Weeding Out Flawed Versions of Shareholder Primacy: A Reflection on the Moral Obligations That Carry Over from Principals to Agents

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ABSTRACT: The distinction between what I call nonelective obligations and discretionary obligations, a distinction that focuses on one particular thread of the distinction between perfect and imperfect duties, helps us to identify the obligations that carry over from principals to agents. Clarity on this issue is necessary to identify the moral obligations within "shareholder primacy" (i.e., "shareholder theory"), which conceives of managers as agents of shareholders. My main claim is that the principal-agent relation requires agents to fulfill nonelective obligations, but it does not always require (and sometimes actually prohibits) discharging discretionary obligations. I show that the requirement to fulfill nonelective obligations is more far-reaching than has been acknowledged by most defenders and critics of shareholder primacy. But I also show that managers are not bound by certain discretionary obligations like charity, showing that their moral obligations are more circumscribed than the obligations that apply to human beings in general.

KEY WORDS: shareholder primacy, shareholder theory, agency ethics, perfect duties, imperfect duties, corporate governance

In this article, I argue that the distinction between what I call nonelective obligations and discretionary obligations, a distinction that picks out one central thread in the traditional distinction in moral philosophy between perfect and imperfect duties, helps us to identify the obligations that carry over from principals to agents. Not all obligations require the same degree of latitude: while we are always required to avoid holding a person in slavery, we are not always required to help a person in need. I will refer to an obligation as *nonelective* if it imposes demands that don't allow for latitude and requires compliance on every occasion. The obligation not to murder an innocent person or to hold someone in slavery are paradigmatic examples. I will refer to an obligation as *discretionary* if it binds every moral agent but allows for latitude about when and how to discharge it, a latitude that has to do partly with the individual's own inclinations and sensibility. The obligation to help those in need and to show mercy are two examples of the latter.

Clarity on the obligations that carry over from principals to agents is necessary to identify the moral obligations of managers within what has been called "shareholder

©2019 **Business Ethics Quarterly** 29:4 (October 2019). ISSN 1052-150X pp. 519–544
DOI: 10.1017/beq.2019.18

primacy," the framework that conceives of managers as agents of shareholders (a framework also known as "shareholder theory").[1] My main claim is that while the principal-agent relation requires agents to fulfill nonelective obligations, it does not always require (and sometimes actually prohibits) fulfilling discretionary obligations. To make my topic manageable, I will focus my attention on shareholder primacy and will only occupy myself with discussing the obligations that managers have towards external parties. As such, my investigation will bracket out the obligations that managers have towards shareholders and the agency risks involved in them (see Buchanan [1996b] for an analysis of this).

The article makes two theoretical contributions to the field. The first is methodological; the second conceptual. The core commitment of shareholder primacy, i.e., that managers are agents of shareholders, entails that to identify the managerial obligations one needs to first identify the obligations of shareholders. Scholars in the field have failed to appreciate that if we want to think of shareholder primacy as a full blown normative account, we should conceptualize shareholders and managers on a fully normative register.

The conceptual contribution consists of distinguishing between nonelective and discretionary obligations, a distinction that offers us an important criterion to assess the obligations that bind managers within shareholder primacy. This criterion will allow me to show that most versions of shareholder primacy in the literature are flawed. I offer a taxonomy of three types of shareholder primacy according to their ethical demandingness: minimal, maximal, and encompassing. Minimal versions of shareholder primacy—the most well-known—require managers to conduct business within the law, avoid violating the most basic negative obligations, and prohibit transactions that involve coercion, deception, or fraud (Friedman 1962, 1970; Hasnas 1998; Sternberg 2000, 2010). Maximal versions of shareholder primacy hold that managers' ethical obligations to external business parties are coextensive with the obligations that shareholders have towards these parties (Goodpaster 1991; Kriegstein 2016; Mansell 2013, 2015). Encompassing versions of shareholder primacy contend that managers are required to fulfill all nonelective obligations that bind shareholders, but they are not always required to fulfill (and are sometimes actually forbidden from fulfilling) discretionary obligations that bind shareholders as shareholders.

I will show that the only tenable versions of shareholder primacy are the third. Because managers inherit all nonelective obligations from shareholders, they are bound by more far-reaching ethical constraints than has been acknowledged by minimal versions of shareholder primacy. I will also argue that scholars defending maximal versions of shareholder primacy go too far in proposing that the ethical obligations of managers are coextensive with those of shareholders. These scholars fail to recognize that, because of the latitude involved in the fulfillment of discretionary obligations, these obligations do not necessarily carry over from principals to their agents. In particular, I will argue that wide duties of charity should generally be discharged by shareholders directly and not by their managers.

Shareholder primacy has tended to polarize the field. My article may well upset scholars on both sides. On the one hand, in suggesting that shareholder primacy imposes far-reaching moral obligations, it challenges scholars who, defending shareholder primacy, have argued that managers should be bound by very limited ethical obligations (Friedman 1962, 1970; Hasnas 1998; Sternberg 2000, 2010). On the other hand, in defending shareholder primacy as ethically legitimate *even if* it does not require managers to fulfill discretionary obligations, I challenge scholars who have been critical of shareholder primacy for its alleged moral laxity (Bakan 2004; Bower and Paine 2017; Ciepley 2013; Freeman 1998; Freeman et al. 2010; Ghoshal 2005; Ireland 1999; Kochan 2002; Stout 2012). I show that the criticism of shareholder primacy as a free-for-all, laissez-faire view that sanctions maximizing profits in an unconstrained way targets what one may ultimately identify as a straw man (even if such a straw man is actually endorsed by numerous business practitioners, economists, and lawyers). If one wants to argue that a certain flavor of stakeholder theory, or a specific model of corporate citizenship, is superior to shareholder primacy, one should engage with the best version of shareholder primacy. I take myself to be offering a blueprint of such a version here.

The article is divided into two parts. The first part (sections 1–3), provides its theoretical foundation. In section 1, I identify the core commitments of shareholder primacy, namely, that managers are agents of shareholders and they should focus their efforts on increasing shareholder value. I then offer a taxonomy that categorizes shareholder theories, depending on the managerial obligations that each imposes. In section 2, I introduce two methodological considerations that, I argue, should guide any appropriate conceptualization of shareholder primacy. First, because the obligations of managers are parasitic on the obligations of shareholders, to identify the former one needs to start by identifying the latter. Second, because shareholder primacy is a normative account, the shareholders and managers discussed are normative exemplars. In section 3, I motivate and explain the distinction between nonelective and discretionary obligations.

In the second part of the article (sections 4–6), I apply the theoretical foundations developed in the first part to identify the versions of shareholder primacy that are flawed. In section 4, I show that maximal versions of shareholder primacy go wrong because they fail to recognize that there are discretionary obligations that do not carry over from principals to agents and, consequently, that managers are not bound by them. In section 5, I show that minimal versions of shareholder primacy go wrong because they fail to see that the set of elective obligations that carry over from shareholders to agents encompasses more ethical obligations than they have acknowledged. In section 6, I clarify the nature of encompassing versions of shareholder primacy by comparing this view with the accounts proposed by Heath (2014) and Hsieh (2004, 2009, 2017b). In section 7, I conclude by laying out some practical implications of what I have defended.

1. THE CORE COMMITMENTS OF SHAREHOLDER PRIMACY

1.1 The Agency Thesis

If one looks at the various authors who have defended shareholder primacy one comes to identify the following as their core commitment:

https://doi.org/10.1017/beq.2019.18 Published online by Cambridge University Press

> *Agency thesis*: Managers are agents of shareholders. They are shareholders' fiduciaries who ought to run the company in shareholders' interest (Friedman 1962, 1970; Goodpaster 1991; Hansmann and Kraakman 2001, 2012; Hasnas 1998; Heath 2011, 2014; Hessen 1979; Jensen and Meckling 1976; Kaler 2003; Langtry 1994; Mansell 2013, 2015; Marcoux 2003; McMahon 1981; Sternberg 2000, 2010; Von Kriegstein 2015).

I will be identifying any scholar who endorses or defends the legitimacy of the idea that managers are agents of shareholders as a defender of shareholder primacy. It is worth emphasizing that, even though what is popularly called "agency theory" (Jensen and Meckling 1976) is also committed to what I am calling the "agency thesis," we can separate shareholder primacy from several additional, and often contentious, commitments that agency theory endorses (Hasnas 1998; Heath 2009).

The agency thesis links together the idea that managers are *agents* of shareholders, that they are their *fiduciaries*, and they ought to run the business in *the principals' interest*.[2] Defenders of shareholder primacy have placed a different emphasis on each of the italicized concepts. Some have put more emphasis on the agency dimension (Friedman 1962, 1970; Hansmann and Kraakman 2012; Hasnas 1998; Sternberg 2000), others on the fiduciary dimension (Goodpaster 1991; Heath 2007; Hessen 1979; Marcoux 2003), and others on the dimension related to serving the principals' interest (Hansmann and Kraakman 2001; Hessen 1979; Langtry 1994). But while their emphasis on each of these concepts varies, nearly all recognize that, within shareholder primacy, "being an agent," "being a fiduciary," and "running the business in principals' interests" entail one another. The reason is simple: when a manager is running a business on behalf of a principal, the principal is put in a vulnerable position with respect to both control of the business and access to information about it. This vulnerability requires principals to trust the manager and puts the manager in a fiduciary relationship with the principal (Marcoux 2003, 9). Conversely, because fiduciaries exercise control over certain affairs of the principals, they should be considered their agents in such affairs (9). Finally, the fact that managers are agents and fiduciaries of a group of principals implies that managers should make decisions in the principals' interest.[3]

1.2 The Profits Thesis

A second core commitment that is endorsed by most defenders of shareholder primacy is the following:

> *Profits thesis*: The primary aim of the business enterprise is to increase shareholder value (Brenkert 1992; Brophy 2015; Easterbrook and Fischel 1982; Friedman 1962, 1970; Goodpaster 1991; Hasnas 1998; Heath 2014; Hessen 1979; Langtry 1994; Mansell 2013, 2015; Marcoux 2003; McMahon 1981; Sternberg 2000, 2010).[4]

The profits thesis has been defended in a number of ways. Some scholars argue that it stems from the sole fact that one is talking about a business enterprise (Goodpaster 1991; Sternberg 2000, 2010). Other scholars derive the profit thesis from the agency thesis, arguing that the main motivation that leads most shareholders to invest in a business is to get a return on their investment and, consequently, that managers, as agents of shareholders, are required to pursue this end (Brophy 2015; Friedman 1962, 1970; Goodpaster 1991; Hansmann 1988; Hasnas 1998; Heath 2006; Mansell 2013, 2015; Marcoux 2003).[5] Other scholars have appealed to political philosophy and economic theory to argue that increasing shareholder value should be the main goal of businesses because of the social benefits that accrue from this (Berle and Means 1932; Boatright 1994; Hansmann and Kraakman 2001, 2012; Heath 2006, 2007; Hessen 1979; Jensen 2002; McMahon 1981).

Shareholder primacy is sometimes identified, particularly by its critics, as proposing corporate strategies that favor short-term profits (Bower and Paine 2017; Stout 2012). This has been partly the consequence of the fact that activist investors and corporate raiders have appealed to their privileged position as shareholders to demand that management follow their directives requesting short-term profits. Shareholder primacy, however, need not (and should not) be committed to this short-term orientation. In fact, some of the most prominent defenders of shareholder primacy have contended that the profit thesis requires managers to focus on pursuing long-term profits (Goodpaster 1991, 70; Jensen 2002, 246; McMahon 1981, 258–9; Sternberg 2000, 96).

1.3 Ethics in Shareholder Primacy

Many business ethicists have sought to provide alternatives to shareholder primacy. The driving motivation for this (recognized by both defenders and critics of shareholder primacy) has been the perception that shareholder primacy does not impose enough moral obligations (Arnold 2003, 163; Bakan 2004; Bower and Paine 2017; Corporate Watch 2006; Freeman 1998, 126; Freeman et al. 2010, 4; Ghoshal 2005; Goodpaster 1991, 62; Heath 2006, 540–2; 2007, 367–9; Hsieh 2017b, 293; 2017a; Kochan 2002; Von Kriegstein 2015, 466).

The profit thesis is probably one of the main culprits for this perception. This thesis appears to be not merely silent about ethics but actually in conflict with it (Heath 2014, 25–8). However, it is important to recognize that while all defenders of shareholder primacy agree that increasing shareholder value is a central aim of businesses, there is also an almost unanimous recognition that such an aim does not entail "that managers have a moral blank check that allows them to ignore all ethical constraints in the pursuit of profits" (Hasnas 1998, 22; cf. Brophy 2015; Friedman 1970; Goodpaster 1991; Hansmann and Kraakman 2012; Heath 2006, 2007; Langtry 1994; Marcoux 2003; Sternberg 2000).

Nevertheless, while defenders of shareholder primacy agree that business activity has moral constraints, there is significant disagreement about how far reaching these constraints should be. One can divide the positions taken in the literature into three categories that differ according to how ethically demanding they are:

> *Minimal*: Minimal versions of shareholder primacy, by far the most widespread in the literature, argue that the moral obligations that constrain the activities of businesses are minimal: businesses are required to, at most, comply with the law and respect basic obligations such as fulfilling contracts and avoiding deception, theft, and coercion (Friedman 1962, 1970; Hasnas 1998; Sternberg 2000, 2010).[6]

https://doi.org/10.1017/beq.2019.18 Published online by Cambridge University Press

Maximal: Maximal versions of shareholder primacy propose that the moral obligations of businesses are equivalent to the moral obligations of shareholders (Goodpaster 1991; Kriegstein 2016; Mansell 2013, 2015; Ohreen and Petry 2012).

Encompassing: Encompassing versions of shareholder primacy assert that the obligations of businesses extend significantly beyond what is required by minimal versions of shareholder primacy but are still less demanding than the obligations that are imposed on shareholders and human beings in general.

Our examination of the core theses of shareholder primacy will reveal, first, that nonelective obligations carry over from shareholders to managers. This, as we will see, imposes more encompassing moral demands than those recognized by defenders of minimalist versions of shareholder primacy. We will also recognize that discretionary obligations do not always transfer from principals to their agents. This will show that maximal versions of shareholder primacy are flawed because they are too morally demanding. As a consequence, encompassing versions of shareholder primacy emerge as the only tenable versions of shareholder primacy. The first step to show this, however, involves clarifying the normative dimension of shareholder primacy.

2. NORMATIVE MANAGERS AND PRINCIPALS

A manager has know-how, competencies, and expertise that make her particularly well-suited to administer the business; principals are seldom as qualified as she is (Kriegstein 2016, 453).[7] The same is true about other types of professionals that act as fiduciaries of principals. Doctors and lawyers have expertise that patients and clients typically lack; it is because of this expertise that patients and clients need to hire doctors and lawyers. When doctors and lawyers make decisions on behalf of a principal, they are required to act in the principal's interest. Decisions (especially the most important ones) are usually discussed with the patient or client. He is typically offered information about the benefits and risks of the different potential alternatives available to him, information that is supposed to help him make an informed decision about what he considers best. When it is not possible to get direct input from him, doctors and lawyers have to make the decisions on his behalf, trying to put themselves in the shoes of the patient/client so that they act as he would have chosen them to act. The agent, in sum, should conduct the affairs of the principal as the principal would have wanted her to.

Because the manager is institutionally separated from shareholders and seldom has direct contact with them, she is in the position faced by a doctor/lawyer who lacks access to the direct input of her patient/client. This suggests the following *guiding managerial directive*: "Is this what shareholders would want the manager to do? Is this what shareholders would do if they were directly administrating the business and had the information, know-how, expertise, and competencies that the manager has?" (cf. Hart and Zingales 2017a, 263).

When articulating the moral obligations of managers at the most general level of analysis, this directive is keyed in a fully normative register. From a fully normative perspective, the idea that managers are required to do what shareholders would want the manager to do should not be construed as a question of what actual shareholders would effectively want managers to do. Scholars have tended to miss this (Bower and Paine 2017, 55, 59; Hansmann and Kraakman 2012, 36; Hasnas 1998, 22; Kriegstein 2016, 457; McMahon 1981, 258–9; Hart and Zingales 2017a, 248; Rodin 2005, 171, 176). If one fails to recognize this, one ends up committed to the view that if shareholders are indolent and want the manager to pursue unfair business practices, the manager is supposedly obligated to follow suit.

This is mistaken. The morally inflected question that we are addressing—how *should* the manager conduct the business she is entrusted to administrate?—is a full-blown normative question. As such, it is not an empirical question about how shareholders, as a matter of fact, want the manager to conduct the business (Heath 2014, 32–3). It is a normative question that involves thinking of shareholders in normative terms; that is to say, assuming that shareholders are moral and, therefore, that what they want passes moral muster. Thus, articulating a normative theory of business that fleshes out the responsibilities that a manager has towards shareholders requires us to think of "shareholder" and "manager" as embodying normative standards. In particular, it requires thinking that they are moral agents who abide by moral norms.[8] In what follows I will assume that shareholders and managers are moral agents that live up to what morality requires of them.

This leads to what one may call the normative directive that guides the manager's decisions:

> *Normative Managerial Directive*: Is this what (moral) shareholders would want the manager to do? Is this what shareholders who abide by moral norms would do if they were directly administrating the business and had the information, know-how, expertise, and competencies that the manager has?

A corollary follows: the fiduciary obligations that an agent has to the principals do not give the agent moral immunity to pursue immoral activities; fiduciary obligations do not override the principal's moral obligations or license behavior by the agent that would be prohibited to the principal (Goodpaster 1991; Kriegstein 2016). It is natural to infer from this that agents inherit all the obligations of principals. A number of scholars in business ethics have actually made that inference (Goodpaster 1991; Hsieh 2004; Kriegstein 2016; Mansell 2013; Ohreen and Petry 2012). As we will see, this inference is mistaken because there are discretionary obligations that do not carry over from principals to their agent. To see this, however, we need to first clarify the nature of nonelective and discretionary obligations.

3. THE DISTINCTION BETWEEN NONELECTIVE AND DISCRETIONARY OBLIGATIONS

At the heart of the distinction between nonelective and discretionary obligations is the fact that moral obligations are not all mandatory in the same way (Herman 1993; Hill 1971; Kant 1998; Rainbolt 2000; Schneewind 1990; Schroeder 2014; Stohr 2011). There are obligations, such as the obligation not to murder an innocent person, that impose demands that do not afford latitude and require compliance on every occasion. Other obligations, such as the obligation to aid those in need, allow for latitude about when and how to discharge them. We are always required to avoid murdering an innocent, but we are not required to always help a person in need. This latitude has to do with, among other things, the fact that how one decides to fulfill a discretionary obligation can depend on one's own sensibility and personal inclinations.

I will refer to duties that impose demands that don't allow for latitude and always require compliance as *nonelective* obligations. I will refer to obligations that allow for latitude about when and how to discharge them as *discretionary* obligations. The labels nonelective and discretionary are meant to single out one single criterion at play in the more complex distinction between perfect and imperfect duties.[9] I use these labels instead of the more familiar perfect/imperfect labels to indicate that the distinction at play here is only related to this single aspect of the perfect/imperfect distinction and to signal to readers that the distinction between nonelective and discretionary obligations should be unhinged from the philosophical baggage associated with the distinction between perfect/imperfect duties, in particular from the Kantian theoretical apparatus with which these are typically associated.

There is, in fact, nothing specifically Kantian about the distinction between nonelective and discretionary obligations. The idea that not all obligations allow for the same degree of latitude is a pretheoretic intuition that runs deep within our moral landscape. Denying it amounts to affirming that all obligations are always mandatory or forbidden, a view that imposes too stringent demands on us. The case of beneficence illustrates it. If it were demanded that we comply with the obligation to be beneficent on every occasion, we would be required to help those in need every time we could. Because it is almost always possible to help someone in need, this would require us to devote all of our spare time to pursuing beneficent actions. However, it is natural (and legitimate) to deny this. Arguably, we are not contravening the duty of beneficence by enjoying an afternoon with friends, even if we could be spending this time contributing to worthy humanitarian causes. And this is so, not merely because doing so allows us to replenish our vigor to pursue our charitable work, but because "there is such a thing as having done enough when it comes to beneficence" (Stohr 2011, 52; cf. Hill 2002, 201). Part of the force of the intuition that guides the distinction between nonelective and discretionary obligations is that it is permissible to pursue self-interested projects, that even though we should help those in need, we don't need to always be devoted to serving others or to contributing to society.[10]

One might object that the idea of a discretionary obligation is an oxymoron. An obligation that is discretionary, one might say, is not an obligation. This worry is mistaken. The objection fails to recognize that even though discretionary duties allow for latitude, they are obligatory.[11] That they allow for latitude does not entail that they are optional. We have an obligation to help those in need, this obligation is mandatory, and everyone is bound by it. But while this obligation is obligatory in this way, it does not require us to help every single person who is in need, nor to help those in need every time we have the chance to do so; this obligation allows discretion about how and when to help.[12]

4. MAXIMAL VERSIONS OF SHAREHOLDER PRIMACY GO WRONG WITH DISCRETIONARY OBLIGATIONS

It is natural, but mistaken, to think that all obligations that bind shareholders are inherited by the manager who serves as their agent. Goodpaster provides a concise articulation of this rationale:

> The responsibilities of management toward stockholders are of a piece with the obligations that stockholders themselves would be expected to honor in their own right.... No one can expect of an agent behavior that is ethically less responsible than what he would expect of himself.... The conscience of the corporation is a logical and moral extension of the consciences of its principals (1991, 68).

As I will now show, this argument, suggested by a number of business ethicists (Arnold 2003; Goodpaster 1991; Kriegstein 2016; Mansell 2013; Ohreen and Petry 2012), is flawed. The fact that all shareholders share a particular obligation, interest, or need does not mean that the manager is obligated to discharge this obligation, serve that interest, or fulfill this need, on their behalf. A fiduciary relationship is a "*triadic* relation" (Marcoux 2003, 3). It involves two parties (an agent and a principal) *and* a project (in this case, the business). Managers are agents of shareholders only in a circumscribed domain: the administration of the business (Heath 2014, 32). It follows that the obligations that carry over from shareholders to managers are only those that bind shareholders as part of their participation in the business (Kriegstein 2016).

Most of the scholars who have defended maximal versions of shareholder primacy have tried to infer the responsibilities of managers from the responsibilities that shareholders have as human beings (Goodpaster 1991; Mansell 2013; Ohreen and Petry 2012). This is mistaken. As Kriegstein (2016, 446) points out, the moral obligations that apply to shareholders need not coincide with the moral duties that bind human beings in nonbusiness contexts. Shareholders' obligations take place in a competitive environment determined by the ethics of adversarial relationships, and this context will typically impose a more limited set of obligations than those that apply to human beings in general. Only these more limited sets of obligations would potentially carry over from shareholders to managers.

What most defenders of maximal versions of shareholder primacy get right is that shareholders' participation in a (successful) business enterprise imposes a duty of beneficence on them. Arguably, because shareholders increase their wealth through their investment in the business, we have a moral expectation that they would share some of these gains with those who are less fortunate. This expectation, however, arises not merely from the fact that they are human beings, but from the fact that they are increasing wealth *through* their joint enterprise.

But the fact that all shareholders are bound by this obligation does not mean that it carries over to the manger. Defenders of maximal versions of shareholder primacy fail to realize that for managers to be required to fulfill shareholders' obligations on their behalf, these obligations are such that (moral) shareholders want the manager to fulfill them on their behalf. If it is in the interest of (moral) shareholders to discharge certain obligations by themselves, and it is morally permissible for them to do so, the manager should not attempt to discharge these on their behalf.

The above considerations can be summed up in the following two conditions that have to be met for any obligation to roll over from principals to agents.

> *Imposed on shareholders (qua) shareholders*: It is an obligation that would be imposed on shareholders if they were administrating the business themselves.

> *Shareholders would want it discharged by their agent*: It is an obligation that shareholders, who uphold moral norms, would want the manager to discharge on their behalf.

With these two conditions, as I will proceed to show, managers are not, in general, obligated to fulfill instances of the wide duty of beneficence (to which I will refer to as "charity") on shareholders' behalf. Two reasons explain this. The first has to do with the way in which discretionary duties allow us to express our individuality. In allowing for latitude, the duty of charity provides us with a space to exercise what Rainbolt has aptly called "moral freedom" (Rainbolt 2000; cf. Lea 2004, 210–1). How and who we decide to help provides us with an avenue to express ourselves morally. Rainbolt illustrates this with familial and amical obligations, such as the obligation to play with one's child or to show one's wife that one loves her:

> Consider my obligation to show my wife that I love her. This obligation gives me a great deal of latitude as to manner. The fact that I have this latitude is important to my wife (and to me) because it means that the act-tokens I perform to meet this obligation are more expressive of me and my feelings about her. It gives me the latitude to show that this relationship is unique (Rainbolt 2000, 249).

From this perspective, how a shareholder might want to share his proceeds with those in need appears to be a personal matter that should be out of the reach of managerial responsibilities.[13] In other words, it seems that an important part of a discretionary obligation is that it allows us to fulfill it in our own personal way.

A second reason why managers should not, in general, be tasked with fulfilling wide duties of charity is that shareholders might have personal differences that lead them to fulfill the duty of charity differently. These differences will be grounded in both their individual sensibilities and their personal circumstances. Some shareholders might be more inclined to contribute to organizations that help certain dispossessed communities, while others might want to contribute to threatened minorities or at-risk populations. There are also differences in their personal circumstances that lead to variations in the proportion that each shareholder should contribute to charity. Some shareholders might be very wealthy and are morally obligated to make substantial donations to charity; other shareholders might be struggling financially and might not be required to make any financial contribution (Lea 2004, 214–5). Given these wide divergences, it will be difficult, if not impossible, for the manager to discharge shareholders' obligation to fulfill wide duties of charity on their behalf. But because the duty of charity is wide, and because it does not require the manager to discharge it in any specific way, it is a duty that can be separated from the money-making activities of the business (Hart and Zingales 2017a, 2017b).

Because of this, instead of using corporate resources to engage in charity, managers should transfer these resources to shareholders and allow each of them to fulfill their wide duty of charity directly, as is fit for each of them.

A reader might be tempted to provide a third justification for why managers should not discharge discretionary obligations on behalf of shareholders, namely, that managers lack the qualifications to do it (Friedman 1970, 122; Rodin 2005, 178). "What qualifies a manager to administrate a business," this reader might argue, "are things like her understanding of the risks and challenges in the industry, her ability to anticipate the financial needs of the company, and her capacity to lead teams and inspire others. Knowing how to engage in charitable giving to best help those in need, however, is not part of a manager's job description." This justification is fallacious; it begs the question. It is predicated on an antecedent conception of the manager's responsibilities, which is precisely what we are trying to clarify. If my argument showed that managers are obligated to fulfill discretionary obligations, then this would just show that this reader's understanding of the scope of managerial responsibilities is mistaken and that discharging discretionary obligations should be part of a manager's job description.

A few caveats are in order. First, if shareholders (or at least a sufficient majority of them) want the manager to discharge a discretionary obligation that binds them in a specific way, then the manager will be typically obligated to do it. There are, for instance, companies whose statutes codify the charitable commitments of shareholders, stipulating that the company should devote a certain proportion of their proceeds to certain charitable causes; Target, for instance, commits 5 percent of its profits for this purpose (Target 2012). Absent this kind of stipulation, however, one would not expect a consensus among shareholders about how to discharge their duty of charity given their wide variety of inclinations and diverse personal circumstances. In these cases, we have a prima facie reason to think that managers should avoid fulfilling these obligations on their behalf.

Second, if making charitable donations is a strategic managerial decision that contributes to increasing the company's bottom line (and most of the charitable contributions of current companies are of this sort), then the manager is typically obligated to make these donations. Note, however, that her obligation to get involved with charity arises not because she is obligated to discharge discretionary obligations on shareholders' behalf, but because she is obligated to increase shareholders' value (cf. Rodin 2005, 175). As such, charity becomes a means to achieve an end: increasing shareholder value. Because it is a means, there is a clear way to determine the charitable deeds that the manager should pursue: those that would make more money for shareholders. Pursuing charity in this way, however, should not be conceptualized as fulfilling a discretionary duty of beneficence.

Third, I have argued that, within shareholder primacy, managers are not required to fulfill *certain* discretionary obligations such as the wide duty of charity. I haven't shown, however, that this result generalizes to all discretionary obligations. Although it is beyond the limits of the article to explore this, there may be narrow duties of beneficence, associated with the particular competencies of the company or its specific relationships with certain groups of people, that are discretionary and that managers may be required to fulfill on behalf of shareholders.

5. MINIMAL VERSIONS OF SHAREHOLDER PRIMACY GO WRONG WITH NONELECTIVE OBLIGATIONS

5.1 Many Nonelective Obligations are Context Sensitive

In the previous section, I argued that discretionary obligations don't necessarily carry over from shareholders to managers. In this section, I will argue that all nonelective obligations do carry over. Before providing my argument, however, I first need to get out of the way an objection. The objection can be phrased as follows:

> Aren't nonelective obligations universal? Don't they bind managers merely in virtue of their being humans? Managers have the obligation to not murder their competitors, not because they inherit this obligation from shareholders but because it is an obligation imposed on every human being. If the manager is endowed with nonelective obligations in virtue of being human and not in virtue of being a manager, then it seems misguided to try to figure out what the manager's obligations should be by looking at the obligations of shareholders.

I agree that there are certain nonelective obligations—such as the obligation not to murder an innocent person—that are not contextual and that bind managers in virtue of their being human and not in virtue of their being the agents of shareholders. And I agree that it is misguided to identify these obligations by looking first at whether or not they bind shareholders. The objection misses the mark, however, in assuming that all the nonelective obligations that bind managers are of this kind. The idea that all nonelective obligations bind managers in virtue of being human beings fails to recognize that different contexts of human interaction involve different moral obligations. The obligations that arise when we are engaged in adversarial relationships are not the same as the obligations that arise when we partake in collaborative endeavors (Boatright 2009; Heath 2007, 2014; Kriegstein 2016; McMahon 1981). Thus, while there are some obligations that bind us as human beings, regardless of our context, many obligations are context specific. Consequently, to identify the managerial obligations that arise from the agency thesis, many of which are nonelective, one will need to attend to the obligations that bind shareholders qua shareholders.

5.2 Nonelective Obligations Carry Over From Shareholders to the Manager

In section 4, I showed that the fact that all shareholders are bound by the same obligation does not necessarily mean that this obligation carries over to the manager; even though all shareholders are bound by the duty of charity, the manager is typically not required to fulfill it on their behalf (in fact, she may be prohibited from doing so). Why would this not be the case with nonelective obligations? Why do nonelective obligations always carry over from shareholders to managers?

Scholars in the field tend to think that this claim follows trivially and does not require argumentation. As I hope to show below, this is not the case. What explains why nonelective obligations carry over from shareholders to managers is the combination of two things: 1) the underlying motivation to separate "ownership and control," and 2) the fact that nonelective obligations offer no latitude. What justifies thinking that principals should fulfill certain discretionary obligations directly and not through their agent is that there are individual differences among them that their agent should try to respect: their possibilities to express their own moral identities, their differing individual inclinations, and their varying personal circumstances. These differences, however, play no role in the case of nonelective obligations. Nonelective obligations do not offer latitude about how to fulfill them. When a nonelective obligation binds shareholders, shareholders are all required to fulfill it in roughly the same way.

It is conceptually coherent to think that shareholders could fulfill a nonelective obligation generated by the activity of their business directly and not through the manager. Take, for instance, the positive nonelective obligation to pay employees their contractually-agreed salary. Shareholders could (leaving aside the legal complications of it) fulfill this duty on their own by paying employees directly. This shows that it is theoretically possible to consider certain nonelective obligations not carrying over from shareholders to managers. However, when we take into account the motivation for shareholders to invest in a company that separates shareholders and managers, the implausibility of this theoretical possibility comes to the fore. Among the central reasons to separate the investment capabilities of a multitude of shareholders from the administrative competencies of a business manager (separate ownership and control) is to reduce the costs that arise from a multitude of shareholders trying to administer the business together (Heath 2010, 180). Shareholders require the manager to administer the business on their behalf because they don't have the competencies (and time) to do it on their own. The idea of shareholders fulfilling directly the nonelective obligations that arise from their participation in the business complicates the logistics of the administration of the business in costly and unnecessary ways. For instance, it would be utterly complicated for shareholders to coordinate paying employees' salaries directly. Fulfilling nonelective obligations on their own would also require shareholders to be much more involved in the business activities than they are typically willing to be (and capable of being). Consequently, thinking about shareholders fulfilling nonelective obligations directly undermines their motivation to come together as shareholders and appoint an agent to administrate the business on their behalf.

In the previous section, I discussed that when attempting to fulfill wide duties of beneficence on behalf of shareholders, a manager is faced with a coordination problem: because each shareholder is entitled to fulfill the duty of charity differently, it is seldom possible to find a unified way that would reflect the way in which shareholders would fulfill this duty. This issue does not arise in the case of nonelective obligations. Because nonelective obligations are strict, they bind all shareholders in the same way. Consequently, there is no diversity of interests nor are there personal circumstances affecting how the manager should fulfill them. Once a nonelective obligation is identified, it is transparent to the manager how to fulfill it.

5.3 Minimal Versions of Shareholder Primacy are Untenable

Establishing that managers are required to fulfill all nonelective obligations that bind shareholders allows me to show that minimal versions of shareholder primacy are untenable. The work of three scholars, Arnold (2003), Heath (2014), and Hsieh (2017b), provides three different avenues to substantiate this.

Arnold (2003) has appealed to Texaco's infamously reckless oil extraction in Ecuador to show that shareholders (and their managers) are often bound by moral obligations that go beyond those proposed by minimal versions of shareholder primacy. During Texaco's exploitation, "villagers report ... cattle are found with their stomachs rotted out; crops are destroyed; animals are gone from the forest; and fish disappeared from lakes and rivers" (161). In addition, "the water used by many communities for drinking, bathing, and fishing was contaminated with high levels of carcinogens" (161). To assess whether it was forbidden for the managers to engage in these highly polluting practices, we need to ask ourselves whether shareholders, who uphold moral norms, would have engaged in these practices if they were directly managing the company. Is the reckless pollution of the environment, and the very serious harm caused to human beings, justified by the potential increase in their profits? Arguably, the answer is no. No morally oriented shareholder would consider himself entitled to make a profit by causing such damage and such harm. The obligation to avoid engaging in such toxic practices applies to every shareholder with no latitude. Consequently, it is a nonelective obligation that carries over to the manager.

Arnold reminds us that Texaco complied with the law, honored its contractual obligations, and did not engage in deception, theft, or coercion (161). As such, this case illustrates that minimal versions of shareholder primacy are flawed because they fail to recognize certain nonelective obligations that bind shareholders and, *by proxy*, their managers. The example also allows one to illustrate a particular failure by minimal shareholder theorists to recognize that the moral obligations imposed on businesses need not all be codified into law. The reason is not merely that ethical norms and legal laws do not coincide but that there are laws that *should* be codified into a legal system, but are not codified because of corruption, logistical difficulties with their implementation, high transaction costs, or significant agency risks (Norman 2011). Because all of these potential laws apply to everyone who is taking part in the economic activity of a given country, regardless of their individual sensibilities, they are nonelective. As such, they bind all shareholders and their managers.

Heath (2014) has developed an influential project in business ethics that, among other things, serves to criticize minimal versions of shareholder primacy. His reflection on the "implicit morality of the market" (McMahon 1981) leads him to show that the social value of business competition, which minimal shareholder theorists usually endorse, implies a wider set of managerial obligations than those recognized by minimal shareholder theorists. Within this account, these managerial obligations include, among others, internalizing the cost of negative externalities, avoiding lobbying against regulations intended to correct imperfections in the market, competing only through price and quality, avoiding erecting barriers to entry, reducing information asymmetries between the business and adversarial business parties, and a host of additional restrictions that suggest that the moral demands on businesses are quite encompassing (Heath 2014, 37).

While it is beyond the limits of the article to fully assess the merits of Heath's account, it is worth highlighting that the obligations that he describes are nonelective.[14]

Heath's argument is meant to apply to everyone who interacts in an adversarial business relationship. The obligations imposed by his account follow from the sheer recognition of the social value of economic efficiency. The fulfillment of these obligations does not depend on the individuality or the sensibilities of any market actor but applies to everyone equally. Consequently, according to Heath, shareholders whose investment in a business is made possible by a free market should recognize the prohibition to exploit market failures (Heath 2014; Kriegstein 2016). Because all shareholders are bound by these obligations in the same way, these obligations are nonelective. And because of they are nonelective, they carry over to managers.

In a series of papers, Hsieh has provided a different approach that seeks to identify the responsibilities of business managers by reflecting on "the duty not to harm" (Hsieh 2004, 2009, 2017b). According to Hsieh, the duty not to harm imposes a wide variety of negative duties on managers. It protects the people with whom a company has to deal "against actions or forms of treatment that would involve wronging them in some significant way, such as by harming an important interest of theirs (e.g., bodily integrity) or by restricting their ability to exercise a fundamental freedom (e.g., freedom of thought)" (Hsieh 2009, 256). Because these constraints "apply to all persons, regardless of natural or social differences" (256), they are nonelective.

But Hsieh argues that the duty not to harm does not merely ground negative duties; it also grounds "positive obligations in the areas of human rights, labor standards, and environmental protection" (Hsieh 2004, 643). For instance, Hsieh argues that shareholders of transnational, multinational companies operating in what he calls "burdened societies" have a positive duty to provide aid because they have a negative duty not to harm. As he explains, shareholders in these companies "benefit directly from the burdensome conditions that characterize the society in which they operate" (650). According to Hsieh, because they benefit from conditions that harm people in the burdened society, shareholders have a duty to compensate those who have been harmed by the exploitation of these conditions, at least for the amount that has been gained. Thus, according to Hsieh, shareholders whose companies benefit from burdensome conditions would have positive duties to alleviate these burdensome conditions if they were managing the business directly. These positive duties of assistance are ultimately grounded in the duty not to harm. Because this is a nonelective duty that binds all shareholders, it carries over to their manager. By showing that the (nonelective) duty not to harm grounds a much more encompassing set of obligations than minimal versions of shareholder primacy recognize, Hsieh's account helps us to see that such versions of shareholder primacy are flawed.

6. ENCOMPASSING VERSIONS OF SHAREHOLDER PRIMACY

I have argued that minimal and maximal versions of shareholder primacy are both untenable. The former do not impose enough obligations on managers; the latter impose too many. Both Heath (2014) and Hsieh (2004, 2009, 2017b) recognize that the obligations imposed on managers are more encompassing than minimal versions of shareholder primacy recognize, and both of them agree that these obligations are not as encompassing as maximal versions of shareholders primacy suggest (cf. Rodin 2005). I will conclude the article by discussing whether either of their accounts instantiates an encompassing version of shareholder primacy.

Let me start by focusing on Hsieh, who proposes to ground managerial obligations in the "duty not to harm." While this duty can be shown to ground obligations that are more encompassing than what minimal versions of shareholder theory recommend and not as encompassing as what maximal versions propose, it is nevertheless inadequate to ground an encompassing version of shareholder primacy. The main reason is that in some cases this duty is too demanding and in others it is insufficiently demanding. There are two types of reasons why it is too demanding. First, in failing to differentiate the magnitude of the harm, it is unable to differentiate between major harms that are forbidden and minor harms that may be morally permissible. Second, within shareholder primacy there are plenty of examples where managers are allowed (and even encouraged) to engage in morally permissible harms of significant magnitude. For example, they are allowed to put competitors out of business by developing better products at lower prices, leave a group of employees out of jobs because a plant is relocated to a different location, or leave a group of suppliers in the lurch due to a change in the strategic orientation of the firm. The moral legitimacy of these actions may actually be very strong (for instance, if the new plant is moved to a location that serves a historically disenfranchised group or if the change in strategy is a response to an existential threat to the company).

But the duty not to harm is also not sufficiently demanding because it cannot ground all obligations that bind shareholders qua shareholders. Arguably, not all instances of nonelective duties of reparation, foresight, fidelity, and justice can be formulated in terms of a duty not to harm. Fulfilling one's promises and seeking fair arrangements in the workplace are instances of the duty of fidelity and justice. But what grounds these duties is not always the harm that may be inflicted by the failure to discharge them. By breaking a promise or a contract you may wrong (but not harm) the other party (Rodin 2005, 167). To assume that "harm" can be used as a universal token to assess all obligations fails to recognize the multiplicity of ways in which our moral obligations are grounded.

Hsieh connects the idea of grounding managerial duties in the duty not to harm with the idea that "basic principles of ordinary morality . . . provide an adequate basis for specifying the responsibilities of business managers" (Hsieh 2017b, 293). Our basic principles of morality, however, involve negative *and* positive duties. Why, one may wonder, should one expect one single negative duty, the duty not to harm, to ground all negative and positive nonelective duties? For instance, there are promising arguments suggesting that there are positive duties of rescue that are nonelective (Merck's donation of Mectizan comes to mind). A powerful justification for these (nonelective) positive duties is not that the company's managers have to repair the harm from which shareholders have profited, but that the company has a unique competency to alleviate a significant human need without incurring significant costs to shareholders (Donaldson 1992; Dunfee 2006).[15] Thus, the duty not to harm is neither necessary nor sufficient to ground the moral obligations within encompassing versions of shareholder primacy. In certain cases, this duty imposes some obligations that are too demanding, and in other cases, it imposes obligations that are not sufficiently demanding.

Let me now discuss Heath's account. The fact that he identifies himself as a "tinged" shareholder theorist (Heath 2006, 551) may suggest that his account instantiates an encompassing version of shareholder primacy. However, the fact that the duties favored by his account appear to line up with the duties that an encompassing version of shareholder primacy would recommend betrays an important methodological difference. One of the central points defended in this article is that, because of the agency relationship, to identify many of the obligations imposed on managers one needs to start by looking at the obligations that would bind shareholders if they were directly managing the business. However, as Kriegstein (2016, 446) has shown, Heath attempts to infer the managerial obligations directly from the implicit morality of the market, failing to recognize that "the obligations formulated by the market failures approach apply in the first instance to shareholders, rather than to managers, for it is shareholders who are seeking to further their own self-interest via market competition" (446). This suggests that Heath's approach, as it stands, cannot be identified with an encompassing version of shareholder primacy.

With a few minor tweaks, however, Heath's account can be modified to instantiate an encompassing version of shareholder primacy. To be an encompassing version of shareholder primacy, his account would need to, first, identify the obligations that bind shareholders qua shareholders. Kriegstein (2016) has argued that it is possible to interpret Heath's account as applying to shareholders first. For this revised account to be an encompassing (instead of a maximal) version of shareholders primacy, it would also need to examine which of these obligations carry over to managers. In doing so, it would recognize, as Kriegstein does not, that not all discretionary obligations that bind shareholders carry over to the manager. A revised Heathian account that would accommodate these two methodological points would instantiate an encompassing version of shareholder primacy.

This revised Heathian account, however, is but one potential version of an enhanced notion of shareholder primacy. Different business ethics scholars might have reservations with it. Some may argue that shareholders who benefit from investing in a business enterprise should not merely avoid profiting from market failures but also from "justice failures" (Singer 2018). Others might argue that the emphasis on efficiency conflicts with other moral duties that shareholders have and which might take priority (McMahon 1981), moral duties that one might simply recognize as "the decent thing to do" (Goodpaster 1991, 65). It is also possible to propose encompassing versions of shareholder primacy that do not rely on efficiency or Paretian considerations. For instance, one might try to develop an account of the moral obligations that bind shareholders by relying on, say, Kantian (Bowie 1999) or Aristotelian (Hartman 2013) principles.

7. PRACTICAL IMPLICATIONS AND FUTURE DIRECTIONS

Encompassing versions of shareholder primacy provide a framework that is able to accommodate a family of versions of shareholder primacy. These versions recognize that to identify the main responsibilities of managers one should 1) identify the obligations that bind shareholders qua shareholders and 2) examine which of these obligations carry over to their managers. I showed that when we identify managerial obligations in this way, we see that managers are required to fulfill all nonelective obligations that are imposed on shareholders, but they are not always required to fulfill (and are sometimes actually forbidden from fulfilling) discretionary obligations that bind shareholders. From this it follows that both minimal and maximal versions of shareholder primacy are untenable: the former do not impose enough obligations on managers and the latter impose too many. The alternative to these two versions of shareholder primacy, however, is not a single version of shareholder primacy, but a framework that is able to accommodate a *family* of versions of shareholder primacy.

My analysis in this article has focused on the obligations that are imposed on managers in virtue of the principal-agent relationship. Nothing in what I have said, however, precludes the possibility of providing considerations external to the agent-principal relationship to modify the scope of these managerial obligations. For instance, as an anonymous reviewer put it, there may be a "professional ethos specific to the context of management that is independent of any obligations shareholders may have." This managerial role may come with an independent set of obligations that are not derived from the fact that managers are agents of shareholders, and these obligations may be more (or less) demanding than the obligations imposed by the principal-agent relationship (cf. Strudler 2017). To illustrate with another example, one may appeal to notions of corporate agency to argue that the managerial obligations are more (or less) encompassing than those entailed by the principal-agent relationship (cf. Hsieh 2017a).

One interesting corollary from my argument pertains to debates about corporate agency. Scholars who attribute agency to firms have tended to think of businesses as agents with the same moral requirements as ordinary human beings. The main thesis I defended in this article—that managers and, by proxy, the businesses they administer, are only constrained by some of the obligations that bind human beings in general—means that *if* we think of businesses as moral agents, and *if* we think that the responsibilities of managers to conduct the businesses are those that emerge in virtue of being agents of shareholders, then it follows that businesses do not have the same ethical obligations as ordinary human beings. In other words, my article provides a prima facie argument that businesses and human beings are different kinds of moral agents and, consequently, that the conscience of the corporation is *not* "a logical and moral extension of the consciences of its principals" (Goodpaster 1991, 68; cf. Goodpaster and Matthews 1982).

As I have demonstrated, because any tenable version of shareholder primacy has to be encompassing, any account that criticizes shareholder primacy as promoting unethical corporate behavior is targeting what is ultimately a straw man. Shareholder primacy, properly understood, does not sanction reckless profit-maximization. It is not guilty of what some stakeholder theorists have called the "separation fallacy" (Freeman et al. 2010, 6), i.e., the notion that managers can keep ethics and business separate. The fact that, within shareholder primacy, businesses are required to fulfill nonelective obligations implies that business decisions cannot be divorced from ethical questions. Because managers cannot pursue corporate actions that are forbidden by nonelective obligations, they have the obligation to incorporate an evaluation of this ethical dimension in every one of their business decisions.

Shareholder-centric models have become widespread as shown by changes in the attitudes of managers, recent modifications in corporate governance, and the growing ability of activist investors to influence managers' actions (Bower and Paine 2017, 55–57). Shareholder primacy has also become pervasive in the business literature and business education, particularly in the areas of economics, finance, and management (Heath, Moriarty, and Norman 2010, 445; Hart and Zingales 2017a, 248), and has been characterized as "the dominant ideology, or global normative standard" (Hansmann and Kraakman 2001, 46; cf. Hansmann and Kraakman 2012; Hart and Zingales 2017a).

As a consequence, and as many in the literature have recognized, it has become almost axiomatic for shareholders, financial advisers, boards of directors, and company executives to conceive of managers as agents of shareholders (Bower and Paine 2017; Ghoshal 2005; Hansmann and Kraakman 2001, 2012; Hart and Zingales 2017a). Practitioners, however, have tended to limit the focus of their attention on the managerial obligation to maximize profits for shareholders, often short-term profits, failing to recognize the demanding ethical limits that the principal-agent relationship imposes on such maximization. Business ethicists have often addressed this profit-oriented bias by proposing alternative models of corporate governance, a strategy that has had limited success because of practitioners' deeply ingrained conviction that managers are agents of shareholders. Unlike external critiques of shareholder primacy that propose alternative models of corporate governance or promote prosocial behavior by firms, my argument is more powerful rhetorically in that it offers an internal critique of a model that these business practitioners, lawyers, and scholars embrace, a critique that shows that their own endorsement of shareholder primacy commits them to recognize a more robust set of ethical obligations than they typically acknowledge.

Shareholders, as the principals in whose interest the business is administered, need to recognize that they are not only the beneficiaries of the activities of the business but that they also bear the ultimate responsibility for any moral wrongdoing committed on their behalf. As such, shareholders should be more vocal with managers about the importance of conforming to a more encompassing set of moral restrictions. This requirement might appear to fly in the face of the generally accepted fact that the general public should be allowed to buy shares in companies, despite lacking much expertise on such companies or their industries and without requiring much involvement in their part. What I am suggesting here is not that individual shareholders should be vocal with managers about the specific obligations that they should fulfill on their daily operations. My claim is that shareholders should be vocal about the fact that their financial returns should be constrained by any nonelective obligation imposed on managers via the agency relationship. Of course, given that managers are equipped with the expertise to run the business, expertise that shareholders typically lack, it behooves managers to figure out the specific moral limits of their actions and decisions. Managers should recognize that the moral limits to their external business activities exceed those proposed by minimal versions of shareholder primacy. But they should count on the support of shareholders who would look favorably at lower rates of return when this is the result of fulfilling the nonelective obligations that bind them. Boards of directors should be more conscious that part of their own responsibilities consist of ensuring that managers are complying with these moral obligations. Financial advisers, in turn, should recognize and make more transparent to clients that buying company stock is not simply betting money on a particular company, but owning a share of the residual earnings, earnings which should be limited by a more encompassing set of obligations than previously acknowledged. Finally, lawmakers and regulators should seek institutional reforms on corporate governance that support the view that "managers are accountable to owners not only for the financial performance of the corporation but also for the minimal and maximal moral character of its activities" (Rodin 2005, 178) and that provide clearer avenues for shareholders to communicate their moral demands and preferences to shareholders (Rodin 2005, 179; Hart and Zingales 2017a, 258, 264).

Some scholars might have the intuition that this is not part of what managers should do, that this should not be part of their job description (Friedman 1970, 122; Rodin 2005, 178). However, a reflection on the principal-agent relationship shows that such intuition is mistaken; as agents of shareholders, managers are required to fulfill an encompassing set of moral obligations on their behalf. If the skeptic pushes back saying that this is not what business managers are trained to do, one can respond in two complementary ways. First, one should insist that this is a mistake, that business managers should be sufficiently conversant with ethics to identify their most important moral responsibilities. Second, one could argue that, as with any other aspect of the company's administration, managers need not know everything about its management. They can (and should) hire officers who have the competence for dealing with this specific area, officers who are capable of identifying difficult moral issues and offer counsel and recommendations about how to deal with them. Regulated by a more encompassing set of corporate laws, guided by more explicit moral directives in corporate statues and shareholder communications, pressured by boards of directors to comply with these moral requirements, and helped by corporate officers to identify, assess, and take action with respect to encompassing obligations, managers would be well positioned to fulfill the moral demands imposed by the principal-agent relationship.

ACKNOWLEDGEMENTS

This article greatly benefited from lively discussions at the Society of Business Ethics conference and The Georgetown Institute for the Study of Markets and Ethics. I am also indebted for valuable conversations and feedback on the ideas discussed in this article to Miguel Alzola, Pietro Bonaldi, Noah Chafets, Marc Cohen, Kendy Hess, Kevin Jackson, Ainsley LeSure, Samuel Mansell, Jeff Moriarty, Clair Morrissey, Gaston de los Reyes, Luke Semrau, and Aleksandra Sherman. Chelsea Wegrzyniak and Akash Jethwani provided valuable research assistance, which would not have been possible without the support from the Columbia-Fordham Research Fellowship. The suggestions by the associate editor, Thomas Donaldson, and three excellent anonymous reviewers helped to significantly strengthen the article. All errors are mine.

NOTES

1. I will use "managers" as an encompassing term that refers to everyone tasked with making managerial business decisions in the company. While the most important decisions come from the top executives, middle managers or committees also make decisions on behalf of principals and, as such, should also be considered managers when they are acting in such a capacity. When I speak of "shareholders" I will be assuming that they are ordinary human beings. This may fly in the face of the fact that a significant percent of public equities are currently owned by institutional investors (Bower and Paine 2017, 53; Hart and Zingales 2017a, 265). However, this turns out not to be such a problematic assumption because companies are, in fact, ultimately owned by ordinary human beings, given that institutional investors are predominantly owned by ordinary human beings (Hart and Zingales 2017a, 248).

2. Some scholars in the field establish a distinction between fiduciaries and agents. According to this distinction, "agents" carry out the wishes of principals and follow orders from them. "Fiduciaries," by contrast, exercise "independent judgment on behalf of a beneficiary" (Bower and Paine 2017, 53; Strudler 2017, 123; Rodin 2005, 175). The "agency thesis" uses a broad notion of "agent," which encompasses both "agent" and "fiduciary" understood in this sense. By being more encompassing, the agency thesis is able to accommodate the fact that in some companies, like big companies that trade in the stock exchange, managers tend to exercise independent judgment, but that in other companies shareholders' agency is more direct (for instance, in privately held companies whose shareholders are deeply involved in the company's affairs and who have the power, through a board of directors, to get management to carry out their orders).

3. Defenders of shareholder primacy have attempted to defend the agency thesis on a variety of grounds (quite often several grounds at once). Even though it is beyond the limits of this article to weigh in on which of these may be more promising, it might be instructive to provide a short overview of them. A significant number of defenders of shareholder primacy have argued that managers are agents of shareholders because shareholders are owners of the company, even if the notion of ownership at play here may be different than the ordinary notions of ownership that we typically use (Friedman 1962, 1970; Hansmann 1988; Heath 2010, 2014; Hessen 1979; Jensen and Meckling 1976; Mansell 2013, 2015; Sternberg 2000, 2010). While often conflated with the previous argument, the agency thesis has also been justified on a (perhaps hypothetical or tacit) contractual relationship or a governance promise between managers and shareholders (Friedman 1962, 1970; Hasnas 1998; Heath 2010; Hessen 1979; Jensen and Meckling 1976; Lea 2004). Other scholars have argued that the agency thesis is grounded on the vulnerability of shareholders, a vulnerability that is recognized in the fact that shareholders are the company's residual claimants and that they have control over the board of directors (Hansmann 1988; Hansmann and Kraakman 2001; Heath 2010; Marcoux 2003). The agency thesis has also been justified on the alleged social benefit that this form of corporate governance provides (Berle and Means 1932; Boatright 1994; Hansmann and Kraakman 2001, 2012; Heath 2006, 2007, 2011; Von Kriegstein 2015). There have also been arguments contending that the agency thesis best accounts for how we think about business enterprises (Heath 2006, 551, 2010, 199), how we understand and encourage "entrepreneurial risk-taking" (Goodpaster 1991, 66) and "equity markets" (Marcoux 2003, 15), and how we think about business activity (Sternberg 2000). Finally, scholars have defended the agency thesis by arguing that the alternative models of corporate governance are less viable, either because they create tension with current corporate law (Hansmann and Kraakman 2001, 2012; Heath 2006, 548); because they create agency risks and complicate manager's accountability and decision-making ability (Goodpaster 1991; Heath 2006, 2010); because these alternative models are conceptually problematic or incoherent (Goodpaster 1991; Heath 2006, 2007; Langtry 1994; Marcoux 2003); or because these models assimilate businesses to organizations run for the public good (Hasnas 1998, 24), and thereby reconceptualize the private enterprise as a public institution that ultimately proposes to supplant capitalism for socialism (Friedman 1962, 1970; Goodpaster 1991), or that

leads to the dissolution of the distinction between what is public and what is private (Brenkert 1992). All of these justifications have been challenged by scholars who favor alternative models of corporate governance in what is a rich and long-standing debate (Berle and Means 1932; Boatright 1994; Ciepley 2013; Ireland 1999; Sharplin and Phelps 1989; Stout 2012). As I said above, it is beyond the ambitions of the article to intervene in this debate. My article merely aims to offer some constraints on what a coherent and attractive version of shareholder primacy should look like.

4. The specific way in which this aim is phrased varies in the literature. Some defenders of shareholder primacy state that managers should aim to increase (or maximize) profits (Friedman 1962, 1970; Goodpaster 1991; Heath 2014), return on investment (Hasnas 1998), shareholder wealth (Mansell 2013), and shareholder value (Sternberg 2000). As far as I can see, nothing of importance hangs on the use of any of these terms; they all seem to be pointing to the idea that a central aim of the business is to make money for shareholders. The reason why I prefer shareholder "value" to "wealth" is that the latter carries the suggestion of opulence (Sternberg 2000, 46). The reason for preferring it over "profits" or "return on investment" is that these two accounting concepts are slippery and their interpretation often leads to short-term biases (Sternberg 2000, 46).

5. Of course, and as has been recognized by some of these scholars, investors might want to pool their money for other purposes and have different aims (Brophy 2015; Friedman 1970; Hasnas 1998). Because this is not what typically happens, however, these scholars also agree that an examination of shareholder primacy should focus on the cases where managers pursue shareholder value.

6. Minimal versions of shareholders primacy include amoral versions of shareholder primacy that hold that moral considerations are not relevant to determine the limits on the external relationships between managers and their business parties (Easterbrook and Fischel 1982, 1177).

7. To simplify the use of pronouns I will use the feminine pronoun for managers/agents and the masculine for shareholders/principals. My usage is not meant to suggest that the former or latter tend to be or should be female or male.

8. In two recent articles, Hart and Zingales (2017a, 2017b) take themselves to address the normative question "What should managers do?" (Hart and Zingales 2017a, 247). They conclude, as I do, that managers have more encompassing obligations than minimal versions of shareholder primacy recognize. Their explanation, however, relies on the fact that shareholders have prosocial inclinations, which carry over to the manager. In their account, the answer to the normative question about the managerial responsibilities is contingent on empirical facts concerning the actual inclinations of shareholders. As such, Hart and Zingales are not offering a full-blown normative analysis of shareholder primacy. I thank Thomas Donaldson for asking me to articulate how my account differs from Hart and Zingales. I also thank an anonymous referee for pressing me to clarify the argument in this section.

9. The distinction between perfect and imperfect duties has been used to distinguish not merely whether a duty allows for latitude, but also whether the duty can be legally enforced or not (Austin 1954, 27), whether the duty compels us to do certain acts or to adopt certain ends (Kant 1998), and whether its violation requires us to think or will a contradiction (Kant 1998). In the business ethics literature, the distinction between perfect and imperfect duties has been discussed by scholars such as Bowie (1999, 2010), Buchanan (1996a), Kaler (2003), Lea (2004), Mansell (2013, 2015), and Ohreen and Petry (2012). Among recent moral philosophers, it has been discussed by Cummiskey (1996), Herman (1993), Hill (1971), Rainbolt (2000), Schroeder (2014), and Stohr (2011).

10. Certain normative ethical theories reject this intuition. Within versions of consequentialism that hold that every individual should try to maximize social benefit (say utility or well-being), discretionary obligations would be nonelective because there would be only one way to fulfill your obligations, namely by pursuing the actions that maximize social benefit (cf. Schneewind 1990, 57). Versions of libertarianism and contractualism that define our only moral obligations as those that prohibit coercion and the infringement on other people's liberty would deny that we are bound by discretionary obligations as charity or mercy. These latter ethical theories do not have room for discretionary obligations, not because they conceptualize these obligations as nonelective, as consequentialists do, but because they don't accept them as obligations at all. While it is beyond the limits of the article to defend the intuition that there are discretionary obligations, it is worthwhile to mention that the fact that these ethical theories do not have room for such obligations is typically considered to be one of their weaknesses. Consequentialism is criticized because it does not allow room for partiality towards ourselves; libertarianism and contractualism because they give too much prominence to such partiality.

11. It is because of this that I have referred to these obligations as "discretionary" instead of "elective." The term "elective" elicits the idea that these duties are elective or optional, which is mistaken because these duties are mandatory. But, while these duties are not elective, they allow for discretion about how to fulfill them. The label "discretionary" conveys this better.

12. The claim that we have an obligation to aid others and that this obligation is discretionary is widely accepted by moral philosophers and business ethicists. See, for instance, Buchanan (1996a), Beauchamp (2019), Dubbink (2018), Goodpaster (1991, 73), Heath (2006, 541), Herman (1993), Hill (1971), Hsieh (2017a), Lea (2004), McMahon (1981, 250, 261–2), Rainbolt (2000), Stohr (2011), and Schroeder (2014).

13. As I mentioned earlier, certain versions of consequentialism require one to conceptualize discretionary obligations as nonelective. It is not a coincidence that an important dimension of the fulfillment of discretionary obligations has to do with the fact that they serve to express the person's individuality. As I suggested earlier, consequentialism tends to reject that we have any warranted partiality to ourselves. All that matters when you are making a moral judgment is that such action maximizes the overall social benefit. And this is so regardless of how such action furthers your own good. As such, these versions of consequentialism require moral actors to deliberately disregard their individuality and character (Williams 1981; Williams and Smart 1973).

14. It has been acknowledged by a number of scholars, Heath included, that the Market Failures Approach relies on an idealized conception of perfect competition that is not trivially applied to nonideal situations (Heath 2014; Kriegstein 2016; McMahon 1981; Moriarty 2019; Steinberg 2017). What is important for our purposes is to recognize that the implicit morality of the market imposes obligations that, even if not fully aligned with what the Market Failures Approach proclaims, still go beyond the minimal obligations defended by minimal shareholder theorists (cf. Norman 2011).

15. I thank two anonymous referees and the associate editor for pressing me to clarify this.

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