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Abraham A. Singer: *The Form of the Firm: A Normative Political Theory of the Corporation*

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The Form of the Firm is an extraordinary and highly original book. It is one of the most rigorous and comprehensive interdisciplinary works that combines normative political theory with business ethics and economics addressing issues relating to justices in and of the business firm. The book has two broad goals: to *reconstruct* and *critically evaluate* economic theories of the business corporation in normative terms. Singer argues that a political theory of the corporation has two components, namely the productivity component and the normative component (pp. 33–35). The former refers to the question of why the corporation exists and what are the functions of it, while the latter refers to the question of how and in what ways the corporation could be made compatible with liberal democracy while not defeating the economic functions of the corporation.

Part I of the book (from chapter 2 to 6) reconstructs the normative justification of the corporation as found in economic theories. In Singer's own words, part I is about 'placing the development of the Chicago school's theory of the corporation in the context of economic and managerial intellectual history' to 'illuminate the power, strengthen, and novelty of its contribution and to better understand the nature of its claims' (p. 2). Part II (chapters 7–8) devotes to the critical assessment of the economic theory of the business corporation reconstructed in part I, and part III (chapters 9–12) moves to three alternative accounts of corporate law, corporate governance, and business ethics followed by Singer's theory of the corporation in part II.

Part I rearticulates the transaction approach in the political theory of the corporation (p. 39). Singer argues that the transaction cost approach, as articulated by Ronald Coase and Oliver Williamson, provides a better account than classical political

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economists such as Adam Smith, John Stuart Mill, and Karl Marx. Contrary to Smith, Mill, and Marx, who hold the view that the corporation exists because it helps to increase productivity through the division of labor, increasing quality of labor, or the creation of surplus value through the exploitation of labor (pp. 50–51), the transaction cost approach demonstrates that corporations thrive because they can mitigate problems of asset-specific investment and opportunism, which are transaction cost that could be hard to deal with by the price mechanism (pp. 62–64). Asset-specific investment means that in cases where investment cannot be redeployed for other productive purposes, such as the investment in machinery for the production of a highly specific kind of good, the investor would be subject to a highly disadvantaged position as compared to that of potential buyers. Opportunism implies that people will actively take advantage of the vulnerable position of the investor. Bounded rationality also means that no party is able to predict all circumstances and protect itself fully in a one-time market contract. The incentive to invest in asset-specific investment is therefore particularly low.

Through establishing transaction and authority relationships different from those of the market (p. 65), the corporation is capable of economizing on transaction cost that the market is unable to, and hence the corporation is more efficient than the market in these cases (pp. 55–58). The transaction cost approach, thus, 'rebuilds an account of how and why capital, labor, and raw goods cooperate together within a corporation' (p. 71) by recentering the focal point to the comparative advantages of the corporation as a method of organizing production. Similar to the Chicago school's theory of the corporation, Singer's account concedes the indispensable role of efficiency in the normative assessment of the corporation. Nevertheless, Singer rejects the Chicago school's tendency to reduce the corporation to a set of market contracts. He criticizes the 'nexus of contracts' approach for failing to capture substantive normative relationships within the corporation and the ontological foundation (market inefficiency) of the corporation (pp. 163–164). In Singer's own words, every 'corporation, in a certain respect, is an implicit argument against the perfect efficiency of markets' (p. 72).

As such, the corporation represents a structure in which productive collaborations are not directed by the price mechanism. Part II explicates this idea, which Singer calls 'norm-governed productivity'. The idea is that 'corporations supplement instrumentally oriented rationality with norm-based reasoning in order to lower transaction costs and induce conscious cooperation' (p. 115). Corporations cultivate 'cooperative norms' to economize on market failures (p. 118). These cooperative norms facilitate particular preferences and relationships, and hence they invite questions concerning the moral goodness or badness of norms being cultivated, which economists typically ignore (p. 119). These norms, in principle, are designed to address the 'motivational crowd-out' problem resulting from the consequence-oriented rationality embedded in the market. Each corporation thus represents a 'cognitive script', which is a knowledge situation containing behavioral rules driven by social norms (p. 129). The important point here is that Singer ties the efficiency of the corporation to its capacity for facilitating cooperative relationships that are otherwise unavailable in a competitive market (p. 163).

Although Singer does not offer a specific account of what these norms are, he argues that these norms must fall between the 'minimal and maximal viability horizons' (p. 156). Minimally, norms cannot be too thin to the extent that they are unable to address problems of opportunism; maximally, they cannot be too thick to the extent that organizing productive activities through the firm becomes more costly than the price mechanism. The space between these two horizons provides a wide range of possibilities for different combinations and rankings of values (not just efficiency) to structure the firm.

Part III develops Singer's own normative theory of the corporation in three major institutions and practices, which are corporate law, corporate governance, and business ethics. He argues that the normative components of the transaction cost approach that he advances can be best captured by the 're(lation)al entity' theory of the corporation, which sees the corporation as an independent social fact that has its own life that cannot simply be reduced to a government creation nor an aggregation of individuals (p. 173). In the area of corporate law, this would imply that managerial fiduciary duty needs to be understood as a duty toward not a particular patron group (such as shareholders), but a duty towards the corporation as a whole (p. 179). This duty toward the whole further implies that managers owe an obligation to reasonably justify their decisions to all parties of the corporation. The relational view suggests that shareholders and the management need to take more responsibilities for corporate actions that harm innocent third parties. Thus, the corporate veil should be pierced, relevant executives should be made accountable to tort claims, and shareholders should post a bond for their limited liability (p. 185). The relational view also demands 'just cause' employment decisions, meaning that 'at-will' employment should be abandoned due to the asymmetry of power between employers and employees (p. 188).

In the area of corporate governance, the relational approach would demand reforms in both internal corporate governance structure and external market environment. With respect to the former, shareholders' voices ought to be taken more seriously, and hence they should be given more real control over director elections because the very purpose of assigning a vote to shareholders is to enable them to express their will in corporate governance (p. 198). It further implies that institutional investors, such as pension funds, ought to treat their corporate governance powers of their investment holdings as a fiduciary duty toward their plan holders (p. 199). With respect to the external market environment, the relational approach demands a fair relationship between different types of firms, which implies the removal of unfair market obstacles preventing the formation of worker cooperatives (pp. 206–207). Reforms that could address these biases include establishing a monopolistic cooperative bank to provide capital to worker cooperatives, sectorial insurance schemes that help workers and cooperatives to diversify risks associating with worker ownership of the firm, and a sectoral application of John Romer's idea of coupon socialism to build a cooperative stock market for providing information and facilitating a market for membership (pp. 216–217).

Corporate law and governance structure delimits a scope in which the management still has a wide range of options to exercise their power. The area of business ethics deals with the moral constraints and guidance within the purview of managerial discretionary power (p. 221). Singer discusses two approaches of business ethics and their respective implications for managerial duties. The first is the 'market failure approach'. This approach has already been quite influential in the business ethics literature. Its main tenet is that managers have a duty not to take advantage of market failures, such as externalities and information asymmetries. This is because market failures represent a breach of the original purpose of market competition—the maximization of Paretian efficiency through market competition (p. 224). When market failures prevail, market competition within the legal constraints does not necessarily improve Paretian efficiency.

What is distinctive in Singer's business ethics is the 'justice failure approach'. In contrast to the market failure approach which sees the firm as primarily an actor in the market, the justice failure approach asks also what duties and obligations a firm owes to the political society where it operates. Singer suggests that there are three different kinds of justice failures. The first is political justice failures, which refer to the inability of political institutions to protect the integrity of the democratic process from special business interests (p. 242). The second is social justice failures, which point to the failure of social institutions to provide equal opportunities and training to access the market (p. 246). Against this backdrop, the market tends to exacerbate existing social inequalities. Third, distributive justice failures mean the institutional maldistribution of income and resources (p. 248). Such failures enable business firms to take advantage of people who are disadvantaged by the maldistribution. The justice failure approach requires business actors to broaden their responsibilities to include a duty not to profit from these three failures even if doing so is legal, and business actors should also seek to actively remedy these failures. Examples include withdrawing from campaign donations, avoiding the exploitation of tax loopholes, and offering workers an appropriate living wage.

Singer's work is a comprehensive normative reconstruction of the transaction cost approach. His account convincingly shows that the transaction cost approach offers a better ontological foundation to explain why business firms exist, and his notion of 'norm-governed productivity' provides an important conceptual tool for understanding the non-contractual moral scripts underlying the business firm as a mode of organizing productive activities. Despite the many strengths of the book, there are two particularly noteworthy problems.

For a book which discusses both the firm and the corporation, readers would expect that the conceptual distinction between the two to play an important role. As Robé (2020) said: 'it is impossible to understand the effective operation of modern capitalism' without carefully distinguishing the firm and the corporation (p. 225). However, the only chapter where the concept of the corporation plays a crucial role is chapter 9, where Singer discusses the fiduciary duty of managers and limited liability enjoyed by the corporation. The connection between norm-governed productivity and the corporate form remains unclear. If norms and scripts exist because business firms facilitate cooperative relationships different from that of the market, then the corporate form also seems to facilitate corporative relationships that are not entirely similar to that of the firm. As Singer mentioned, the corporate form grants a number of privileges, including legal personality, assets lock-in, and limited liability (pp. 5–9). These privileges are not enjoyed by unincorporated firms. Therefore, the corporation is a special legal entity partially created by the corporate charter which the state is entitled to specify a particular purpose of the corporation (Ciepley 2013). Does the corporate charter generate thicker obligations for the corporation because people choose to make use of the additional privileges granted by the state? In other words, does it make a difference to our understanding of corporate rights and duties when the state is explicitly involved in the creation of the norms and scripts in the corporation? And should the state make use of the corporate charter to tighten control over corporate purposes and activities? Are both the firm and the corporation subject to a similar set of moral and ethical requirements despite the fact that they are legally distinctive? These are important questions that have not been addressed to a sufficient degree.

Another problem of the book is that it did not provide an account of the relevance of norm-governed productivity to the multinational corporation, except in one sentence where Singer argues that distributive justice failures imply that multinational corporations should not engage in practices ‘looking for tax loopholes, using tax shelters, or otherwise gaming the system to avoid paying their share of taxes’ (p. 250). Nonetheless, the multinational corporation is arguably one of the major reasons why political theorists are concerned about the corporation. Multinational corporations possess immense wealth, power, and even enjoy distinctive rights and privileges. For example, Ruggie (2018) has shown that the multinational corporation is ‘an economic organization [which] is structured using the corporate form; but legally the group itself is *not* a corporation’ (p. 320, original italics). Thus, legally speaking, although most people would understand that Walmart is one multinational corporation, the law does not recognize this. What the law recognizes is multiple corporations contracting with one another. This legal structure creates special questions about accountability, rights, and obligations. When people choose to use the multinational corporate structure to organize their productive activities, how should we assess the relative merits and disadvantages of the multinational corporation as a method of production organization?

Moreover, a peculiar feature of the multinational corporation is that it operates across different regimes and cultures, whereas Singer’s approach is grounded heavily on liberal democratic norms such as individuality, formal equality, and the commitment to democratic procedures (pp. 23–26) as bases of normative critiques and reflection. Can his account speak to how business firms or corporations ought to behave in non-democratic contexts where these norms are not necessarily widely shared? The book does not provide an answer, but if a normative political theory of the firm (or corporation) cannot answer questions posted by corporations and multinational corporations in non-democratic contexts, it appears to be at a significant disadvantage in that their role is becoming increasingly important in today’s world economy.

No one single book can cover all these topics. Despite the questions that I have raised, *The Form of the Firm* is an excellent contribution that anyone interested in normative political theory of the firm will find valuable.

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