jan. 20, 2012: http://www.nbcnews.com/business/consumer-groups-rip-mandatory-arbitration-ruling-1C7101029.

6.   In the United States, police and firefighters are generally prohibited from striking over contract disputes.

7.   I am grateful to an anonymous reviewer for this line of reasoning.

8.   Were stakeholders able to push a firm to arbitration on a given policy, the pressure might just as well be applied directly to the policy change rather than arbitration.

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