Commentary

Are Rawlsian Considerations of Corporate Governance Illiberal? A Reply to Singer

Sandrine Blanc
INSEEC Business School

ABSTRACT: Singer has recently argued that questions related to corporate governance are beyond the reach of Rawls's political conception of justice. This is because justice applies to the basic structure of society, understood as society's legally coercive structures, and because corporate governance cannot be considered part of this structure in political liberalism. This commentary challenges the second part of the argument. First, it suggests that the criterion used to exclude corporate governance from the basic structure—whether employees can exit economic organizations—is not conclusive for corporate governance, notably as institutionalized in corporate law. Second, even if the focus were on corporate governance, it would still be possible to argue that it legally coerces citizens, if not employees, in a relevant way. Thus, the argument is not successful in demonstrating that political liberalism goes beyond its legitimate boundaries when considering that aspects of corporate governance may be matters of justice.

KEY WORDS: Corporate governance, corporation, institution, justice, liberal egalitarianism, Rawls

INTRODUCTION

RAWLS WAS CONCERNED with the shape of the economic institutions of a just society. In his later works, he hints that the governance structure of firms might matter for justice. In an oft-cited passage from *Justice as Fairness*, he wonders whether "greater democracy within capitalist firms" or fostering "worker-managed firms" might be "justified in terms of the political values expressed by justice as fairness, or by some other political conception of justice" (Rawls, 2001: 178)[1]. While he does not address this question himself, he makes it clear that this is an important issue. Liberal egalitarians have pursued this line of enquiry, and recent arguments have pointed towards more democratic workplaces (Hsieh, 2008; O'Neill, 2008, 2009; Hussain, 2009, 2012; Blanc & Al-Amoudi, 2013) or an amount of employee protection from unjustifiably intrusive managerial demands (Hsieh, 2005).

Yet various new critiques still see liberal egalitarian accounts of firms' governance as limited, notably failing to flesh out a detailed account of the type of corporate governance that would be required in a just society. For instance, from thorough reviews of recent literature in business ethics and political philosophy,

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Norman and Néron both conclude that liberal egalitarians have had "little to say" about the governance structure of the firm (Norman, 2015: 29; Néron, 2015: 116). Singer concurs and lists several corporate governance issues that remain unaddressed, for instance, whether shareholders should enjoy "greater democratic powers" in addition to the possibility of selling their shares, or whether workers should hold "more democratic control" (Singer, 2015: 65). In fact, even liberal egalitarians who advocate workplace democracy acknowledge some degree of "imprecision" in their own calls for more democratic firms (O'Neill, 2008: 47).

Yet there exists notable disagreement regarding the reasons for these limitations, ranging from qualifications by liberal egalitarians to more radical criticisms that consider the liberal egalitarian endeavor to address corporate governance to be a mistake. O'Neill justifies his own reluctance to choose between several possible kinds of workplace democratization (e.g., increased worker discretion over their role at work, increased protection for trade union rights or some form of co-determination) by pointing to the boundaries of philosophical arguments. The latter depend on empirical premises, the specification of which requires "experimentation in public policy" rather than further "armchair" philosophizing (O'Neill, 2008: 47). In his careful consideration of the fruitfulness of Rawls's political philosophy for corporate governance, Norman also stresses the importance of empirical data, which, he believes, political philosophers have widely neglected (Norman, 2015: 34). Yet he encourages liberal egalitarians to take up the results available in the social sciences (Norman, 2015: 57) rather than call for experimentation. Néron offers a different explanation for what he sees as meager liberal egalitarian conclusions about corporate governance. In his view, this failure results from a focus on the distribution of primary goods, which "blind[s] egalitarian theorists to many forms of injustice that might be hardwired into the institutions and processes themselves," particularly within firms (Néron, 2015: 100). Néron notes that egalitarians will not be able to establish whether some "reform of corporate law and governance" might further a more equal distribution of primary goods unless they look inside the firm. Finally, assessments at odds with the suggestions outlined above deny the relevance of Rawls's political philosophy for corporations in a more radical manner, both in the global arena (Arnold, 2013) and at the nation-state level (Singer, 2015). For Arnold, Rawls's failure to distinguish between corporations and mere associations, like church congregations, prevents him from offering a relevant analysis of the role of firms for justice (Arnold, 2013: 132), especially the role of multinationals for global justice (2013: 133). For Singer, Rawlsians cannot say more about firms because it is plainly inconsistent for a political conception of justice to consider the inner workings of meso-level organizations, even at the familiar nation-state level.

This commentary joins the discussion regarding the relevance of liberal egalitarianism in assessing the justice of the governance structure of firms, thus forming part of the wider reflections on the import of political philosophy for business ethics (Heath, Moriarty, & Norman, 2010). It takes stock of Singer's particular perspective on this issue, developed in an article forcefully entitled *There is no Rawlsian Theory of Corporate Governance* (2015). In this article, Singer argues for a "null hypothesis," according to which "projects attempting to use Rawls's theory to ground approaches to … corporate governance are nonstarters" (Singer, 2015: 70). This statement rests on the view that corporate governance lies beyond the reach of political liberalism. Singer suggests that Rawlsian discussions on corporate governance draw on Rawls's comprehensive liberalism in *A Theory of Justice* and cannot be sustained in the face of Rawls's "political turn" and the reframing of his theory as a *political* conception of justice.

This argument represents a serious challenge for those who think that Rawls's political conception of justice may call for a more democratic workplace. Their view requires showing that a state can justifiably mandate more extensive governance rights for workers, as in German co-determination. This presupposes that it is legitimate to consider corporate governance as a matter of justice, even after Rawls's "political turn". If Singer is right however, politically liberal justice cannot bear on firms' governance, let alone call for more democratic firms. This view deserves closer scrutiny in light of its radical implication—the irrelevance of Rawls's political conception of justice in establishing normative requirements for the governance structure of firms.

This commentary focuses on Singer's narrower statement that "by framing his criticism in terms of a 'political' conception and by limiting the scope of his criticism to the 'basic structure' of society, Rawls's theory is unable to account for power dynamics operating in…the corporation" (2015: 75). Specifically, it disputes that this conclusion is well established by the main argument offered in support of it. The commentary is organized as follows. First, it exposes the argument, namely the basic structure objection, according to which questions of corporate governance are necessarily beyond the scope of Rawls's political conception of justice; this is because justice applies to the basic structure of society alone and corporate governance cannot be considered part of this structure in political liberalism (Part 1). The commentary then challenges the second part of this argument. It suggests that the criterion used for excluding corporate governance from the basic structure, that is, the possibility of exit from *firms*, is ill-fitted to the subject matter, corporate governance, in particular as institutionalized in corporate law and the relevant parts of labor law[2]. Furthermore, even if the focus were on corporate governance, the view that it is not part of the basic structure can be disputed (Part 2).

1. THE BASIC STRUCTURE OBJECTION

1.1. The Structure of the Objection

Singer's article provides a welcome assessment of recent liberal egalitarian considerations concerning corporate governance. In addition to examining the internal consistency of some of these arguments, Singer provides one generic and radical critique according to which all are necessarily inconsistent with the tenets of a political conception of justice. In his words, "attempts to formulate a position on corporate governance using the normative resources offered by Rawls are *bound to fail*" (2015: 75, emphasis added). This, Singer asserts, may explain why Rawls has been unable to say much about numerous important questions of corporate governance. Furthermore, it disqualifies all liberal egalitarian attempts at discussing these issues.

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Singer's assertion is notably supported by what may be labeled a *basic structure objection* against the consideration of corporate governance as a matter of justice, in reference to G. A. Cohen (2008: 124). This objection is straightforward. It contends that the primary subject of justice is society's basic structure, understood as society's legally coercive institutions, and that the corporation is not part of this. The conclusion follows that corporate governance, as part of the "internal structure" of corporations (2015: 78), is beyond the reach of a political conception of justice. Thus, no form of corporate governance, including workplace democracy, can be mandated on the grounds of justice.

The basic structure objection follows three premises:

(1) The primary subject of justice is the basic structure of society;
(2) Only legally coercive institutions are part of the basic structure of society;
(3) The corporation is not a legally coercive institution.

To reach the conclusion that:

(4) The principles of justice do not apply to corporate governance.

Assuming that (1) is fairly uncontroversial, Singer proceeds to justify (2) and (3). His account of the two remaining premises is outlined below.

1.2. A Legally Coercive View of the Basic Structure

Since the primary subject of justice is the basic structure of society, any assessment of an institution on the grounds of justice requires an account of this structure. Yet Rawls is notorious for having failed to provide an unambiguous definition of society's basic structure. Singer rightly notes this ambiguity and the several textually supported interpretations of the basic structure it has generated (2015: 76). The basic structure of society is defined in *A Theory of Justice* as the institutions that structure the terms of social cooperation. Society's basic structure is indeed "the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation" (1999: 7; see also Rawls, 2001: 8-9). However, Rawls also claims "the basic structure is the primary subject of justice because its effects are so profound and present from the start" (1999: 6, cited in Singer, 2015: 76; see also Rawls, 2001: 55). This suggests an expanded version of the basic structure as including institutions that have a pervasive impact on people's lives, possibly including non-legally coercive institutions such as customary conventions. Finally, other textual indications may support a third interpretation of the basic structure as "institutions that … subject people to legal coercion" (Singer, 2015: 76). Cohen sees, for instance, this interpretation as "mandated" by Rawls's claim that "the law defines the basic structure within which the pursuit of all other activities takes place" (1999: 207, cited in Cohen, 2008: 133 n39). These perspectives, Singer notes, are identified by Abizadeh's (2007) "cooperation," "pervasive impact" and "coercion" theories of the basic structure respectively.

Setting aside cooperation theory due to its vagueness, Singer focuses on the two remaining interpretations and main *foci* of scholarly debate: coercion theory and

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pervasive impact theory. For instance, Cohen notoriously assesses both options and argues for the latter. Yet Singer rejects Cohen's preferred interpretation of the basic structure as both the formal and informal structures that affect people's lives. For Singer, this expansive construal of the basic structure is inconsistent with the requirements of political liberalism. "Why not set the sights of a theory of justice on all those practices that structurally affect the life-chances and social position of people?" Singer asks (2015: 77). Of three possible reasons for rejecting the pervasive impact theory of the basic structure, and adopting the legally coercive one, he suggests that the most convincing is that of the structure and limits of a political conception of justice:

> The third and most helpful explanation for why Rawls cannot conceive of the basic structure so expansively involves the constraints Rawls imposed on his theory by arguing for a political conception of justice…. The claim that principles of justice should extend to all instances of "profound and pervasive" impact is to turn the political conception of justice into a comprehensive doctrine…. If we are to acknowledge the fact of pluralism and strive for a political conception of justice, it must apply to *the basic structure understood as the coercive legal institutions of a social system*, and it must allow for people to pursue their varied understandings of the good life, and associate on those terms. (Singer, 2015: 77-78, my emphasis)

Rawls offers a political theory of justice that is limited in scope. Since justice applies to the basic structure of society, the restricted interpretation of the basic structure as a society's legally coercive institutions is preferable. By contrast, the view of the basic structure as those institutions that have an important impact on people's lives turns justice into a comprehensive doctrine that is necessarily politically illiberal.

1.3. The Exit Argument

Once the definition of the basic structure is settled, it is possible to ask whether corporate governance forms part of this structure. Again, Rawls is famously ambivalent about the status of corporate governance. Singer (2015: 78-79) recalls that Rawls envisages business firms as associations (2001: 92, 164), the "internal life" (2001: 164) and "rules" of which sit apart from the basic structure (2005: 268-69, cited in Singer, 2015: 82; 1999: 126). Yet Rawls hints that justice may address issues of corporate governance (2001: 178). The ambiguity is that, as part of the internal rules of associations, corporate governance operates against the background of the basic structure, without being part of it, whereas by being part of the subject of justice corporate governance must belong to this structure. Of note, Rawls's approach distinguishes between firms as economic organizations or legal entities, and their internal rules, as partly expressed in the framework of corporate law. Citations excluded, in what follows, "corporation" refers to *any given corporation* that results from an actual process of incorporation and "Corporation" to the *corporate form*, defined as the rules and procedures structuring corporations, defining roles, rights and duties, and including but not limited to governance rules. Corporate rules can be conventional as well as legal, and for the latter, be entrenched in corporate law, parts of labor and other relevant bodies of law (depending on legal systems).

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In the absence of clear indications from Rawls regarding corporate governance, Singer suggests that we ask whether corporations form part of the basic structure. If "the corporation can be considered part of the basic structure … we can ask whether the principles of justice would have implications for the internal structure of the firm" (Singer, 2015: 78). If it cannot, some other regulation might be adopted, yet not define corporate governance directly. Singer then spells out the argument that Rawlsians would have to make to demonstrate that the corporation is part of the basic structure: a claim that "the business corporation … *should* be considered part of the basic structure … would have to make a case not only about the importance of the corporation and its impact on people's lives but also about *its nature as a legally coercive institution*" (2015: 79, last emphasis added). Here, Singer specifies the coercive theory of the basic structure as relating to institutions that have both a pervasive impact and are legally coercive. Setting aside the question of impact, he focuses on legal coercion.

The proposed criterion for determining whether an institution is legally coercive turns on the possibility of exit. This is directly inspired by Rawls's reflections on the governance of religious associations (Rawls, 2001: 20, 93, 164):

> As Rawls makes clear in his discussion of ecclesiastical organizations … the ability of believers to exit allows for discretion and freedom in establishing the terms of church governance. *The ability to exit the authority of an institution and its leaders therefore seems like a decent test for whether it can be considered part of the basic structure. If one has the ability to leave the church, it is not legally coercive to such an extent that it could be considered part of the basic structure*. To make the claim that the corporation is part of the basic structure, then, one would need to claim that the exit option is not available for individuals who contract with the corporation. (2015: 79, emphasis added)

The legally coercive nature of an institution depends on whether its "authority" can be "exited". Rawls's considerations on associations and the church suggest, in turn, this exit is unavailable if the rules of the institution are imposed on the individual rather than chosen voluntarily. Furthermore, legal coercion is demanding in one respect: lack of exit needs to be "universally true," that is, true for all individuals (Singer, 2015: 80). Thus, an institution is legally coercive only if no individual can exit its authority, except by leaving the state's territory. The church, for example, is not legally coercive because individuals can exit its authority and decide not to live by its rules. Rawls remarks that "we impose any such [religious] doctrine on ourselves" (Rawls, 2001: 93); we accept ecclesial authority voluntarily (Rawls, 2001: 182, n3) and ceasing to accept it is no legal offense (Rawls, 2001: 93). Government rules are by contrast coercive because "the power of the government cannot be evaded except by leaving the state's territory" (Rawls, 2001: 93). Singer ranks "constitutional doctrine[s]" and "tax regime[s]" among legally coercive institutions (Singer, 2015: 80), presumably because citizens cannot exit their authority and must abide by their rules. While Singer does not draw this distinction himself, we may note that these examples point to a legal interpretation of exit availability (absence of rule enforcement by the state), but that some also consider non-intentional restrictions on exit as relevant for public justification and justice[3].

Corporations are not legally coercive, the argument goes, because their authority can be exited. While the argument applies to all "individuals who contract with the corporation" (Singer, 2015: 79), the discussion nonetheless focuses on employees who represent the party that may be intuitively thought of as being coerced[4]. We may indeed think that customers can buy products from other shops, investors can divest, or management can leave without legal (or other relevant) restrictions. As Singer rightly notes, however, it may be difficult for employees to quit their jobs. In less than perfect markets, employees may be locked into their firms because of scarce employers or non-transferable skills[5]. Yet due to the demand for universal application, this situation does not qualify as an instance of legal coercion: even if some employees might not be able to leave the corporation that they hold a contract with, usually a number of them can. Crucially for Singer, this distinguishes corporations from states: "while … for some individuals … the ability to exit [the corporation] is not freely or realistically available, this is by no means *universally* true in the way that parallel obligations under a tax regime or a constitutional doctrine would be" (2015: 80, emphasis added). The corporation does not coerce its employees in the way that a "tax regime" or "constitutional doctrine" coerces citizens. *Some* employees can leave, even if not all of them, while *all* citizens must respect fundamental liberties and pay their taxes. Exit is neither legally nor otherwise universally restricted in corporations[6].

Call this the *exit argument* for rejecting the view of the corporation as legally coercive, which we may now summarize as follows:
The exit argument rests on two premises

(3.1) An institution is legally coercive only if its authority cannot be exited;
(3.2) The authority of the corporation can be exited.

Leading to the conclusion that

(3) The corporation is not a legally coercive institution

I now turn to a critical assessment of the basic structure objection, notably the way in which its third premise plays out in the overall objection.

2. CORPORATIONS, CORPORATE GOVERNANCE AND LEGAL COERCION

Granting, for the sake of this commentary's argument, premise (2) of the basic structure objection ("only legally coercive institutions are part of the basic structure of society")[7], I focus on premise (3). In what follows, I suggest first that the version of premise (3) established by the exit argument ("the corporation is not a legally coercive institution") is not the premise (3) that would be required for the basic objection to work ("the Corporation is not a legally coercive institution") and obtain (4), "the principles of justice do not apply to corporate governance". Second, even a revised version of the exit argument that focuses on the Corporation, in particular its governance aspects, fails to establish that corporate governance can be exited. If this assessment is right, then the conclusion that corporate governance necessarily falls outside the purview of a politically liberal conception of justice cannot be granted on this ground.

2.1. The Subject Exerting Coercion: Corporate Governance Rather than Firms

To assess the exit argument, we must first clarify the meaning of "institution" in (3.1). Rawls defines institutions as "a public system of rules," where "public" means that the rules must be known as if people have agreed on them, and people also know that these rules are known to others (1999: 48). Rawls's illustration of institutions includes non-controversial political and socio-economic institutions of the liberal state, but also, importantly, private conventions: "as examples of institutions … we may think of *games and rituals*, trials and parliaments, markets and systems of property" (1999: 48, emphasis added). Rawls states that an institution can be thought of "as an abstract object, that is, as a possible form of conduct expressed by a system of rules" (1999: 48), but he also emphasizes that the realization of these rules depends on real people acting upon them. This is a stylized and uncontroversial account of institutions, yet crucially, it draws a distinction between institutions as rules and particular organizations or persons acting upon such rules.

Let us now turn to the meaning of "corporation" in the second premise of the exit argument (3.2). The vocabulary of a "contract with the corporation" (Singer, 2015: 79), of quitting "a job" or exiting a "firm" refers to the corporation as one particular economic organization or legal entity, rather than the legal and conventional rules that make up the Corporation. Thus what is established in conclusion (3) of the exit argument is that *corporations*, yet not their governance structures, are not legally coercive. Turning to the basic structure objection, this version of premise (3) of the objection does not allow us to grant its conclusion (4), according to which *corporate governance* is not part of the basic structure, and hence not a subject for justice. What is required for this conclusion to follow is premise (3), according to which the Corporation (hence corporate governance) is not legally coercive.

This observation should suffice for the limited argument this commentary attempts to make. The subject of the exit argument is ill-focused for the basic structure objection to work: it should focus on the governance rules that form part of the Corporation rather than on corporations. One may, however, respond, and this was perhaps Rawls's implicit assumption, that corporations stand in effect for their structuring rules so that if the corporation can be exited, so can the Corporation and associated corporate governance. But this does not follow. In the next section, I argue that even a revised version of the exit argument that focuses on corporate governance would fail to establish that it is not legally coercive, on both interpretations of restriction on exit.

2.2. Non-intentional Coercion, Corporate Governance and Representative Employees

In the revised version of the exit argument, we must ascertain whether corporate governance as defined in corporate law (and parts of labor law) can be "exited," or whether it establishes its authority over individuals. First, suppose that all economic organizations of a given society are hierarchical corporations.[8] Furthermore, suppose

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that employees willing to exit their firms can find similar jobs without incurring any cost, effectively making an exit option from firms available to all workers. While it is true that employees can escape the authority of one particular employer, they will necessarily face the authority of another one in another firm. What they cannot evade, except perhaps by leaving the state's territory, is the hierarchical structure of the Corporation. Here, exit from the Corporation does not follow from exit from corporations, and corporate governance rules appear coercive because they are inescapable.

Yet one might object that liberal societies, notably near-just ones, are likely to allow for various organizational and business charters (including not-for-profits, sole proprietorships, partnerships, different kinds of co-ops, state-owned firms, etc.) alongside corporations. Assuming some effective level of pluralism among business forms in society, it can be argued that some employees are able to escape the corporate form, choosing for instance to work for a partnership, a cooperative, a sole proprietorship or perhaps not work at all. They need not all live by corporate rules, indicating that corporate governance is not, as such, coercive.

We may still resist this conclusion, if we shift the focus of the discussion from a specification of *what* is to be exited, a firm or an institution, to the question of *who* is coerced. The discussion thus far has held the coerced to be particular, identifiable individuals. However, the appropriate standpoint for assessing the possibilities of exit is arguably not that of an actual individual, but of a "representative" individual, say the worst-off (Rawls, 1999: 56). Suppose that the worst-off social position includes low-ranked workers in corporations. Suppose that some, but not all, of the worst-off can become self-employed. This is plausible as not all big corporations are likely to disappear, even in a property-owning democracy that spreads capital ownership. Even if the worst-off are not coerced individually they may be seen as coerced collectively,[9] because a number have to work for a corporation and operate according to corporate rules. The worst-off *social position* remains subject to the Corporation and its governance rules. In other words, the requirement that some (but not all) can exit might set the bar too low for defining non coercive institutions if the relevant standpoint is that of a *social position*. This view of coercion may seem stretched, but as a criterion for defining a society's basic structure, it is congruent with Rawls's method for assessing the impact of policies. What matters for justice is how different policy options affect *social positions*, notably the worst-off, not how one particular *individual* fares under each policy.[10] In sum, it is possible to conceive of a society in which exit from corporations is legally available for all and actually effective from some and yet in which a social position remains subjected to corporate rules. This argument rests however on a view of coercion as non-intentional restriction on exit, so I offer another argument that retains the more stringent criterion of state-enforced restriction on exit, and need not rely on *representative* employees being coerced.

2.3. State-enforced Coercion, Corporate Governance and Citizens

Here, we assume the account of legal coercion as an inescapable exposure to non-optional rules backed by state power. A preliminary consideration for the argument to follow is that it is inaccurate to describe corporate governance as simply "bottom-up" contractual arrangements[11] (Orts, 2013; Néron, 2015: 97). Many structures of corporate governance are state-granted and -guaranteed in both corporate and labor law (O'Neill, 2008, 2009; Orts, 2013; Néron, 2015). Anderson similarly argues that "capitalist property" cannot "exist without state action" (2015: 61). There are three ways in which state action may appear coercive.

First, some emphasize that state enforcement of the terms of a private contract, whatever they may be, is coercive. For Blake "even private law … is rife with coercion" (2001: 276-77). This is because state involvement turns private promissory commitments into actually enforced ones. Once one enters into a contractual agreement, the implications of contract law cannot be escaped, as those of a game can, simply by leaving the game. At some point in the contracting process, exit is no longer available and "the adjudication of disputes will issue in a coercive transfer of legal rights" (Blake, 2001: 277). However, this consideration still focuses on parties who, some may insist, have voluntarily chosen to contract. The suggestion here will be that we shift our evaluation of coercion from *employees* (and contracting parties) to *citizens*.

A second consideration is that the state makes corporate and labor law coercive not just for those who have contracted with the corporation but for those who *plan* to do so, by extending the authority of what would be local norms to the entire political society. As Andersen notes, for capital ownership to be recognized and operate as an asset, it requires "the state to formalize [people's] property rights" (2015: 62) with a "written record" of property and the "standardization of property-rights" through their integration into the broader legal framework of society. Corporate law and labor law "standardize" across society the various "rights and obligations" attached to capital ownership, corporate governance, and employee status. For instance, anyone operating a corporation has to apply non-optional features in a given country (e.g., a required number of directors). For Anderson, standardization is unavoidable in capitalism because it creates among shareholders and employees the shared expectations that are necessary for the "scaling up" of productive enterprises. State action is arguably coercive as it imposes a standard that all involved, or planning to get involved, in corporations must respect. Yet some may still reject this as relevantly legally coercive, because it only concerns individuals who chose to get involved in corporations.

There is a third and more decisive respect in which corporate governance appears coercive: it is coercive for *all citizens*, and not just those contracting or planning to contract with the corporation. The standards set in corporate and labor law establish rights and duties for corporations, shareholders, managers and employees, which relate to important aspects of society such as property rights, social rights and taxation, and which must be respected by all citizens and public agencies. Crucially, the implications of corporate governance are not simply internal to a community of practice, such as playing chess or hide-and-seek might be, but are integrated into society's wider structure of rights and duties, thereby creating unescapable constraints for third parties. For instance, limited liability makes it impossible to sue a shareholder for more than the value of its shares (O'Neill, 2009: 176). As Néron rightly emphasizes, this has to be imposed upon third parties by the state; two individuals cannot, on their own, contractually limit the other's right to sue them

(Néron, 2015: 97). Thus, the bearing of limited liability on society is strikingly different from that of the various associational rules that Rawls mentions—"apostasy," "a point of theological doctrine" or "the rules of evidence used by a scientific society" (Rawls, 2001: 93). This is one notable difference between corporations and associations like independent church congregations (see Néron, 2015: 96). Unlike other voluntary associational rules, limited liability is intentionally imposed by the state upon citizens of a political society in a way that *they* cannot exit. This echoes Blake's consideration that state-backed contract law empowers individuals "to make legal rules determining ownership that all must be compelled to obey" (Blake, 2001: 277). Another example is that of somebody's status as an employee (labor law) or a manager (corporate law): it gives or denies access to social rights such as unemployment benefits that are claimed on society (or third parties in society). The point is that when a state operates rules that create rights and duties not just *within* but also *outside* the community of practice, these rules are relevantly coercive for the wider political community. In sum, state-backed corporate law, as well as the relevant parts of labor law, is relevantly coercive once we identify one important standpoint from which to assess legal coercion. Regardless of whether *employees* and other contracting parties are coerced, *citizens* of the wider political community are, just as they are coerced by the constitutional protection of the basic liberties of others, while individuals see their actions enabled and protected by these very liberties. Citizens, in other words, are subjected to the authoritative social meaning and implications of state-backed corporate governance in a way they cannot escape[12]. And if one still wishes to resist the view that citizens are coerced by enabling corporate law, one would also have to explain according to which understanding of coercion it is that enabling basic liberties are part of the legally coercive structure of society, while enabling corporate law is not.

To summarize, if one holds coercion theory to be an appropriate account of the basic structure of society, and exit a relevant criterion for identifying coercive institutions, then corporate governance appears no less coercive for citizens than other less controversial dimensions of the basic structure. While this argument disputes the view that no aspect of corporate governance can be part of the basic structure of society, it does not tell whether and which elements can. As noted earlier, the latter also requires demonstrating that these aspects of corporate governance affect people's lives significantly.

It is plausible to think that Rawls suspected that aspects of firms' governance might be significant. He sometimes characterizes the basic structure "as a social and economic regime" (2001: 56) and asks later whether such regimes, "viewed as social systems, complete with their political, economic and social institutions," are "right and just" (2001: 136). The kinds of regime that he examines are various types of capitalism, state socialism, democratic socialism and property-owning democracy. These differ not just with respect to taxation and redistribution, but also with respect to firms' governance features (e.g., type of ownership, workers' participation rights, etc.) indicating that these features could be relevant to justice. This commentary suggests that the basic structure objection does not give us reason to consider that this is illegitimate in political liberalism, nor to see as irrelevant

Rawls's hypothesis that democratic forms of corporate governance might be preferable in terms of political values.

CONCLUSION

This commentary has argued that the basic structure objection does not establish that corporate governance is necessarily beyond the reach of Rawls's political conception of justice. This is because the exit argument is not successful in excluding corporate governance from the basic structure of society, even if we take corporate governance rather than firms as the appropriate subject for evaluation. Enabling corporate law and relevant parts of labor law are indeed coercive for the political community, even if not for particular employees. Thus arguments dealing with corporate governance, including those in favor of workplace democracy, are permissible provided they address aspects of governance that also have a significant impact on people's lives and draw on political values[13].

However, I agree with the assessments presented at the outset of this article that liberal egalitarianism has not been overly specific about corporate governance thus far. While the argument above suggests that aspects of corporate governance *may* be matters of justice, establishing which aspects actually *are* and *what* justice demands is a context-dependent matter that requires more detailed empirical enquiry. What justice calls for may be normatively disputed, involving disagreement on the relative weighting and hierarchy of various political values (equal political liberty, social equality and reciprocity, stability, etc.).[14] The process of addressing these questions may also be epistemically uncertain, relying on complex circumstances and possibly limited or perhaps controversial results from the social sciences[15]. The limited argument of this commentary, however, is that this enquiry does not prove to be inconsistent within political liberalism.

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NOTES

1. A non-exhaustive list of citations includes, among others, Hsieh (2005: 115), O'Neill (2008: 33) and, not surprisingly, all three BEQ special-section articles dedicated to "Social Justice and the Corporation" (Néron, 2015: 93; Norman, 2015: 49; Singer, 2015: 79).

2. This commentary adopts a broad view of corporate governance as the rules that allocate powers and prerogatives in the corporation, especially as they are defined in corporate law, the relevant parts of labor law and other bodies of law (depending on the legal system). This account of corporate governance is arguably broader than Singer's, whose examples mainly refer to corporate law.

3. Coercion is in fact a "contested" concept (Valentini, 2011). Blake and Olsaretti define coercion as an agent's intentional action. Blake points to punishment by the state as "the most obvious form of coercion" (Blake, 2001). For Olsaretti coercion is "the deliberate interference of one person with another, typically through the use of threat or force" (Olsaretti, 2004: 141). Alongside this "interactional" form of coercion, Valentini also identifies "systemic" coercion: the constraints that a system of formal and informal rules place on individuals. For Valentini, it is the fact of systemic coercion, rather than that of an agent's intentional action, that triggers, even at state level, a demand for justice. Similarly, Olsaretti, points to some non-voluntary (yet not coercive in her view) situations as relevant to justice.

4. For a critical discussion of the status of employees as special, see Moriarty (2010).

5. For an account of various limits on employee exit in a just society, see Hsieh (2005: 127-29).

6. Of note, a restriction on exit for some that results from labor market failures is typically an instance of non-intentional coercion that economists would accept as a rationale for regulation, including of governance. For an account of regulation as a response to market failures, see Norman (2011: 44-45).

7. This premise may be disputed. For instance, Heath, Norman and Moriarty refer to *cooperation theory* to suggests that at least publicly traded corporations are part of the basic structure (Heath, Moriarty, and Norman, 2010: 432). An alternative approach for construing the basic structure is sketched in Blanc and Al-Amoudi (2013). For an overview of several conceptions of the basic structure in Rawls and their implications for the firm, see Blanc (2014). Furthermore, a legally coercive view of the basic structure need not imply blindness toward other social norms and may require some (legally coercive) regulation to mitigate the implications of these norms (Ronzoni, 2008; Schouten, 2013). This commentary pursues a different strategy however, disputing that corporate governance is best understood as a non-coercive norm outside the basic structure.

8. For an account of the corporation and its governance structure, see Orts (2013: 187 sqq.).

9. See Cohen (1983) for a discussion of collective unfreedom.

10. See Van Parijs (2003).

11. For a view of corporate law as a "set of terms available off-the-rack", see for instance Easterbrook and Fischel (1991: 34).

12. This argument leaves open the question of whether all state-created institutions or policies imply lack of exit and legal coercion. An argument according to which state policies are always coercive, "at least through the collection of taxes," may be found in Scanlon (2003: 162); for the contrasted view that some state policies are not, such as "cultural policy" or "symbolic recognition of religion" by the state, see Laborde (2013: 80, 82).

13. Thus the suggestion by Néron that egalitarians should "'open the hood' of different models of firms" (2015: 99) can also be legitimately taken up by *politically liberal* egalitarians. Among the Rawlsian arguments that have supported more democratic forms of capitalism, we might think that O'Neill's emphasis on the possible import of participation rights at work for citizens' democratic character (2008) or Hussain's concern with stability (2009) refer, at least in part, to relevant political values, making their discussion compatible with the requirements of public reason in political liberalism. This may come as no surprise to those who argue that politically liberal policies may well be as progressive as those resulting from comprehensive liberalism, (Schouten 2013: 383 sqq.), not least due to the richness of the concept of political citizenship.

14. Part of the debate between liberal egalitarians who favor more democratic governance structures in firms and those who do not turns on the weight of efficiency (Singer, 2015: 80-81) – as a concern for "bak[ing] the biggest pie" (Néron, 2015: 98) – and of preserving the legitimate scope for fundamental liberties in the face of other values such as stability, political citizenship, or the bases of self-respect (O'Neill 2008, 2009; Hsieh, 2005; Hussain, 2009, 2012; Blanc and Al-Amoudi 2013). Settling these debates goes beyond the scope of this article, but a useful account of how political liberalism might proceed can be found in Schouten (2013).

15. This could account for the inconclusiveness of liberal egalitarianism on some issues of corporate governance. Yet drawing on the results of social sciences as Norman (2015) suggests or even aiming at building up further results, as O'Neill proposes, would seem a necessary and legitimate step for assessing the impact of coercive institutions. On this issue, see also Blanc, Boncori, and Braune (2014).

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