

A Theory of the Just Corporation

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I. INTRODUCTION

In their seminal article *A Team Production Theory of Corporate Law*, Margaret Blair and Lynn Stout hold that the modern corporation is best understood in terms of team production. Challenging the principal-agent model, and with it the shareholder primacy principle, Blair and Stout offer an analysis that considers the various stakeholders of the corporation as members of a team. Accordingly, they suggest, the purpose of corporate law is to provide a response to the problems created by collective production processes, in particular those pertaining to the distribution of profits stemming from the cooperation. The solution to this problem, according to Blair and Stout, is to be found in handing over control of the firm to the board of directors, conceived of as a mediating hierarch whose responsibility is to balance the competing interests of the team members. The neutrality and independence of the board allow it to be an efficient arbiter and keep everyone sufficiently satisfied so that the team does not dissolve.

While Blair and Stout's move—away from the shareholder primacy model and towards an inclusive, multistakeholder conception of the firm—is important and desirable, it is nonetheless insufficient. Its principal weakness is that the team production model does not deal with questions of fairness in the allocation of goods within the corporation. This deficiency is especially striking since their perception of the firm places the interrelationship of team members at the heart of the corporate idea.

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In this Article, I propose to complement Blair and Stout's model with principles that will ensure not only efficient decisionmaking procedures, but also fair distribution among team members. These principles, I suggest, may be found in John Rawls's principles of justice that, if applied to the corporation, may serve as the framework for such a task.

The Article begins by presenting Blair and Stout's position in relation to the purpose of the corporation. It focuses first on the advantages of thinking about the corporation in terms of team production, highlighting the way in which this model enables all stakeholders to be thought of as an organic part of the corporate body. This is followed by a discussion of the weakness of the Blair–Stout model, focusing on the fact that it does not relate to questions of distributive justice. The metaphor that I use to illustrate this point presents the Blair–Stout model as a Hobbesian model of the corporation, whereas a Rawlsian model, I argue, would be preferable.

Part III clarifies the possibility of applying Rawlsian principles of justice to the corporation. It starts by admitting to the main difficulty of such a move, namely that the Rawlsian principles of justice are not meant to apply to private organizations such as corporations. Indeed, according to Rawls's "division of moral labor," the principles of justice pertain only to the basic structure of society, those "public" social institutions that have to do with the background conditions for justice, while private, individual interactions (including those of and with organizations such as corporations, religious institutions, universities, etc.) are not subject to these principles. In response to this, and possibly in contrast to Rawls's own opinion, I propose to view corporations as part of the basic structure of society. By showing that corporations are major social institutions, which construct power relations, shape the public sphere, and allocate significant goods (surely wealth, but also self-esteem and social position), this Article argues that corporations meet Rawls's criteria for the basic structure of society and ought to be considered as a subject of the principles of justice.

After establishing that corporations should be considered as part of the basic structure of society, Part IV will demonstrate—in broad strokes—the ways in which Rawls's principles of justice might be applied to the decisionmaking process of the board. Rather than offer a detailed account of the various scenarios in which the principles of justice should be applied to the board's decisionmaking process, this Part is intended merely to outline the contours for the exercise of discretion within a just corporation.

II. THE TEAM PRODUCTION MODEL

In their seminal article *A Team Production Theory of Corporate Law*, Margaret Blair and Lynn Stout hold that the modern corporation is best understood in terms of team production.¹ Challenging the principal-agent model along with the shareholder primacy principle, Blair and Stout offer an analysis that considers the various stakeholders of the corporation as members of a team. Accordingly, the purpose of corporate law is to provide a response to the most difficult problem of collective production processes—the distribution of profits stemming from the cooperation.

According to Blair and Stout, team production problems arise when the production activity requires the combined inputs (time, money, expertise, etc.) of two or more individuals; when these inputs by team members are *team-specific* (that is, they are difficult to recover once invested in the project); and when the gains from the cooperation are non-separable (that is, it is impossible to ascribe a particular portion of the gains that arise from the cooperation to identifiable contributors).² In such cases, Blair and Stout argue, it is very difficult to determine how the gains produced by the team should be divided: any *ex ante* rule of distribution may encourage team members to shirk, as their portion of the surplus has already been determined. Any *ex post* rule, on the other hand, may encourage opportunistic rent-seeking.³ Blair and Stout offer a solution to this problem: in contrast to the conservative principal-agent view, in which distribution of profits favors the firm's shareholders (as the residual claimants, they are entitled to all the profits that are left after the corporation's other contractual obligations have been met), Blair and Stout propose to hand control of the firm, including the decision of how to allocate profits among team members, to the board of directors. Under this view, the board is conceived of as a "mediating hierarch" who must balance the competing interests of team members. As the board itself is not a member of the productive team, its neutrality and independence allow it to arbitrate efficiently and keep everyone sufficiently satisfied so the team does not dissolve.⁴ In an important sense, the authority of the

1. Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 249 (1999) [hereinafter Blair & Stout, *Team Production*]; see also Margaret M. Blair & Lynn A. Stout, *Team Production in Business Organizations: An Introduction*, 24 J. CORP. L. 743, 744–45 (1999) [hereinafter Blair & Stout, *Introduction*].

2. Blair & Stout, *Team Production*, *supra* note 1; Blair & Stout, *Introduction*, *supra* note 1.

3. Blair & Stout, *Team Production*, *supra* note 1, at 249.

4. *Id.* at 250–51. In fact, according to Blair and Stout, the solution of the independent board is a second-best solution, because the board has no direct stake in the success of the project. See *id.* at 283–84.

board derives (conceptually if not formally) from the team members themselves: the team members address the distribution-of-profits problem by “voluntarily relinquishing important control rights over firm-specific inputs and over outputs to a neutral decisionmaker who is not herself a member of the team,”⁵ as this will ensure that everyone gets (at least) a satisfactory portion of the profits. This solution, according to Blair and Stout, allows rational individuals to profit (even if not optimally) from team production by opting into an internal governance structure—the board.⁶

The logic behind this move tracks the long and notable social contract tradition: the team members (citizens in the social contract theory equivalent) forego their rights to determine the profit allocation by themselves, entrusting the matter to the board of directors—a mediating hierarchy (the sovereign in the political theory parallel)—in order to make sure that the allocation of profits furthers the interests of individual team members. As Blair and Stout note:

In essence, the mediating hierarchy solution requires team members to give up important rights . . . to a legal entity created by the act of incorporation.⁷

. . . .

[Team members] realize that it is in their own self-interest to create a higher authority—a hierarchy—that can limit shirking and deterrent-seeking behavior among team members. *In other words, team members submit to hierarchy not for the hierarchy’s benefit, but for their own.*⁸

The model of the board-as-mediating-hierarchy can be specifically traced to the Hobbesian idea of the social contract:

This basic idea [of a mediating authoritative hierarchy] is central to much modern political theory, and can be traced back at least to Thomas Hobbes. . . . Hobbes’s notion that people might submit themselves to a coercive monarch in order to avoid the “war of every one against every one,” . . . focuses on horizontal relationships that are perhaps better described as “team destruction” rather than “team production.” His proposed solution parallels our own, however.⁹

5. Blair & Stout, *Team Production*, *supra* note 1, at 255.

6. Blair & Stout, *Introduction*, *supra* note 1, at 752.

7. Blair & Stout, *Team Production*, *supra* note 1, at 250 (emphasis in the original).

8. *Id.* at 274 (emphasis added).

9. *Id.* at 274 n.58 (internal citation omitted).

As is the case with Hobbes's sovereign, so too with Blair and Stout's board, there are only minimal guidelines as to how its discretion is to be exercised. Indeed, much as Hobbes suffices with setting only threshold limitations on the sovereign's discretion (the sovereign may not infringe upon basic human rights), Blair and Stout hold that the board should be permitted as much room for judgment as possible. Its duty to maximize shareholder profits (according to the conservative principal-agent account) is thereby replaced by a duty to profit the corporation itself, as an independent entity. But there are no guidelines as to how the rents, once obtained, are to be divided between team members. This, I argue, is the model's weakness: the absence of any such rules exposes the board's decisionmaking process to political power relations between the different groups within the corporate team. Blair and Stout acknowledge:

From an efficiency perspective, all that is required to protect team production is that the board make sure each member of the team receives enough . . . that he or she remains willing to stay in the team. *Beyond that minimum, the question of who gets what portion of the corporate surplus may be determined simply by relative political power.*¹⁰

In my view, this poses difficult problems of distributive justice to the team production model. Because there is no positive account of the responsibility of the board to the less powerful groups within the team, its decisionmaking process is susceptible to political pressures exerted by the better-off groups. Indeed, while the team production model holds much promise in that it considers the interaction between team members as *the* fundamental feature of the firm, rejecting the idea that one group—the shareholders—are the firm's owners and enabling it to consider all stakeholders as an organic part of the corporate body, it nonetheless lacks distributive guidelines as to how the revenues ought to be fairly divided among the contributors to the production.

Importantly, this weakness of the team production model compromises its progressive promise: the move away from the shareholder primacy model and towards a stakeholder view of the corporation may prove futile if the actual discretion of boards is biased towards the

10. Blair & Stout, *Introduction*, *supra* note 1, at 747 (emphasis added). *See also* Blair & Stout, *Team Production*, *supra* note 1, at 282 (“[T]he mediating hierarchy model does not imply that all the individuals and groups that make firm-specific investment in a public corporation will receive equal, or fair, shares of the surplus generated from team production. It is important that each team member whose firm-specific investment is essential to the corporate enterprise receive at least *some* portion of the economic surplus” (emphasis added)).

stronger groups within the team. By exposing the board's decisionmaking process to political pressures, without providing any distributive justice principles to guide rent allocation and mitigate the power gaps between the different groups of the team, the mediating hierarch solution practically revalidates the status quo.¹¹ Due to this failure to provide a just vision of how the board should exercise discretion regarding rent allocation, the team production model may offer an efficient framework to think about corporations, but it lacks fairness.¹² The next Part of this Article proposes to complement Blair and Stout's model with principles that will ensure not only efficient decisionmaking procedures, but also fair distribution among team members. These principles, I suggest, may be found in John Rawls's principles of justice that, if applied to the corporation, may serve as the framework for such a task.

III. RAWLSIAN PRINCIPLES OF JUSTICE AND CORPORATIONS

Moving away from the Hobbesian social contract view to a more progressive idea, this Article proposes to think about the corporation within the framework of the Rawlsian theory of justice.¹³ Thus, instead of permitting the board's discretion to be exposed to Hobbesian-like power struggles between the different groups within the team, the Rawlsian theory applies Rawls's principles of justice as a constraint on the board's decisionmaking process. Rawls's principles of justice, if applied to the corporation (specifically to the board's decisionmaking pro-

11. Vis-à-vis most other groups (employees, suppliers, the local community, etc.), the strongest group would most likely be shareholders. This is because relative to other groups within the corporation, shareholders' team-specific investment in the project is relatively loose; they are legally authorized to elect and dismiss the board and may use this power to influence its decisions; and they possess the legal authority to file derivative suits against management's breach of fiduciary duty on behalf of the corporation. For a discussion of the relative strength of shareholders in the American context, see, for example, Martin Gelter, *The Dark Side of Shareholder Influence: Managerial Autonomy and Stakeholder Orientation in Comparative Corporate Governance*, 50 HARV. INT'L. L.J. 129 (2009). Shareholders are also a relatively strong group outside the corporation. As Bratton and Wachter's research on shareholders shows, "[t]he model shareholder . . . is rich, old, and white. It follows that there is nothing inherently democratic or progressive about the shareholder interest in corporate politics." William W. Bratton & Michael L. Wachter, *Shareholders and Social Welfare*, 36 SEATTLE U. L. REV. 489, 491 (2009).

12. It should be noted that it was expressly never Blair and Stout's intention to engage with issues of fairness. It is this choice, however, rather than some specific position on the matter, that this Article criticizes.

13. In *A Theory of Justice*, Rawls develops two principles of justice: the principle of basic equal liberty, and the difference principle, combined with the demand of equal opportunity. See generally JOHN RAWLS, *A THEORY OF JUSTICE* (1971) [hereinafter RAWLS, *THEORY OF JUSTICE*]. Both principles will be discussed more fully in the next Part of the Article. The last Part of the Article evaluates the possible implications of applying Rawls's principles of justice to the board's decisionmaking process.

cess), will restrain the board's ability to act in favor of the stronger groups in the team, ensuring that the distribution of goods among team members is carried out according to just principles.

Importantly, the team production model naturally fits the Rawlsian analysis of the responsibilities that arise from social cooperation. Whereas a contractualist view of the corporation views the firm as a sphere of voluntary agreements between different free and equal agents (shareholders, employees, suppliers, customers, etc.), the team production view stresses the unique framework of the team and the *team-specific investment* of each member. Arguing that the core feature of the corporation lies not in any of its voluntary aspects, but rather in the entanglement of nonhierarchical commitments of different persons to a joint effort and the participation of various members, who (especially after joining the project) are in a sense locked-in, allows us to better consider the real, sometimes involuntary, influences that corporations have on the allocation of social benefits. This view is well suited to the Rawlsian vision of society as a cooperative scheme "in which the main political and social institutions of a society fit together into one system of social cooperation . . ." ¹⁴ In response to the problems regarding the distribution of profits stemming from social cooperation, both Blair and Stout and Rawls, respectively, aim to ascertain the way in which social institutions "assign basic rights and duties and regulate the division of the advantages that arises from social cooperation over time . . ." ¹⁵ These significant similarities—the framework of cooperation and the centrality of distribution of gains that arise from the cooperation—make Rawls's analysis of cooperative systems and the principles of just distribution a natural complement to the team production model.

To establish whether or not this move is possible or even desirable, however, it is necessary first to consider whether Rawls's principles of justice apply to corporations. The difficulty with this suggestion stems from Rawls's own view, according to which the principles of justice apply *only* to the institutions of the "basic structure of society," but are not directly applicable to private organizations. This is Rawls's famous "division of moral labor" between public and private, according to which the demands of justice are only appropriate for social institutions, while individuals and private associations are left free to pursue their own per-

14. JOHN RAWLS, JUSTICE AS FAIRNESS: A RESTATEMENT 10 (Erin Kelly ed., 2001) [hereinafter RAWLS, JUSTICE AS FAIRNESS].

15. *Id.*

sonal ends and expected only to support the basic structure.¹⁶ “Since Justice as Fairness starts with the special case of the basic structure,” Rawls explains, “its principles regulate this structure and do not apply directly to or regulate internally institutions and associations within society. Firms and labor unions, churches, universities and the family [are only indirectly bound by] just background institutions.”¹⁷ According to Rawls, then, corporations belong to the latter, private sphere, and are therefore not directly subject to the principles of justice.¹⁸

While extremely influential, Rawls’s division of moral labor has also been widely criticized. G.A. Cohen has argued that Rawls’s principles of justice should regulate individual conduct as well as institutional design.¹⁹ In a similar vein, Liam Murphy claims that political justice and personal ethics should not be viewed as two distinct spheres, because justice should be considered “a collective obligation, one that we must shoulder together.”²⁰ According to Murphy, Rawls’s “division of moral labor” hinders this idea.²¹

While Cohen and Murphy contest the very distinction between political justice and personal ethics, Susan Moller Okin and others have argued against the non-inclusion of institutions such as the family within the basic structure of society, thus leaving it outside the direct application of the principles of justice.²² Because, according to Okin, the family is central to gender-structured social roles and is currently a social platform

16. “The principles of justice for institutions must not be confused with the principles which apply to individuals and their actions in particular circumstances. These two kinds of principles apply to different subjects and must be discussed separately.” RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 54–55.

17. RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 14, at 10.

18. According to Rawls, we are looking for “an institutional division of labor between the basic structure and the rules applying directly to individuals and associations and to be followed by them in particular transactions. If this division of labor can be established, individuals and associations are then left free to advance their ends more effectively within the framework of the basic structure, secure in the knowledge that elsewhere in the social system the necessary corrections to preserve background justice are being made.” JOHN RAWLS, *POLITICAL LIBERALISM* 268–69 (Columbia Univ. Press 1996) (1993).

19. G. A. COHEN, *IF YOU’RE AN EGALITARIAN, HOW COME YOU’RE SO RICH?* 134–42 (2000).

20. Liam B. Murphy, *Institutions and the Demands of Justice*, 27 *PHIL. & PUB. AFF.* 251, 291 (1998). Murphy argues that “we should not think of legal, political, and other social institutions as together constituting a separate normative realm, requiring separate normative first principles, but rather primarily as the means that people employ the better to achieve their collective political/moral goals.” *Id.* at 253.

21. *See id.* at 259.

22. SUSAN MOLLER OKIN, *JUSTICE, GENDER AND FAMILY* 89–109 (1989).

for gender-based inequalities, the application of the principles of justice to families is necessary.²³

Similar to Okin's argument that principles of justice should be applied to families, this Article proposes that the corporation—given its extremely influential position in today's societies—should be considered part of the basic structure of society. For this purpose, the next Part of the Article will first review Rawls's definition of the basic structure of society. It will then argue—by showing that contemporary corporations are major social institutions, which construct power relations, shape the public sphere, and allocate significant goods—that corporations meet Rawls's criteria for the basic structure of society, and are therefore subject to the principles of justice. After establishing that corporations should be considered as part of the basic structure of society, the Article will demonstrate—in broad strokes—the ways in which Rawls's principles of justice might apply to the decisionmaking process of the board.

IV. CORPORATIONS AND THE BASIC STRUCTURE OF SOCIETY

A. The Basic Structure of Society

Rawls defines the basic structure of society as follows:

The primary subject of justice is the basic structure of a society . . . [that is,] the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation. . . . [T]he major institutions define men's rights and duties and influence their life prospects, what they can expect to be and how they can hope to do. The basic structure is the primary subject of justice because its effects are so profound and present from the start.²⁴

Among the institutions that Rawls includes in the basic structure of society is the political constitution with an independent judiciary and the

23. *Id.* Rawls addresses Okin's critique and discusses the possibility of considering the family as part of the basic structure of society. See RAWLS, JUSTICE AS FAIRNESS, *supra* note 14, at 162–168.

24. RAWLS, THEORY OF JUSTICE, *supra* note 13, at 7. A later version of the definition appears in *Justice as Fairness: A Restatement*, and reads as follows:

The basic structure of a society is the way in which the main political and social institutions of a society fit together into one system of social cooperation, and the way they assign basic rights and duties and regulate the division of advantages that arise from social cooperation over time. . . . The basic structure is the background social framework within which the activities of associations and individuals take place. A just basic structure secures what we may call background justice.

RAWLS, JUSTICE AS FAIRNESS, *supra* note 14, at 10 (emphasis added).

legally recognized forms of property, as well as the ownership of production and the structure of the economy.²⁵ Corporations, as private voluntary associations, are not included.²⁶

According to Rawls, the basic structure of society is the way in which the principal political and social institutions allot basic rights and duties and regulate the distribution of benefits that accrue from social cooperation over the course of time. These institutions should be considered as the basic structure of society, and therefore as the subject of justice, because they play a central role in assigning rights and duties in society. If applied fairly, these institutions produce a just distribution of social benefits. If we accept Rawls's definition of the basic structure, and because (as illustrated below) corporations have a structural, systemic, and lasting influence on the distribution of social benefits in society, the inescapable conclusion is that corporations ought to be considered a part of the basic structure of society, which makes them the proper subject of justice.

B. Corporations as Part of the Basic Structure of Society

The past few decades have witnessed the multifaceted empowerment of transnational corporations. This rise in power is not anecdotal, but transformative, making large corporations a part of the basic structure of society in the Rawlsian sense.

The rise in corporate power is ubiquitous: economically, for example, the net worth of assets owned by large multinationals exceeds the gross national product (GNP) of most of the world's countries.²⁷ Similarly, the income of these corporations exceeds the budgets of most sovereign states (66 of the world's 100 largest economies are corporate entities).²⁸ Naturally, this economic power translates into significant social and political power,²⁹ leading researchers to argue that the market is now

25. See generally sources cited *supra* note 24.

26. Some authors have argued that while Rawls's omission of corporations from the basic structure might indeed be a matter of principle, it may also result from the fact that, writing in the 1970s, Rawls was assuming a strong welfare state. Sandrine Blanc & Ismael Al-Amoudi, *Corporate Institutions on a Weakened Welfare State: A Rawlsian Perspective*, 23 BUS. ETHICS Q. 497 (2013).

27. John Christopher Anderson, *Respecting Human Rights: Multinational Corporations Strike Out*, 2 U. PA. J. LAB. & EMP. L. 463, 505 (2000).

28. E. Bookspan, I. Hahn & G. Roth, *The Giant and His Garden: On Companies, Company Laws, and Environmental Quality*, 13 MISHPAT VEASAKIM (Law & Business) 157 n.16 (2010) (Isr.) (citing BRIAN ROACH, *CORPORATE POWER IN A GLOBAL ECONOMY* (2007)).

29. One of the important channels of political power is lobbying. On the scope of this phenomenon and the threats it holds for democracy, see LAWRENCE LESSIG, *REPUBLIC, LOST: HOW MONEY CORRUPTS CONGRESS AND A PLAN TO STOP IT* (2011). Following the *Citizens United* ruling by the Supreme Court, holding that the government cannot curb political spending by corporations, predic-

more important than states.³⁰ Corporate power also has a striking potential to affect the environment and cause environmental damage. One stark example of this potential is the oil leak from an offshore British Petroleum rig in the Gulf of Mexico in 2010, which caused the most severe ecological disaster the United States had experienced in the past decades.³¹

Corporate strength, however, manifests itself not only in economic, political, or environmental power, but also in additional, often covert, ways that corporations effectively shape the public sphere, influencing the most basic characteristics of people's lives. It is this type of structural influence—rather than random or sporadic—that remains unaddressed under today's understanding of the corporate idea. Consider the following two examples of two central issues—the labor market, and the status of women in society—that indicate the complex and profound impact that corporate “private” power has on our lives.

With regard to the labor market, some 38% of U.S. private sector employees are employed by large businesses.³² Large corporations, then, employ over one-third of the country's workforce.³³ In the United States, the top ten largest corporations employ close to 5% of the labor force.³⁴

tions are that corporate money will be even more heavily funneled into politics. President Obama, for instance, responded to the ruling by saying that the decision is “a major victory for big oil, Wall Street banks, health insurance companies and the other powerful interests that marshal their power every day in Washington to drown out the voices of everyday Americans.” Adam Liptak, *Justices 5-4, Reject Corporate Spending Limits*, N.Y. TIMES, Jan. 22, 2010, at A1; see also *Citizens United v. Fed. Election Comm'n*, 558 U.S. 310 (2010). The political influence of the large corporations on developing countries is even greater. See generally Steven A. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443 (2001).

30. See, e.g., SUSAN STRANGE, *THE RETREAT OF THE STATE: THE DIFFUSION OF POWER IN THE WORLD ECONOMY* 16–43 (1996).

31. For a detailed report prepared on the failures that lead to the catastrophe, see DEEPWATER HORIZON STUDY GRP., *FINAL REPORT ON THE INVESTIGATION OF THE MANCONDO WELL BLOWOUT* (2011), available at http://ccrm.berkeley.edu/pdfs_papers/bea_pdfs/DHSGFinalReport-March2011-tag.pdf.

32. Defined by the Small Business Administration (SBA) as organizations with over 500 employees. See SMALL BUS. ADMIN., <http://www.sba.gov/> (last visited Apr. 17, 2014). Importantly, the definition of “small business” by the SBA is considered by some as overly inclusive, as it considers firms with fewer than 500 employees to be small, placing almost every business in the United States within the category. “A more strict definition of small business, using a limit of 50 employees,” would cut back their share to less than a third of the workforce. The share of large corporations correspondingly rises. See J.D. Harrison, *Who Actually Creates Jobs: Start-ups, Small Businesses or Big Corporations*, WASH. POST (Apr. 24, 2013), http://www.washingtonpost.com/business/on-small-business/who-actually-creates-jobs-start-ups-small-businesses-or-big-corporations/2013/04/24/d373ef08-ac2b-11e2-a8b9-2a63d75b5459_story.html.

33. Harrison, *supra* note 32.

34. See Alexander E.M. Hess, *The 10 Largest Employers in America*, USA TODAY (Aug. 22, 2013), <http://www.usatoday.com/story/money/business/2013/08/22/ten-largest-employers/2680249/>.

The Israeli labor market is similar: large employers (defined as those with more than 100 workers) employ some 45% of all those employed in the private labor market in Israel, which constitutes about 80% of the country's labor force.³⁵ This means that great power is concentrated in the hands of the large private employers. The significance of this power runs rather deep: it is the power that shapes the most basic characteristics of how we work, where we work, and how much we get paid for doing work.

Think, for example, of the standards of remuneration in the private market, and especially the high-manager's versus worker's salary ratio. While most of the employees in the top U.S. companies earn less than \$10 an hour, the wages of senior management are many times that.³⁶ For instance, the highest paid manager at Wal-Mart—the largest single private sector employer in the United States with 1.4 million employees in the United States alone—earned a salary of \$18.4 million in 2012.³⁷ The ratio between the CEO's wages and that of average-earning workers at Wal-Mart stands, then, at 1034:1. At Target and McDonalds, the third and sixth largest employers in the United States, respectively, the ratio is 597:1 and 434:1.³⁸ This type of employment pattern radiates over the entire economy and fashions its accepted norms. According to census data from 2009–2011 compiled by the National Employment Law Project, 66% of low-wage workers in the United States are employed by large businesses with over 100 employees.³⁹ As noted above, most of them do not make as much as \$10 per hour. Indeed, the division of wealth in Western society has for some time been tilted in favor of the capital owners and high earners, and this is largely the result of corporate norms.⁴⁰ According to Pickety, the pace of this distortion is intensify-

35. See Israel Central Bureau of Statistics, *Businesses, by Economic Sector and Size Groups of Average Salaried Positions Per Employer*, 62 STAT. ANN. 770, Table 18.3 (2011), available at <http://www.cbs.gov.il/reader/>.

36. George Zornick, *Large, Profitable Companies Employ Most Minimum-Wage Earners*, THE NATION (July 19, 2012, 5:21 PM), <http://www.thenation.com/blog/168969/large-profitable-companies-employ-most-minimum-wage-earners#>.

37. *Id.*

38. See *Putting CEO Pay in Perspective*, Payscale, <http://www.payscale.com/data-packages/ceo-income> (last visited Nov. 18, 2014). See also Alexander E.M. Hess, *The 10 Largest Employers in America*, USA TODAY (Aug. 22, 2013), <http://www.usatoday.com/story/money/business/2013/08/22/ten-largest-employers/2680249/>.

39. Zornick, *supra* note 36 (large business is defined in this census as a business with 100 employees or more).

40. Indeed, corporate managers are usually not referred to as “capital owners.” However, since much of top managerial income in public corporations tends to accrue from shares and other forms of stock price linked compensation (e.g., options), I include top managers in the category of capital owners as well as in that of high earners. I thank Marc Moore for pointing that out to me.

ing.⁴¹ In the United Kingdom, for example, while the average salaries of wage earners in the private market are declining, the salaries of senior managers are on the rise.⁴² These practices undoubtedly have a huge impact on our societies, from economic disparities to the very concept of human worth. These cannot be attributed to voluntary agreements in any simple sense. Rather, it is a clear indication that corporate decisionmaking processes are the province of “major social institutions” that “determine the division of advantages from social cooperation” in the Rawlsian sense.⁴³

This influence of the corporate private sector on the labor market is not limited to the form of employment; rather, there are far-reaching implications for other key areas of public life. Think, for example, of the status of women in the labor market, particularly in senior positions, which is similarly determined by private practices. The fact that women occupy only 14%–15% of executive positions in Fortune 500 companies,⁴⁴ or that women hold only 18% of senior managerial positions in the private sector in Israel,⁴⁵ is to a great extent the result of private sector decisionmaking. This does not only “influence [women’s] life pro-

41. THOMAS PICKETTY, *CAPITAL IN THE TWENTY-FIRST CENTURY* 296–97 (Arthur Goldhammer trans., Harvard Univ. Press 2014).

42. See Prem Sikka, *Squeezing Ordinary People’s Finance Always Leads to Disaster*, THE GUARDIAN (Apr. 23, 2012), <http://www.theguardian.com/commentisfree/2012/apr/23/squeezing-ordinary-people-finances>. The trend in Israel is the same: the wages of salaried employees have been eroded in recent years; according to a report by Israel’s Security and Exchange Commission that examines salary trends for senior office holders in stock-exchange-traded companies, the average salary of senior managers in these companies has almost doubled in the past decade. See ISRAEL SEC, THE SALARIES OF SENIOR MANAGERS: A PICTURE OF THE SITUATION AND TRENDS, 2003–2009 (Hebrew), available at http://www.isa.gov.il/GeneralResearch/3304/Documents/IsaFile_5029.pdf. In addition, statistics published in the newspaper *The Marker* show that the salary of the highest paid 100 senior managers of stock-exchange-traded companies in 2011 was seventy-nine times that of the average salary in the market and that the gaps were only growing wider; in 2010, it was seventy-seven times greater. Lior Zeno, *79 Times the Average Wage*, THE MARKER (Apr. 3, 2012), <http://www.themarker.com/markets/1.1678124>. The findings of the *Calcalist* newspaper also show the wage gaps between managers of companies in Israel and the average salary in their companies. CALCALIST, SALARIES CONTINUE TO RISE, ALONG WITH WAGE GAPS (2011), available at <http://go.calcalist.co.il/pic//contralmanager/040312.pdf>. A proposed law on limiting the salaries of senior company officers, in an attempt to narrow these gaps for public companies, has lain dormant in the Israeli Knesset for several years. The last proposal in this spirit, seeking to limit the ratio to fifty times, was rejected in May 2012. Zvi Zarakhia, *Vote on Senior Managers’ Salary Rejected: Kadima Party Changes Stand*, THE MARKER (May 23, 2012), <http://www.themarker.com/career/1.1714828>.

43. See RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 7.

44. RACHEL SOARS & LIZ MULLIGAN-FERRY, CATALYST, 2013 CATALYST CENSUS: FORTUNE 500 WOMEN EXECUTIVE OFFICERS AND TOP EARNERS (2013), available at http://www.catalyst.org/system/files/2013_catalyst_census_fortune_500_women_executive_officers_top_earners.pdf.

45. Tomer Zarchin, *Without Favors, Without Discrimination*, HAARETZ, May 20, 2012 (Isr.).

spects, what they can expect to be and how well they can hope to do,”⁴⁶ but shapes our societal concepts of the proper balance between work and home, thus not only shaping the work environment within companies, but affecting women’s position in society more generally.⁴⁷

Consider the following example: in 2011, the Israeli Center for Transplants launched a campaign in the media and on posters on buses to encourage people to sign donor cards for organ transplants.⁴⁸ The posters presented men, women, and children who had signed such a donor card.⁴⁹ The Canaan Transport Advertising and Marketing Company, which was running the campaign on behalf of the bus companies, chose to refrain from presenting women’s images in the Jerusalem campaign, fearing the rage of ultraorthodox groups in the city, who consider the portrayal of women in public indecent. This step drew wide condemnation in the press and among the public because it overlooked women, making women irrelevant to the public sphere. A newspaper piece on the matter read as follows: “In recent years, the exclusion of women from the public space in Jerusalem has grown worse, and become an outrageous norm. [It now involves] the disappearance of any trace of the feminine sex. . . . Commercial companies who cooperate are complaisant with this phenomenon.”⁵⁰ A Jerusalem nonprofit organization and several of the city’s citizens appealed against Egged Israel Transport Cooperative Society Ltd., the bus company, and Canaan Co., arguing that the exclusion of women from advertising boards constituted an infringement of the basic principles of equality, human dignity, and freedom of political expression.⁵¹ In response to the appeal, Egged—the largest bus company in the country—argued that, as a private body, it is not committed to public law principles of equality.⁵² The case is still pending, but the appeal’s chances of success seem to be rather slim, as the Israeli Supreme

46. RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 7.

47. In the Israeli private sector, women compose 47% of all workers, but this rate becomes smaller as their rank increases. Thus, 34% of the women are in junior management positions, whereas only 18% hold senior management positions. Zarchin, *supra* note 45.

48. Tamar Rotem, *Back to the Days When Women Were Seen in Jerusalem*, HAARETZ (Nov. 11, 2011) (Isr.), <http://www.haaretz.co.il/news/education/1.1711620>.

49. *Id.*

50. *Id.*

51. A previous appeal filed against the Egged and Canaan companies, which dealt with the exclusion of a female contender for the Jerusalem City Council from similar ad posters, was settled out of court. See HCJ, 9460/08, *Jerusalem Revival List v. Chair of the Central Elections Committee et al.* (Published in Nevo, Nov. 10, 2008) (Isr.).

52. Relying on 30188/02 *Hevrat Ha-Shmira Ltd. V. The State of Israel, Ministry of Transportation* (June 3rd 2002).

Court has previously ruled that the same bus company is not a “state actor” in the proper sense.⁵³

As these examples illustrate, large corporations possess immense life-shaping power. Under the veil of “voluntary private associations,” they generate practices that shape our identities and influence our most significant circles of belonging. In real life, large corporations are, to quote Rawls on the characteristics of the basic structure, “social institutions [that] distribute fundamental rights and duties and determine the division of advantages from social cooperation.”⁵⁴ Their “effects are so profound and present,” their significant distributive social role not short of that of the welfare state,⁵⁵ that they ought to be included in the basic structure of society.⁵⁶

C. A Theory of the Just Corporation

Having established the plausibility of considering large corporations as part of the basic structure of society and subject to Rawls’s principles of justice, we now turn to examining the implications of this move for the nature of the corporation. The aim of the discussion here is to sketch, even if in broad strokes, the ways in which Rawls’s principles of justice might apply to the decisionmaking process of the board, ensuring that the process is not exposed to political power struggles between the different team members, but rather confined to guidelines of fair distribution.

53. In Israel, the application of administrative law norms to private bodies is made possible by the “dual-essence” doctrine, which deems private bodies to be “dual-essence” bodies to which “normative duality” applies: public law on the one hand, and private law on the other. Among the criteria set down by the courts to declare “dual essence” are private bodies with an affinity to a public authority or bodies that operate according to a state franchise; bodies that fulfill central public functions or supply a vital product; bodies having a monopolistic position; and so on. Accordingly, Israeli law recognizes bodies such as the Electricity Company, the National Burial Services Company, etc., as bodies of dual essence, and imposes public law duties upon them.

54. RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 7.

55. David Ciepley, *Beyond Public and Private: Toward a Political Theory of the Corporation*, 107 AM. POL. SCI. REV. 139 (2013).

56. In the same context, see Naomi Klein’s argument according to which, on top of the apparent aspects of shaping people’s consumerist *habits*, corporations have gained a deep influence over how individuals form their self-perception, primarily as consumers. It is difficult to overstate this point: since culture—in the broad sense—is central to the fashioning of human consciousness and behavior, the bodies that dominate the shaping of cultural codes and accepted norms of conduct have substantial influence in shaping the nature of public life more generally. Possessing immense power in the shaping and reproduction of culture, large corporations are therefore central constructors of reality itself. In this sense as well, they ought to be regarded as part of the basic social structure. *See generally* NAOMI KLEIN, *NO LOGO* (1999).

According to Rawls's first principle of justice, every person has the same claim to a fully adequate scheme of *equal basic liberties*, which is compatible with the same scheme for all. The second principle is comprised of two subconditions: (1) social and economic inequalities attach to offices and positions open to all under conditions of fair equality of opportunity (*the equal opportunity requirement*); and (2) social and economic inequalities are allowed only for the greatest benefit of the least advantaged members of society (*the difference principle*).⁵⁷

As Rawls explains, the first principle is prior to the second principle. Within the second principle, the equal opportunity requirement precedes the difference principle. Priority means that, in applying a principle, we assume that the requirements of the previous principle are fully satisfied.⁵⁸

1. Rawls's First Principle of Justice: Equal Liberties

Among the basic liberties that the first principle warrants, mandating the same scheme of equal liberties for all, Rawls enumerates the freedom of thought and conscience, the right to life and bodily integrity, and the political liberties—such as the freedom of association, the right to vote and to participate in the polity, etc. Just institutions, according to Rawls, have a duty to protect and support these rights and freedoms of parties to the cooperative scheme.⁵⁹

When we translate that notion from the political sphere to the corporate environment, it is possible to think of a duty of the board to not hamper the freedom of employees to unionize. In the same way that the institutions of the polity must, under a Rawlsian scheme, uphold the freedom of persons to freely associate (even if this duty may place a burden, economic or other, upon the polity), the board's decisionmaking must respect the parallel freedom of employees to unionize, even at a cost.

An Israeli case⁶⁰ concerning unionization of workers at a cellphone company illustrates this point. In 2012, a group of employees at *Pelephone Inc.*, one of Israel's largest phone companies, decided to unionize in order to improve their terms of employment. In response, the board

57. RAWLS, JUSTICE AS FAIRNESS, *supra* note 14, at 42.

58. *Id.* at 43.

59. *Id.* at 46, 47–48 (“We see the basic structure of society as having two coordinate roles, the first principle applying to one, the second principle to the other. . . . In one role, the basic structure specifies and secures citizens’ equal liberties.”).

60. See File No. 25476-09-12 National Labour Court of Israel, *The Histadrut (Workers Union) v. Pelephone Communications Ltd.* (2013) (Isr.).

and senior management of the company instructed individual employees not to join the union, had employees sign affidavits stating they would not do so, and addressed employees collectively in order to deter them from joining the union, calling it a “political cancer” and hinting that unionization would result in massive layoffs.⁶¹ The union filed suit against the firm’s conduct, arguing that it infringed on the workers’ right to unionize, which is safeguarded under Israeli labor law.⁶² Balancing the right to unionize against the right of employers to free speech, the court concluded that due to the gap in bargaining power between employers and employees, the employer should remain passive with regard to the unionization process of the firm’s workers.⁶³

Applying Rawls’s principles of justice to the *Pelephone Inc.* board’s decisionmaking process may have resulted in a different scenario altogether. According to Rawls’s first principle of justice—the *equal liberties principle*, translated from the political sphere to the corporate domain—the board may have a duty to respect the workers’ freedom of association. This means that, even at a cost to other interest groups within the firm,⁶⁴ the board cannot pressure employees into relinquishing their right to join the union or imply that joining the union may be perilous to their future employment with the firm.

The American National Labor Act strikes the balance between the employees’ right to unionize and the employers’ freedom of expression to accommodate the employers’ interests. Section c(8) states:

The expressing of any views, argument or opinion, or the dissemination thereof, whether in written, printed, graphic form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act, if such an expression contains no threat of reprisal or force or promise of benefit.⁶⁵

61. *Id.*

62. See Israeli Collective Agreements Act, 5717–1957, 11 LSI 221 (1957) (Isr.).

63. See File No. 25476-09-12 National Labour Court of Israel, *The Histadrut (Workers Union) v. Pelephone Communications Ltd.* (2013) (Isr.).

64. Preventing workers from unionizing is usually linked to an alleged increase in profits as the bargaining power of the workers decreases, which results both in poorer working conditions and in the ability to fire. Numerous cases have shown that in cases where the firm’s performance has been slower than before (reflected in less profit rather than in losses), it is the board’s practice to fire employees and keep the expected gains higher, thus preferring the interests of shareholders over those of the workers. This practice seems to be contrary to a fair distribution of benefits within the firm, and the suggested subjection of the board to the Rawlsian principles of justice may help to prevent it.

65. 29 U.S.C. § 158c(4) (2014).

The Act seems to suggest that the realization of the employees' right to unionize is thought of in terms of a "free market of ideas," where both employers and employees may voice their respective opinions. This view had been criticized as undermining the very purpose of the Act and as disregarding the inherent gaps in the bargaining power of employees and employers.⁶⁶

In its current form, the team production model cannot alter this unjust outcome. It does not address how the relatively weaker team members—the workers—can be empowered to act collectively to counterbalance the power of a stronger employer, as the board's decisions respond only to political power relations between various team members. In this case as well, the mediating hierarch solution reaffirms the status quo. The position advanced in this Article may remedy this problem, by *ex ante* preventing such situations: the board would be obligated, from the outset, to consider the interests of all of the team members according to just principles. Assigning the board with a duty to support the workers' freedom of association—a result of the Rawlsian first principle of justice—will ensure that a fairer balance is struck between the competing interests of the team's groups, and favoring the interests of shareholders over those of employees will no longer be the default choice.

Integrating Rawls's first principle of justice into the corporate decisionmaking procedure may also imply some form of workplace democracy. As mentioned above, according to Rawls's principle of equal liberties, one of the basic liberties that just institutions must support is the right to meaningful political participation.⁶⁷ Applied to the corporation, this would suggest that other team members, primarily workers, should take part—in some form or other—in the management of the firm. Workplace democracy and participation of workers in managerial decisions have been widely discussed in other contexts and are most commonly referred to as "the parallel case argument."⁶⁸ It runs as follows: In the political sphere, the grounds for democratic participation in government are that the polity is a cooperative scheme for the mutual benefit of its members, which is governed by public rules. Thus, everyone that is expected to contribute to the scheme, and is subject to its rules, is entitled to participate in determining these rules.⁶⁹ Since corporations are also

66. Wilma B. Liebman, *Labor Law Inside Out*, 11 J. LABOR & SOC. 9, 9–22 (2008).

67. RAWLS, JUSTICE AS FAIRNESS, *supra* note 14, at 45–46.

68. *See, e.g.*, ROBERT DAHL, A PREFACE TO ECONOMIC DEMOCRACY (1985); Joshua Cohen, *The Economic Basis of Deliberative Democracy*, 6 SOC. PHI. & POL'Y 25 (1989); Robert Dahl, *A Right to Workplace Democracy? Response to Robert Mayer*, 63 REV. OF POL. 249, 249–253 (2001).

69. Cohen, *supra* note 68, at 27.

cooperative schemes, so the argument runs, it makes sense that workers—as contributing team members—should likewise be entitled to some form of workplace participation.

Within the team production model of the corporation, this analysis seems natural. By rejecting the principal–agent view, the team production model stresses the cooperative aspects of the team, focusing on the integrated contribution of each team member and, therefore, on team members’ expectations of being “counted.” This framework traces Rawls’s vision of cooperative schemes and the significance of members’ participation. The team production model therefore seems to naturally lend itself to Rawls’s first principle of justice, which reflects the very same conception of the cooperative qualities in society.

2. Rawls’s Second Principle of Justice: Equal Opportunity and the Difference Principle

(a). Equal Opportunity

Rawls’s principle of equal opportunity is meant to prevent inequalities that emerge over time in a cooperative system. The idea is that even when the initial scheme is fair, different natural circumstances and contingent individual decisionmaking may generate gaps in wealth, property, or other goods or resources between persons. The worry is that these gaps in and of themselves will foster unfair advantages for those who enjoy the better positions, while others’ starting points will become relatively inferior.⁷⁰ For this reason, Rawls argues, it is necessary to ensure that the background institutions are supporting a policy of fair equal opportunity: “Supposing that there is a distribution of native endowments, those who have the same level of talent and ability and the same willingness to use these gifts should have the same prospects of success regardless of their social class of origin.”⁷¹

Translating the equal opportunity principle from the political to the corporate sphere may suggest that corporate policies should strive for principles of diverse employment, ensuring that the corporation hires minorities, for example, in managerial positions rather than as blue-collar

70. Consider the following example: Two groups, *A* and *B*, start out with the same resources. While the investments of group *A* have been greatly successful (both due to its innovation and due to luck), those made by group *B* have resulted in severe losses. A few generations down the line, the offspring of group *A* have a much better starting point than those of group *B*. Since these gaps cannot be attributed directly to the fault of these Group *B* persons, they should be cancelled out by the principles of justice.

71. RAWLS, JUSTICE AS FAIRNESS, *supra* note 14, at 44.

laborers. It may also imply that hiring and promoting policies should be sensitive to the Part that women are allowed to play in the corporate hierarchy. Just as the equal liberties principle discussed above serves as a “justice constraint” on the board’s discretion, the principle of equal opportunity ensures that a broader social view guides corporate decisionmaking to include all of the corporation’s constituencies. Given the immense influence that corporate practices have on the labor market or on the social position of women, placing such restraints on corporate policies seems necessary to get just results.

(b). *The Difference Principle*

Rawls’s difference principle mandates that a corporation may carry out an unequal policy only if the inequality favors the worse-off.⁷² Even in cases where a certain production policy is more efficient in the sense that it increases the total benefits of production, the difference principle may prevent it from being implemented if the gains produced by this policy benefit only the better-off at the expense of the worse-off.⁷³

Applying the difference principle to the decisionmaking process of the board may suggest that some unequal managerial practices, if they only benefit the advantaged team members, should be barred. Thus, a decision to increase the remuneration of the company’s high earners beyond a certain point, making the inequalities between them and other team members greater, may not be allowed because it is an unequal move that does not benefit the worse-off. This may require that any increase in pay to the firm’s advantaged must be linked to a similar raise in pay for the worse-off. Only then does the pay raise meet the qualification that the inequality must favor the worse-off. The difference principle might also apply to the board’s decisions where the board decides to shut down or relocate a plant. While this is possibly an efficient move, in cer-

72. The worse-off or the least advantaged are not precisely defined by Rawls. Rather, Rawls admits that such a definition is seriously difficult to formulate and that a certain amount of arbitrariness relating to it is unavoidable. In *Justice as Fairness: A Restatement*, he proposes some economic indicators relating to such a definition, including counting the least advantaged as those with an income less than half of the median income and wealth, or less than the average income and wealth of the unskilled worker. In a later work, Rawls shifts from the economic measure to the causes of one’s misfortune, focusing on contingencies such as family origin, natural endowments, and luck. In yet another discussion, in *A Theory of Justice*, Rawls ties the idea of the worse-off with the distribution of what he calls the *social primary goods* (which are: rights and liberties, powers and opportunities, income and wealth and self-respect). In lack of an exact formulation of the worse-off group, “we are to aggregate to some degree over the expectations of the worst off, and the figure to be selected on which to base these computations is to a certain extent ad hoc.” RAWLS, *THEORY OF JUSTICE*, *supra* note 13, at 98.

73. RAWLS, *JUSTICE AS FAIRNESS*, *supra* note 14, at 61–64.

tain cases it may be prohibited if it harms the worse-off team members. In such cases, the board may have to consider, as part of its legal duties, not only the implications of such a move for the efficiency of production and the total increase in profits, but also the ramifications for the worse-off.

The decision to demolish two steel plants in Youngstown, Ohio in the 1980s provides a good example.⁷⁴ The board of directors of United States Steel decided to close the two plants, rejecting other options such as selling them to the workers. The board's decision had considerable ramifications, not only for the workers, but for the entire Youngstown community.⁷⁵ The court, discussing the case, even stated that

[f]or all of the years United States Steel has been operating in Youngstown, it has been a dominant factor in the lives of its thousands of employees and their families, and in the life of the city itself. The contemplated abrupt departure of United States Steel from Youngstown will, of course, have direct impact on 3,500 workers and their families. It will doubtless mean a devastating blow to them, to the business community and to the City of Youngstown itself.⁷⁶

The court focused on the question of ownership and control, having to decide between the workers' right to buy the plants and the company's freedom to control its assets. While the court sympathized with the workers' situation, it nevertheless followed the idea of the corporation as the owner of the plants, and the shareholders as the owners of the corporation, and therefore decided that the firm had no legal obligation to sell the plants to the workers. As the owner, the corporation through its board was entitled to handle its property as it wished.⁷⁷

Authors, such as Singer, criticized the court's decision by arguing that the relationship between the constituencies of the corporation could have been legally recognized as a property right.⁷⁸ The court, he claims, should have interpreted the law as recognizing a property right for the

74. Joseph W. Singer, *The Reliance Interest in Property*, 40 STAN. L. REV. 611, 611–614 (1988) (citing N.Y. TIMES, Apr. 29, 1982, at A20, cols. 3–5 (picture caption)).

75. Singer, *supra* note 74, at 611–14.

76. Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264 (6th Cir. 1980) (quoted in Singer, *supra* note 74, at 616).

77. United Steel Workers of Am., Local No. 1330 v. U.S. Steel Corp., 492 F. Supp. 1 (N.D. Ohio 1980), *aff'd in part, vacated in part sub nom.* Local 1330, United Steel Workers of Am. v. U.S. Steel Corp., 631 F.2d 1264 (6th Cir. 1980) (quoted by Singer, *supra* note 74, at 617).

78. Singer, *supra* note 74, at 617. See also Joseph Singer, *The Reliance Interest in Property Revisited*, 7 UNBOUND 79 (2011).

workers, possibly by finding a right of first refusal of either the workers' union or the town.

The proposal here, to restrain the board's decisionmaking in cases such as this by applying Rawls's principles of justice to the process, may tip the law in a desirable direction. As described above, in a case such as that of Youngstown, Ohio, the difference principle may prohibit the board from pursuing a possibly more efficient business decision, but one that harms the worse-off team members (in this case, the workers and the town itself). Current legal doctrine, which allows companies to make such an ominous decision for workers and communities, to the benefit and profit of other team members (shareholders), needs to be amended. By complementing the team production model with Rawlsian principles of justice and designing the legal rules anew, we can achieve a change for the better.

V. CONCLUSION

The team production model of the corporation views the various stakeholders of the firm as members of a team, stressing the team-specific efforts of all its stakeholders as necessary for the team to flourish. This view signifies a much-needed shift away from the conservative principal-agent model of the firm, allowing a broader view of the corporate entity: one that takes into account not just capital, but also labor and community as equally important contributors to the corporate project. A major drawback of the team production model, however, is its disregard for improving the distributional outcomes of the board's decisionmaking. In order to fully realize its progressive promise, the team production model needs to be complemented with a fair distribution mechanism that ensures that the board's decisionmaking process not only reflects the relative bargaining power that each group of members has, but also takes just distribution into account in a meaningful way. This Article has suggested that this goal may be achieved by applying Rawls's principles of justice to the board's decisionmaking. Curbing the board's discretion with Rawlsian principles of justice may not only lead to a better, fairer redistribution of benefits that accrue from the corporate project, but it may also signify a break from a narrow view of the corporation as a wealth-maximizing mechanism for the better-off members of society, towards its reformulation as a just social institution.