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Corporations, the Democratic Deficit, and Voting

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ABSTRACT

Many corporations are enthusiastic participants in the political arena. The most common, and most studied, forms of corporate political activity are lobbying and campaign finance (Hillman, Keim, & Schuler, 2004). Increasingly, however, corporations are engaging in a new kind of political activity. They are taking on roles traditionally played by the state, notably, by providing public goods like education, environmental protection and disease prevention, and helping to sustain and enforce civil regulations like the UN Global Compact, the Business Charter for Sustainable Development, and the Voluntary Standards on Security and Human Rights (Kobrin, 2009; Matten & Crane, 2005; Ruggie, 2004; Scherer & Palazzo, 2011; Vogel, 2010).

Many writers argue that a “democratic deficit” is created when private actors such as corporations take on state functions (Brenkert, 1992; Matten & Crane, 2005; Scherer & Palazzo, 2011). The problem, it is said, is that the course of public life is being shaped by agents who are not accountable to the public. We evaluate this claim and consider what should be done about it. We focus in particular on a recent attempt, put forward principally by Palazzo and Scherer (Palazzo & Scherer, 2006; Scherer, Baumann-Pauly, & Schneider, 2013; Scherer & Palazzo, 2007, 2011; Scherer, Palazzo, & Baumann, 2006), to address the democratic deficit by “democratizing” corporations. We argue that their proposal, while promising, has a significant defect. We then propose a remedy for this defect. In sum, our goal is to call attention to a new kind of corporate political activity, to highlight its main ethical defect, and to examine in detail an attempt to address it. More generally, this paper contributes to our understanding of the evolving role of corporations in society.

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I. INTRODUCTION

Let’s begin with what we will call the “standard model” of institutional responsibilities in a democratic society. Generally speaking, democracy is an ideal that requires that the members of society govern their common affairs together. Social institutions in a democratic society must be structured so that, directly or indirectly, citizens collectively determine how to organize important aspects of social life and how to address the important challenges they face. Perhaps the most important institution in this regard is the state. The various agencies of the state make binding laws, develop regulations, and deploy various collective assets, all on behalf of the people, carrying out the organiza- tional plans and social policies that citizens have endorsed.

According to the standard model, business corporations have a subordinate role to play in social life. The role of the corporation is primarily to pursue profits within the constraints established by law and ethical principles (Friedman, 2002/1962; Jensen, 2002). It is up to the state and the people more generally to decide broader questions about how to organize social life and how to address important social challenges. Among its important functions, the state must shape the legal and regulatory framework in society so as to ensure that the pursuit of profits by corporations will advance the public policy objectives adopted by the people.

In recent years, it has become increasingly apparent that the standard model of institutional responsibilities has broken down. Corporations no longer confine themselves to a subordinate role in social life. Instead of merely pursuing profits within the scope of laws and regulations established by the state, corporations have taken on public functions that were once the exclusive domain of the people and the state, functions that include making laws, articulat- ing regulations, and setting public policies (Matten & Crane, 2005; Vogel, 2010).

Take the case of forests. Forests play a key role in regional and global ecosystems. As such, they are an essential social resource, and hence an important part of the common life of a democratic community. So, according to the standard model, members of a democratic society would collectively deter- mine social policies regarding how to preserve and responsibly exploit forests, and these policies would be articulated and implemented by the state. For

example, democratic majorities would decide on policies regarding clear-cutting and reforestation, and these policies would be articulated by the state in laws and agency regulations. Private corporations would then have to respect these rules, on pain of state sanction, as they pursue profits.

But in several important ways, the people are no longer in control of forest policy in society (Scherer & Palazzo, 2007). First, corporations play an important role in the legislative and regulatory processes. Through donations and various forms of lobbying, they shape the laws and regulations that the state enforces (De Figueiredo, 2002).¹ Second, when the legal and regulatory framework is sparse or nonexistent, the corporation’s own internal policymaking process essentially determines how forests will be managed. Finally, in many cases, forestry companies are acting in remote areas where the state itself has a very weak presence. In these cases, as well, the corporation itself effectively decides on forestry policy, without any type of involvement by the people.² These three cases illustrate the basic idea that in many arenas, the corporation is no longer a subordinate player, but plays a central role in making laws, developing regulations, and carrying out social policies.³

From now on, we will use the term “corporate political activity” (CPA) to refer to cases in which corporations perform activities that on the standard model are assigned to citizens or the state. These activities include making laws, articulating regulations, and deploying assets to carry out important public policies. It is helpful to distinguish between two kinds of CPA, depending on how the corporation becomes involved in performing public functions.

The most common kind of CPA comprises lobbying and campaign finance (Hillman, et al., 2004). In lobbying, corporations attempt to shape society’s

1. There is skepticism about the power of donations alone to influence laws and regulations (Ansolabehere, De Figueiredo, & Snyder, Jr., 2003). But there is strong evidence that lobbying influences them (De Figueiredo, 2002). As a result, we find that corporations spend far more on lobbying than on campaign finance (Milyo, Primo, & Groseclose, 2000).

2. It might be objected that, if the corporation owns the forest, then “the people” have no right to say what it does with it. This is incorrect. To be sure, people have certain fundamental rights that democratic legislatures have no authority to abridge. The rights to freedom of thought and expression are among them. But a corporation’s right to do what it wants with the forests it owns is not. Instead, the nature and scope of corporations’ (and other parties’) property rights are legitimately circumscribed by a democratic society. Within broad limits, society as a whole can decide which resources will be owned by the state (e.g., oil fields, waterways, airwaves) and which will be owned by private citizens (e.g., farms, ranches, factories), and how the use of those resources will be restricted. In the background of this discussion is the difficult question of what precisely the scope of democratic authority is (Christiano, 2010a). We cannot hope fully to resolve this issue here. However, we say more about why the new CPA creates a democratic deficit in section 3.

3. A recent example of corporate involvement in public policy can be seen in the response to the collapse of the Rana Plaza garment factory in Bangladesh in April of 2013 that killed 1100 workers. Many observers said: “something must be done.” But governments did not take the lead; corporations did. A group of powerful multinational corporations based in the U.S. and Europe agreed that they will not do business with suppliers whose factories do not meet certain safety requirements (Greenhouse, 2013). One result of this is that building and fire codes for factories in Bangladesh are now effectively being set by Western multinational corporations, not the people of Bangladesh.

legal and institutional framework by “presenting briefs, testimony, and arguments to legislators and their staffs” in formal meetings, charity events, and other venues (Stark, 2010, p. 503). In campaign finance, they attempt to do so by donating money from political action committees (PACs) to legislators’ campaigns or to their political parties, or purchasing advertising in support of legislators or in support of issues with which those legislators are identified (Stark, 2010). This is what we will call “old” CPA.

Increasingly, however, corporations are engaging in a new form of political activity. They are attempting to influence the state’s rules and regulations not just through, but outside of, formal political processes. Among other activities, corporations pursue climate change and public health policies (Kobrin, 2009; Ruggie, 2004), enforce citizenship rights (Crane, Matten, & Moon, 2008; Matten & Crane, 2005), promote peace (Fort & Schipani, 2004), and partner with other corporations, non-governmental organizations (NGOs), and other political actors to create and enforce systems of civil regulation (Ruggie, 2004; Vogel, 2010). In many cases, corporations take on these roles not at states’ request, but on their own. In doing so, they effectively arrogate to themselves the traditional functions of the state (Ruggie, 2004). This is what we call “new” CPA.

It might be wondered why corporations engage in the new CPA. The reason is probably the same as the reason why they engage in the old CPA, viz., they think it is in their interest to do so (Hillman, et al., 2004). Through lobbying and campaign finance, corporations incentivize legislators and regulators to pass (or not pass) favorable (or unfavorable) laws or write (or not write) favorable (or unfavorable) regulations. Creating public policy and rule-making, on the other hand, can be seen as attempts to placate powerful political actors who threaten corporations with negative publicity or boycotts if they do not take steps to address social problems (Vogel, 2010).⁴

An important difference between the old and new CPAs is how each operates. The old CPA operates “through” the state. Corporations attempt to affect formal political processes through lobbying and campaign finance to obtain certain outcomes (e.g., favorable laws and regulations). But the people who they attempt to influence are public officials (e.g., legislators, regulators), who are accountable ultimately to the people in periodic elections. By contrast, the new CPA unfolds “beside or around the state” (Vogel, 2010, p. 69) or “above and beyond the state” (Scherer & Palazzo, 2011, p. 903). When they engage in new

4. Corporations are targeted in part because they have deep pockets. But corporations can also be painted as complicit in creating social problems (e.g., by inserting themselves into the political arena), or as benefiting from these problems (e.g., by operating in countries with extreme poverty to take advantage of low labor costs) (Wettstein, 2009). It is unclear that these threats, if carried out, substantially impact corporations’ financial performance (Vogel, 2010). But corporations do appear to respond to them. Vogel suspects that the reason they do is that corporate executives “value public approval and dislike negative media attention” (2010, p. 77). They prefer to be seen as heroes rather than as villains in the media.

CPA, corporations perform putatively political functions without direction from, supervision by, or accountability to, states. Focusing on this difference, in the next section we identify a familiar problem with the old CPA and show how the new CPA avoids it. We then identify a new problem with the new CPA.

II. THE NEW CPA: AVOIDING AN OLD PROBLEM BUT FACING A NEW ONE

Perhaps the most common complaint against old CPA is that it is corruptive (Stark, 2010; Sunstein, 1994). Stark says that “[d]emocratic officials are entrusted with power by the citizenry on the condition that they make decisions based on no other consideration than the interest of the public” (Stark, 2010, pp. 501–502).⁵ When public officials receive gifts from private parties, either as part of campaign finance or in the process of being lobbied, this may cause them to make decisions not based on the public’s interest, but instead on the interest of a private party. Of course, even if it is known that a public official has received gifts from a private party, it is often hard to tell if she is acting in the private party’s interest. The official may believe that her actions are in the interest of the public as a whole. But even if officials make decisions “based on no other consideration than the interest of the public,” their receiving gifts from private parties may lead people to *suspect* that they are not acting solely on the public’s interest. As Sunstein says, even the “specter of quid pro quo exchanges violates” the norm against corruption (1994, p. 1392).

The accusation of corruption is implied in the familiar refrains that a certain member of Congress has been “bought and paid for” by a private party such as the National Rifle Association (NRA) or the Club for Growth, or that another member of Congress is “in the pocket” of the AARP or the Service Employees International Union (SEIU). The idea is that the member of Congress who has been “bought and paid for” by, or who is “in the pocket” of, the special interest group is not doing what she should be doing, viz., promoting the public good.

The new CPA largely avoids this problem of corruption, since it goes “around” or “beyond” the state rather than “through” it. This problem exists because there is someone in the political process, viz., the public official, who has a duty to act solely in the public’s interest. The problem is that she may act in the interest of the private party instead. By contrast, none of the major players in new CPA—viz., representatives of corporations and NGOs—has a duty to act solely in the public interest.⁶ So there is no problem if they do not. This is not to say, of course, that there is no possibility for any kind of corruption in the new CPA. Corporate executives have a duty to promote the

5. The public official’s duty to make decisions “based on no other consideration than the interest of the public” can be met even if she does not *in fact* make decisions that are in the public interest. She fulfills her duty if she *reasonably believes* that her decisions are in the public interest.

6. More precisely, none of the major players in the new CPA has a duty to act solely in the interests of the public *as a whole*, as government officials do. They do, of course, have a duty to represent the interests of *a portion of* the public, i.e., the members of their particular organization or group (e.g., the Sierra Club).

interests of their firms, and they may be tempted by considerations of private gain not to do so. But this kind of corruption exists in the new as well as in the old CPA.⁷

While the new CPA may be better than the old CPA with respect to corruption, it has seemed to many writers worse with respect to accountability. The feature of the new CPA that makes it better with respect to corruption is the same as the one that makes it worse with respect to accountability; namely, the new CPA goes around or beyond the state rather than through it. In the old CPA, the officials that corporations attempt to persuade through lobbying and campaign finance are ultimately accountable to the public in periodic elections. This is not the case with the new CPA. In this case, the agents performing putatively political activities (e.g., corporate executives) are not accountable to the public. For this reason, many writers claim that the new CPA creates a “democratic deficit” (Scherer, et al., 2013; Scherer & Palazzo, 2011).

Palazzo and Scherer are perhaps the most prominent contemporary proponents of this idea. They say that corporations that shape public policy and engage in rulemaking “have no democratic mandate for this engagement” (Scherer & Palazzo, 2011, p. 907). In democratic countries, “political authorities are elected periodically and are subjected to parliamentary control. By contrast, corporate managers are neither elected by the public, nor are their political interventions in global public policy sufficiently controlled by democratic institutions and procedures” (Scherer & Palazzo, 2011, p. 907; see also Matten & Crane, 2005). Palazzo and Scherer believe that this deficit must be repaired, and that the best way to do so is by changing how the corporation is governed. In particular, they say that “[i]f corporations assume responsibility for state functions and generate global rules, then it becomes obvious that it is necessary to *control* corporations just as the democratic state needs to be controlled by its citizens” (Scherer, et al., 2006, p. 517, emphasis in original; see also Matten & Crane, 2005). Corporations’ “internal structures and processes,” Palazzo and Scherer say, “have to become more democratic” (Scherer, et al., 2006, p. 517).

Corporations’ increasing engagement in the new CPA has brought increasing concern about its democratic character, with Palazzo and Scherer as key contemporary writers on this subject. But these ideas are not wholly new. Brenkert (1992) says that corporate social responsibility, understood as the

7. The feature of the new CPA that helps it to avoid the problem of corruption may also create skepticism about its public value. Ideally, what comes out of the formal political process are sets of laws and regulations that advance the common good. This hope is founded, in part, on the fact that the primary political actors in this process—viz., public officials—have a duty to advance the common good. But there is no person who has this duty in a new CPA process. So we might have correspondingly less hope that the rules and regulations that come out of it will advance the common good. On the other hand, in the new CPA, corporations are aiming to benefit the public (if only as a means of advancing their own long-term welfare), while in the old CPA, they are aiming to benefit themselves or their industries. Our view of the public value of the old and new CPA may depend on our degree of trust in the government to provide for the public good.

attempt by private firms to establish public welfare policy, is problematic. If private corporations organize collective efforts to promote the public welfare, he says, they must be made “amenable to greater public control and direction” (1992, p. 164). Even Friedman (2008/1970) draws a similar conclusion. One of his arguments against socially responsible acts by corporations is that they are tantamount to “the imposition of taxes and expenditure of tax proceeds” (2008/1970, p. 66). Friedman says that, because these are “governmental functions,” it is “intolerable . . . [that those who perform them] should be selected as they are now,” that is, by shareholders (2008/1970, p. 67). If corporate managers engage in socially responsible actions, then they must “be elected through a political process,” i.e., democratically (2008/1970, p. 67).

In the remainder of this paper we will explore this problem for new CPA. We begin by asking whether it is true that the new CPA creates a democratic deficit. We then consider an attempt, put forward by Palazzo and Scherer, to address it by “democratizing” corporations. We argue that this attempt has a serious problem, and propose a remedy for it.

III. IS THERE A DEMOCRATIC DEFICIT?

The democratic deficit might be summed up as follows: in shaping public policy and making rules, corporations are taking on state functions. But they are not being governed like states. Put this way, we can see that those who claim that there is a democratic deficit are making some important assumptions. One is that states should be governed democratically. Another is that corporations are not, in general, governed democratically. Both of these assumptions seem correct.

But other assumptions being made here are more problematic. One is that shaping public policy and making rules are state functions (Matten & Crane, 2005; Scherer, et al., 2013; Scherer & Palazzo, 2011). That is, the assumption is that these activities in some sense *belong* to the state, so that when a corporation takes them on, it is necessarily performing state functions. A second, related assumption is that any entity that takes on these functions should be governed like the state, i.e., democratically. Both of these assumptions seem to us to require justification. It is difficult, however, to find justifications in the writings of those who make them. In this section we consider challenges to these assumptions and show how they can be deflected. The end result will be a better appreciation of how a democratic deficit is created when corporations engage in the new CPA.

Against the assumption that shaping public policy and rulemaking are state functions, it might be claimed that it is entirely up to the citizens of a state to decide what roles the state will play. States normally perform certain functions, but this does not prove that they should perform them, much less that they “own” them. The citizens of some states may decide that they want the state to prevent the spread of HIV/AIDS through taxpayer-funded public health campaigns (a public policy). The citizens of other states may decide against this.

The citizens of some states may decide that they want the state to limit how much carbon businesses and individuals emit (a set of rules). The citizens of other states may decide against this. And so on. Almost any activity that we typically associate with the state, including minting currency and providing security, could be provided by private agents instead (Hasnas, 2003). On this objection, then, when a corporation provides health services, or helps to create and enforce environmental regulations, it is not *necessarily* performing state functions. It depends on what the state's citizens want the state to do.

What do citizens want the state to do? According to the conventional wisdom, the context for—and part cause of—the rise of the new CPA is a deficit of another sort: a governance deficit. States around the world are increasingly thought to provide, relative to citizens' wants, inadequate responses to public needs and inadequate regulation of commercial activity (Newell, 2001; Palazzo & Scherer, 2006; Scherer, et al., 2013; Vogel, 2010). The most commonly cited reason for this is the economic forces collectively known as globalization, featuring powerful multinational corporations and mobile capital. On the one hand, some corporations operate in states with weak or non-existent democratic institutions (Scherer & Palazzo, 2011). On the other hand, corporations that operate in states with ostensibly strong democratic institutions are increasingly able to get their way in politics, by threatening to decamp to other, less demanding states (Christiano, 2010b; Shamir, 2004). Vogel concludes that “[e]conomic globalization” has “undermined both the willingness and capacity of governments to make global firms politically accountable” (2010, p. 73).⁸ Corporations' increasing performance of new CPA activities can be seen as an effort to fill the governance deficit.

One might claim that the conventional wisdom *challenges* the assumption that, when corporations effectively create public policy and make rules, they are performing state functions. After all, corporations are engaging in these activities in an environment in which states are *not* engaging in them. But this would be a mistake. The conventional wisdom does not suggest that the state's citizens have decided to turn over certain functions formerly performed by the state to private actors, or even that these functions will not be performed by the state. Rather, it suggests that, given current economic trends, citizens have trouble expressing their will through the state's formal political mechanisms. The fact that states do not have certain public policies or create certain regulations

8. The idea that corporations are “under-regulated,” or are asked to provide too few public goods, is not uncontested; indeed, it may appear ludicrous to some. A recent theme of the politics of the Republican Party in the U.S. is that businesses, especially small businesses, are choked by a sea of legal red tape. But it is instructive to consider what citizens ask of businesses when they are confident that their demands will be met. Consider, for example, the Alaska Permanent Fund. Through this fund, the citizens of Alaska tax oil companies and distribute the revenues to current and future generations of Alaskans. Corporations elsewhere in the U.S. are not subject to this high a level of taxation. This suggests that what U.S. citizens really want is to tax corporations highly and share the wealth widely among themselves. Citizens do not do this elsewhere in the U.S. because they believe that corporations will be able to avoid complying with their demands.

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cannot be taken as evidence that this is what citizens want. If anything, citizens seem to want their states to craft more adequate public policies, and create and enforce more regulation. This, in turn, suggests that corporations, when they engage in the new CPA, may well be performing state functions, understood as functions that citizens want their states to perform.

In response, it might be granted that corporations are performing state functions when they engage in the new CPA, i.e., when they shape public policy and make rules. But it might be objected that there is nothing wrong with—and in particular, nothing anti-democratic about—their doing so. This goes to the second controversial assumption mentioned above: that any entity that shapes public policy and makes rules should be governed like the state, i.e., democratically.

Some might argue that we demand control over state functions when *coercion* is involved. And there typically is coercion involved when the state shapes public policy and creates commercial regulation. States fund their provision of public initiatives by requiring citizens to pay taxes. States enforce commercial regulation with the threat of legal action against violators. Because coercion is involved in these activities, it might be said, there would be a democratic deficit if we did not have a say over them. But there is no coercion involved, the objection continues, when corporations effectively shape public policy and make rules. When corporations provide goods such as security services and education to workers, they do so out of their own revenue, not out of the taxes that they require people to pay. Flouting the civil regulation that corporations help to create and enforce is met with social or market penalties, not legal penalties (Scherer & Palazzo, 2011; Vogel, 2010). As a result, the objection concludes, we have no right to a democratic say over the new CPA, and cannot complain of a democratic deficit when we lack one.

The objection should be resisted. First, it takes too narrow a perspective on the idea of coercion. The market is a social institution, one whose various rules are backed by the coercive power of the state. If someone tries to gain access to corporate resources, for example, without the permission of the corporation's officers, the state will use its police powers to prevent her from doing so. The fact that corporations have resources to devote to addressing public problems is itself a consequence of the fact that they are the beneficiaries of a complex system of property, contract, and exchange that is ultimately enforced by the state (Cohen, 2011; Waldron, 1993). Coercion could not be a standard for when democratic oversight is required because coercion and the threat of coercion is a constant background element in economic interaction in our society, even if we are not always aware of it.

Once we resist the temptation to focus on coercion and bring the institutional character of the market more clearly into view, we can see a sharper response to the objection. The essence of democracy is the idea that citizens should be able to shape their shared social, political, and economic conditions. It is hard to see how our basic institutions could be justified unless they enabled us to control

our society in this way (Hussain, 2012). To the extent that corporations shape public policy for satisfying certain social needs and make and enforce commercial rules, however, this does not happen. Instead, the state's social, political, and economic conditions are being shaped by a small group of corporate executives. While these executives may engage in the new CPA in response to pressure brought to bear by politically powerful groups of citizens, they are not accountable to the citizens as a whole, and need not include them in their decision-making processes (Brenkert, 1992). Indeed, the corporate executives who shape the social, political, and economic conditions of a certain state may not even be citizens of that state (as, e.g., when the executives of Western multinationals set rules affecting building and fire codes in a developing country [Greenhouse, 2013]).⁹

The problem is not just that, insofar as corporations shape the social, political, and economic conditions of a state, citizens do not shape them. It is that corporations' shaping of these conditions threatens to degrade or undermine citizens' will and ability to shape them. When corporations create public policy and make rules, citizens' incentives to do so are weakened. They may reasonably conclude that their resources are better spent pursuing their private interests. But democratic self-governance is a skill—or perhaps better, a set of skills. It requires the ability to identify and rank values, speak on one's behalf and listen to others, plan for the long term, and compromise. Like any set of skills, these skills will atrophy over time if they are not practiced (Mill 1998/1861). The new CPA thus threatens to create a democratic deficit that cannot easily be repaired.

Let us then conclude, with many other writers, that the new CPA creates a democratic deficit. Now the question is, what should be done about it? We have presented the democratic deficit in the form of a conditional: to the extent that corporations take on state functions by providing public goods and making rules, then they should be governed like states, i.e., democratically. It may

9. Questions might be raised about what constitutes objectionable "shaping" of society's shared social, political, and economic conditions. A famous singer, for example, might shape society's shared social conditions (for the worse) by popularizing a dance move that degrades women. Our argument might seem to imply, implausibly, that the singer's actions create a democratic deficit. Two points can be made in reply. First, we assume a threshold of significance. That is, actions create a democratic deficit only if they shape society's social, political, and economic conditions to a *significant degree*. It will be hard to say in some cases whether this line has been crossed, but results like this are sometimes unavoidable. An analogy is found in limits on money in politics. It is thought to be anti-democratic for rich people have *too much* power in politics. So campaign contributions are capped. In the U.S., for example, citizens can donate no more than \$2600 to a candidate in a federal election. But a precise answer cannot be given as to why the "too much" threshold is \$2600 and not \$2500 or \$2700. A corporation's shaping forestry policy, we think, crosses the significance threshold—given forests' importance for ecosystems, erosion prevention, and air quality—but a singer's popularizing a dance move may not. Second, and more importantly, not all shaping is the same. Citizens in a liberal democracy are properly understood to have a nearly unfettered freedom to express themselves as they see fit. As a result, popularizing a degrading dance move would be protected by democratic norms, even if it shaped society's shared social conditions significantly. We thank David Shoemaker for pressing this objection.

appear, then, that there are only two options. Either corporations should be democratized (in particular, their performance of state functions should be subject to democratic control), or they should stop performing state functions. But there is a third option. That is, corporations should continue performing state functions but society should live with the resulting democratic deficit. Democracy is important, but it is not the only thing that matters. We might think that the good that comes out of corporations’ performing state functions is worth the democratic deficit.

We cannot hope to resolve all of these issues here. But we will take one important step toward doing so by evaluating the viability of an attempt to “democratize” corporations offered recently by Palazzo and Scherer (Palazzo & Scherer, 2006; Scherer, et al., 2013; Scherer & Palazzo, 2007, 2011; Scherer, et al., 2006). We cannot say whether corporations should be democratized, should stop performing state functions, or continue to perform state functions without being democratized, until we understand what it might mean to democratize a corporation. We choose Palazzo and Scherer’s model of democratic accountability for corporations for three reasons: first, it was specifically designed to address the democratic deficit caused by the new CPA; second, it has received a great deal of attention, especially in the business ethics literature; and third, despite its flaws, it provides an intriguing way to think about how to restore democratic control over corporations. While focused on Palazzo and Scherer’s model, our analysis of it, as we will show, enables us to draw more general conclusions about accountability for corporations engaged in the new CPA.

IV. PALAZZO AND SCHERER’S MODEL OF DEMOCRATIC ACCOUNTABILITY

Palazzo and Scherer’s model of democratic accountability for the corporation is based on the ideal of deliberative democracy. According to this ideal, free, unforced, and rational deliberation among citizens should be sovereign in society. Assuming the standard model of institutional responsibilities, this is accomplished when society’s public officials—its legislators and regulators—are accountable to the citizens. However, when the state is no longer able to play a central role in directing the course of public life, whoever steps in to perform the state’s functions in society must be subject to deliberation. It follows that private actors who take up various state functions in society must become subject, in some way, to free, unforced, and rational deliberation among citizens. Palazzo and Scherer sometimes express this point in terms of legitimacy. It is illegitimate, they say, for private actors to perform state functions without being democratically accountable to society (Palazzo & Scherer, 2006).

Palazzo and Scherer propose to make corporations accountable to society by embedding them in a form of ongoing dialogue among citizens and their representatives in a society-wide process of democratic decision-making. They describe their model as a “complex communicative process of accountability

where . . . limits [on corporate behavior] are defined and redefined in a continuous process of deliberative discourse” (Palazzo & Scherer, 2006, p. 82).

The discourse at issue consists primarily of the exchanging of reasons by all parties affected by (proposed) corporate actions and practices. Corporations are required to present reasons to justify their actions or practices. Those who are affected by them may present reasons for changing those actions and practices. All parties must be willing to take these reasons seriously and change their behavior when the balance of reasons tells in favor of doing so (Palazzo & Scherer, 2006). Public authorities play a background role in this process, guaranteeing “the transparency of discourse, the monitoring and enforcement of corporate compliance, the comparability of information and standards, and the access of less powerful actors to deliberation” (Scherer & Palazzo, 2007, pp. 1112–1113).¹⁰ According to Palazzo and Scherer, once the process is up and running, corporations can legitimately perform various state functions in society just in case their involvement can be “regarded as the result of [this] process of public deliberation” (Palazzo & Scherer, 2006, p. 80).

Palazzo and Scherer do not claim that every instance of corporate activity should be subject to social deliberation. To do so would invite the objection that corporate democracy of this form is hopelessly inefficient (Hansmann, 1996). Instead, they say, “the deliberative concept . . . follows the *principled priority of systematic routine* as advocated by Habermas” (Scherer & Palazzo, 2007, p. 1111, emphasis in original). The default position is that corporations can act according to their own internal decision-making procedures. But this must stop when there is “a public discourse on the legitimacy of a given issue” (Scherer & Palazzo, 2007, p. 1111). At this point, Palazzo and Scherer, corporations must begin exchanging reasons with the public.

As this implies, for Palazzo and Scherer deliberative oversight does not require democratizing corporations by giving control of them to their employees (Scherer & Palazzo, 2007). They advocate a form of democratization that involves the whole citizen body. The point is to “establish a democratic control on the public use of corporate power” by subjecting corporate activity to the “overarching processes of (national and transnational) public will formation” through which citizens collectively direct the course of public life (Scherer & Palazzo, 2007, p. 1108).¹¹

10. Various other features of social life may need alteration to achieve these goals (Cohen, 1989). For example, to ensure that all citizens can participate in the deliberative process, it may be necessary to restructure ownership rights in the mass media so that everyone has adequate access to newspapers, television, the Internet, and other channels of communication. It may be necessary to enact limits on work hours to ensure that citizens have the time to consume information, think about important public issues, and participate in public debate. It may further be necessary for citizens to have access to adequate resources, so that they can engage with them in deliberation as equals rather than as dependents.

11. Yet another way of democratizing corporations is found in early versions of stakeholder theory, which require the creation of boards of directors with representatives from each stakeholder group (Evan & Freeman, 1988). For a critical discussion of this view, see Moriarty (2012).

Palazzo and Scherer identify the Forest Stewardship Council (FSC) as an example of the form of democratization they have in mind (Scherer & Palazzo, 2007, 2011). The FSC is an umbrella organization that brings together NGOs, government agencies, and corporations to agree on principles of sound forest management and to certify wood products as complying with these standards. Democratization in the case of the FSC is not pointed *inward*, making the involved corporations more accountable to their employees or other stakeholders. It is rather pointed *outward*, integrating them into more encompassing processes of democratic deliberation among a wide range of actors in society trying to make decisions about issues of public concern. As Palazzo and Scherer put it, corporations do not, in participating with the FSC, “invite stakeholders into their internal decision-making processes,” but rather move *themselves* out to “the political processes of public policy making” (Scherer & Palazzo, 2007, p. 1110). Given this focus, Palazzo and Scherer label their model of democratic governance for corporations understood as public actors “political corporate social responsibility,” or “political CSR” (Scherer & Palazzo, 2011).

V. A PROBLEM WITH THE MODEL

Palazzo and Scherer believe that, to close the democratic deficit that appears when corporations engage in the new CPA, corporations’ actions must be subject to social deliberation. It seems correct to say that, if a corporation is not required to explain itself to others, or listen to those others’ points of view, then it is not truly accountable to them. But we might wonder if that is all that is required. Is a corporation’s performance of a state function legitimate—is it accountable to the people—just in case it is the *subject of* deliberation among affected parties? Or must this deliberation come to a particular conclusion that the corporation is in some way *subject to*?

Surprisingly, Palazzo and Scherer do not directly address these questions. It would be odd, however, if they answered ‘yes’ to the first one. This would imply that the corporation, provided that it first engaged in deliberation with affected parties, could legitimately perform whatever state function it wanted, even if virtually all of those parties disapproved. As expected, then, several passages in Palazzo and Scherer’s writings suggest a ‘no’ answer. They say that “[modern] theories of political legitimacy link the rightfulness of domination to the consent of the governed citizens” (Palazzo & Scherer, 2006, pp. 79–80), and that deliberation leads “to better and broader accepted political decisions and . . . thus contributes to sustaining moral legitimacy” (Palazzo & Scherer, 2006, pp. 80–81). This suggests that the legitimacy of a corporation’s performance of a state function requires more than just deliberation about it. It suggests that an *agreement* of some sort is also required.

The problem is that deliberation, while perhaps capable of reducing disagree-

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ment, is unlikely to eliminate it.¹² This is familiar to all casual observers of politics, and indeed debates of all kinds among people with divergent interests. Even well informed people deliberating in good faith may fail to come to agreement. There are many reasons for this; we will highlight four.

One is time. It takes time to gather the relevant data, analyze it, construct arguments based on it, subject those arguments to critical scrutiny, develop counter-arguments, and so on. But time is not unlimited, especially in the business world. And we would not want to change the business world so that citizens and corporations had unlimited time to deliberate. The result is some disagreements that could be resolved but, due to time constraints, are not.

A second source of disagreement derives from trust in information. In deliberative processes, the state plays a role in ensuring that the public has access to relevant information (Scherer & Palazzo, 2007). But even when all parties have all the same information, they will have different degrees of trust in different sources of information. An NGO and a corporation may publish competing studies on the effects of a new pollution control measure, one which concludes that it is cheap and effective (the NGO's), the other of which concludes that it is expensive and useless (the corporation's). Some will trust the corporation's study more than the NGO's, and some will trust the NGO's study more than the corporation's. This may lead to a deliberative impasse.

A third source of disagreement is cognitive bias. There are many such biases, but one that is especially problematic in this context is the self-serving bias. This bias leads people to think that outcomes that benefit them, or benefit them disproportionately, are fair (Bazerman & Messick, 1996). This leads to conflict because the interests of different parties to social deliberation are likely to diverge in important ways. Suppose that there is social deliberation about whether a corporation should adopt a new pollution control measure. Many affected parties will likely agree that the outcome should be fair—i.e., it should balance benefits and burdens across affected parties—but they will likely disagree about which outcome is fair. Each side will be especially sensitive to the benefits it will enjoy and the burdens it will suffer (Christiano, 2004).

A fourth and perhaps the most important source of disagreement is value pluralism (Gutmann & Thompson, 1996). Some citizens will think that, e.g., preserving old-growth forests is more important than economic growth; others will think the opposite. This will lead them to different conclusions about the extent to which corporations should be permitted to cut down old-growth forests. Some citizens will think that we have powerful moral duties to those who will be living in future generations; others will deny this. This will lead to different conclusions about how much effort corporations and individuals should make to reduce their carbon emissions. Values can be debated, but disagreements about values cannot be easily debated away.

12. Indeed, in some cases, deliberation may increase the intensity of conflict. For a summary of the literature on the effects of deliberation, see Mendelberg (2002).

The claim that social deliberation in the real world is unlikely to lead to full agreement, for these and other reasons, has been pressed forcefully by deliberative democracy’s critics (Przeworski, 1998). But it is conceded by its proponents as well (Goodin, 2008; Mansbridge, 2006). We are aware of no deliberative democrat who thinks that social deliberation about contested issues will typically lead to consensus. Indeed, it seems more likely that it typically will not, especially in liberal, pluralist societies. This goes for social deliberation about the legitimacy of corporations’ performance of state functions. Where does this leave Palazzo and Scherer’s theory?

Palazzo and Scherer recognize that “dissensual communication” is a problem with which their model of democratic accountability for the corporation “will have to deal” (Palazzo & Scherer, 2006, p. 83). But they offer no way to deal with it. This reveals a significant hole in their model. If deliberation were sure or even likely to lead to agreement between corporations and citizens, then we might think of deliberation as a plausible source of accountability. The corporation would be accountable to the citizens because it would first discuss its plans with them, and in the end it would do what citizens—and the corporation itself—thought it should do. But it would be surprising for this to occur regularly, for the reasons given above. And deliberation alone is not a full form of accountability. It would be implausible to describe a corporation that did whatever it thought was best, provided it first talked things over with citizens, as truly accountable to them. Given the likelihood of irresolvable disagreement, there must be some way for participants in deliberative processes to come to a resolution, one that can be used to guide corporate behavior. In the following section, we offer a way to fill this hole in Palazzo and Scherer’s model.

VI. THE SOLUTION

We suggest that dissensual communication can be overcome by *voting*. We propose, in particular, a *majority rule* standard. Thus we claim that it is more plausible to say that a corporation’s performance of a public function is legitimate just in case there is (i) social deliberation about it, followed by (ii) majority approval of it by affected parties in a free and fair vote. Put another way, subjecting corporations’ action to social deliberation *and* voting, rather than social deliberation alone, is a more plausible way of making them accountable to the people, and hence of closing the democratic deficit that arises when corporations perform state functions.

To be clear, our suggestion is not that social deliberation should be eliminated and replaced with voting, but that voting should follow deliberation. Voting is a way of making decisions when deliberation does not result in consensus. Of course, it is not the only way of making decisions. We might toss a coin or draw straws. But voting—especially majority voting—is a particularly *democratic*

way of deciding.¹³ And indeed many supporters of deliberative democracy endorse majority voting after deliberation (Goodin, 2008; Mansbridge, 2006).

Palazzo and Scherer's silence on the question of voting is surprising because the Forest Stewardship Council (FSC)—their primary example of a system of democratic accountability suitable for the corporation—itsself employs a voting system in addition to a deliberative process. Members are divided into three chambers: social, environmental, and economic. Each chamber is further subdivided into a Northern and Southern group (group membership is determined by the wealth of the country the member is from as opposed to its geographical location). The FSC's membership elects a board of directors that devises rules and procedures for the organization, while the membership as a whole votes on the FSC's policies and principles. For a policy or principle to be approved, it must receive majorities in each of the three chambers of the FSC.¹⁴ The FSC, then, is under no illusion that full agreement can be reached among individuals and groups with disparate interests and values. Yet it does not think that this delegitimizes corporate behavior. Its solution, like ours, is a system of majority voting that follows social deliberation.

The introduction of voting into Palazzo and Scherer's model of democratic accountability for the corporation raises questions. We cannot hope to answer or even raise them all here. We highlight what we believe to be the most salient ones.

Some questions will have a familiar ring. One is: who should vote? A second is: on what issues should they vote? In our view, these questions will be fully answered by the answers that must be given to analogous questions about the social deliberation that precedes voting. With respect to the first question, anyone who has a right to participate in social deliberation should also have a right to vote. As seen, Palazzo and Scherer's answer to the question of who should be able to participate in deliberation is: *everyone* who is possibly affected by the action in question. So they should believe that everyone who is possibly affected by the action should be allowed to vote on it.¹⁵ With respect to the second question, people should be able to vote on any issue about which there is social deliberation that does not result in consensus. Since "the delibera-

13. Two points. First, we choose majority rule because of its long association with the idea of democracy and its widespread used by actual democracies. However, we offer here no independent argument for the soundness of this decision procedure and acknowledge that competitors to it have been advanced. Second, in proposing a majority rule decision procedure, we do not assume that decisions should be made by a *simple* majority. We consider weighted voting systems below.

14. For a description of the FSC's governance system, see <http://www.fsc.org/governance.html>.

15. Of particular interest is the role that corporations themselves play in social deliberation and voting. Palazzo and Scherer think that they should participate in the same way that political groups such as the AARP and the Club for Growth do. Representatives of these groups are properly understood as *advocates* for their members' points of view. We deny that corporations and their representatives should play this role. Instead, we claim, they should function as *technical experts* in political processes, presenting relevant evidence and making disinterested arguments. The reason is that corporations are not politically representative organizations. We develop this argument in Hussain & Moriarty (2014).

tive concept . . . follows the *principled priority of systematic routine* as advocated by Habermas,” corporations are permitted to carry out their activities as normal, until the public becomes concerned about a certain issue, at which point deliberation must commence (Scherer & Palazzo, 2007, p. 1111; emphasis in original). We claim that, if deliberation does not result in consensus, then voting should follow.

But the introduction of voting into Palazzo and Scherer’s model raises new questions as well. Perhaps the most important of these is: how much weight should each party’s vote have? Many writers have argued that democracy requires equality (Christiano, 2008; Dahl, 1959), and it is natural to translate this into a one-party-one-vote scheme. But other writers think weighted voting systems are better suited to realizing democratic ideals (Brighouse & Fleurbaey, 2008; Mill, 1998/1861). In these systems, each party’s vote is proportionate to its “stake” in the decision.

A voting procedure appended to Palazzo and Scherer’s model of democratic accountability should reflect the values already embedded in it. But support for both “equal” and “weighted” voting systems can be extracted from their model. In one place, Palazzo and Scherer say that deliberations between corporations and citizens must be “free of any internal coercion that could detract from the *equality* of the participants” (1996, p. 305, emphasis added). This suggests that a one-party-one-vote scheme may be best. But, following Habermas (1996), Palazzo and Scherer claim that all of those *affected* by a corporate action should have a chance to deliberate about it. This suggests that a voting scheme in which people’s voting power is proportionate to the extent to which they are affected by the action, or their stakes in it, may be more fitting. Moreover, the FSC itself uses a weighted voting scheme. As mentioned, to be approved, a policy or principle must receive majority support from each chamber (social, environmental, and economic). But the Northern and Southern group within each chamber each gets 50% of the voting power, regardless of their number of members. In addition, to be accepted, motions must receive majority support from the FSC as a whole. And each chamber is given equal voting power (i.e., 33% of the vote), again regardless of their number of members.

Ultimately, we think this issue is too complex to be resolved here. We have argued that Palazzo and Scherer’s model of democratic accountability for the corporation should include a majority rule voting procedure, but its exact design requires further analysis. Future research on this subject should be alive to the possibility that different voting schemes may be appropriate in different contexts.

We have said that Palazzo and Scherer are silent on the issue of voting, despite the fact that almost all deliberative democrats think voting is a practical necessity, and the FSC uses a voting system. Where they come closest to mentioning this issue, they seem to suggest that voting need not be a part of their model. Thus while Palazzo and Scherer say that corporate political activity should be subject to greater democratic control, they insist that their theory does

not require a “radical democratization of [the corporation’s] decision-making processes” (Scherer & Palazzo, 2007, p. 1111). They go on: “[c]ivil society actors should not assume the role of the state or that of the corporation but, rather, should limit their engagement to controlling the political and economic systems” in which the firm operates (Scherer & Palazzo, 2007, p. 1111).

We agree with the first of the above passages but not the second. That is, we agree that making the corporation accountable to the public does not require allowing the public to “grab hold,” as it were, of the reins of corporate power, changing corporate leaders from decision-makers to mere executors of public choices. This is so in two senses. First, not every action that the corporation performs must be the subject of social deliberation or voting. Second, the public does not so much tell the corporation what to do in the public sphere as constrain its actions within it. In both of these senses, corporations remain private concerns. But we disagree with Palazzo and Scherer in that we think that realizing the ideal of deliberative democracy requires an exercise of control over the corporation itself, not just the “political and economic systems” in which it operates. The public’s limiting its control of the corporation to the political and economic systems in which it operates is precisely what creates the democratic deficit that Palazzo and Scherer’s model of democratic accountability for the corporation is meant to address. To remedy it, the public must be able to set limits on corporate behavior itself.

The discussion in this section may seem to diminish the attractiveness of Palazzo and Scherer’s model. Putting aside the fact of disagreement—as Palazzo and Scherer mostly do—we have the following sanguine view of the relationship between the corporation and the public: The corporation contemplates performing a state function; it engages in a deliberative dialog with the public about it; agreement is reached; and the corporation performs the action. When there is no disagreement, *everyone* gets the result that they think there is most reason to bring about, i.e., what they think is the *right* result. The corporation, in particular, is not asked to do something that it thinks, in the final analysis, it does not have most reason to do. Palazzo and Scherer’s model thus appears to promise accountability without conflict or pressure. This is an attractive ideal.

We have stressed in this section that this ideal is in many cases unobtainable. Dissensual communication is more likely to be the norm than the exception in liberal, pluralist societies. This means that democratic accountability for the corporation, on a proper understanding of Palazzo and Scherer’s model, will involve conflict. When disagreement is introduced, we confront the possibility that *someone*—one or more groups of citizens, or the corporation itself—will have to live with a result that they think there is *not* most reason to bring about, i.e., what they think is the *wrong* result. This further means that corporate accountability will involve pressure. The corporation, in particular, may be pressured to do something that it does not think it has most reason to do. This does not mean that a corporation’s failure to obey the public’s will—following social deliberation and expressed in a majority vote—should be met with

state-sponsored force or threats of force. But corporations should feel significant pressure to conform, perhaps because the costs of failing to conform (e.g., loss of FSC certification) are high. Otherwise, the corporation cannot truly be said to be *subject to* the people's will.

While our discussion to this point has focused on Palazzo and Scherer, it yields more general conclusions about democratic accountability for corporations engaged in the new CPA. To begin, any attempt to democratize corporations must involve more than deliberation. Since deliberation is unlikely to result in consensus, a decision procedure is needed. Majority voting, we said, is a democratic way of making decisions. But to say that democratically accountability for corporations requires majority voting raises new questions, such as who should vote, on what they should vote, and how much weight each party's vote should have. Finally, the fact that a decision procedure such as majority voting is necessary for making corporations accountable to citizens means that repairing the democratic deficit by democratizing corporations is likely to be costly. These costs must be kept in mind in determining how the democratic deficit should be addressed.

VII. CONCLUSION

The new CPA—shaping public policy and rule-making—proceeds “beside or around” or “above and beyond” the state, while the old CPA—lobbying and campaign finance—proceeds “through” it. This helps the new CPA to avoid the problem of corruption, which is one of the main problems with the old CPA. But it presents a new and potentially more serious problem, viz., the democratic deficit. Insofar as corporations shape public policy and make rules, they are performing state functions but are not being governed like the state, that is, democratically. Palazzo and Scherer offer a way to eliminate this deficit. We have argued, however, that it is incomplete. They suggest that corporations can be democratized through a society-wide process of deliberation. We have argued that conflict is unlikely to be deliberated away, and voting will also be required.

Where does this leave us? One thing we have stressed is that the new corporate political activity, while avoiding one of the problems with the old corporate political activity, is not problem-free. It creates a democratic deficit, which should be acknowledged. Another is that, to judge by our examination of one of the most prominent efforts to repair the deficit, doing so will involve loss for some parties; not everyone can have their way. Future research must explore the full costs of this and other ways of democratizing the new corporate political activity. Ultimately, we will have to decide whether democratizing corporations is worth the cost, whether it would be preferable for corporations to cease shaping public policy and making rules, or whether we should simply live with the democratic deficit, given the potential benefits of the new CPA.

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