

Sauce for the Goose: Does Normative Stakeholder Theory Apply to Unions?

I. Introduction

Over the past quarter century, myriad academic articles have been written advocating, analyzing, or criticizing stakeholder theory. The present offering is most assuredly not another such article. It contains no argument either for or against stakeholder theory and provides little insight into the theory's inner workings. Rather, this article is designed to serve the much more modest goal of exploring stakeholder theory's range of application. The question I am seeking to answer in the present work concerns the nature of the organizations to which the theory applies. What type of organizations should be managed on the stakeholder model? Specifically, do the officers of labor unions have an obligation to manage their organizations in accordance with stakeholder theory?

Stakeholder theory is usually applied to questions concerning the management of large publicly-traded corporations. But the theory itself is articulated in terms of the ethics of capitalism¹, the process of value creation and trade,² or organizational ethics.³ Is stakeholder theory properly applied only to large investor-owned firms? If so, why? If not, then how broadly does the theory apply? Does it apply to closely-held corporations? To partnerships? To sole

¹See William M. Evan & R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation: Kantian Capitalism*, in ETHICAL THEORY AND BUSINESS 97 (Tom L. Beauchamp & Norman E. Bowie eds., 3d ed. 1988); R. EDWARD FREEMAN ET AL., *STAKEHOLDER THEORY: THE STATE OF THE ART* 4 (2010).

²See R. Edward Freeman, *Stakeholder Theory of the Modern Corporation*, in ETHICAL ISSUES IN BUSINESS 38, 45-46 (Thomas Donaldson, et. al. eds. 7d ed. 2002); R. EDWARD FREEMAN ET AL., *STAKEHOLDER THEORY: THE STATE OF THE ART* 4 (2010).

³Robert Phillips, et al., *What Stakeholder Theory Is Not*, 13 BUS. ETHICS Q. 479, 491-493 (2003); ROBERT PHILLIPS, *STAKEHOLDER THEORY AND ORGANIZATIONAL ETHICS* 40-61 (2003).

proprietorships? Does it apply only to profit-seeking organizations? To non-profits? To all non-governmental organizations functioning in a market environment? Can the answer to these questions be deduced from either the inherent logic of or the underlying justification for the stakeholder theory? The purpose of this article is to answer at least some of these questions.

To do so, I will focus on a specific type of organization—labor unions. Labor unions constitute a good test case because they are both similar to and distinct from for-profit corporations in significant and interesting ways. Labor unions are certainly organizations. Like for-profit corporations, they may be, but are not necessarily, large and financially powerful organizations whose actions can affect the well-being of the general public. And like for-profit corporations, labor unions may, but do not necessarily, exert significant political influence. Further, like corporations, labor unions must be managed. The employee members of a union advance their resources to the union in the form of dues to be used to achieve improvements in their material well-being or other specified interests. Those in governance positions in the union are charged with managing the resources to most effectively realize these ends. In this respect, the structure of labor unions parallels that of for-profit corporations in which shareholders advance their resources to the corporation in the form of stock purchases to be used to achieve a positive return on investment or other specified interests, and in which corporate executives are charged with managing the resources to most effectively realize these ends.

Yet, labor unions are obviously distinct from for-profit corporations. In the first place, unions are not productive organizations. Although it is reasonable to regard them as marketing a product—the labor of their employee members,—their purpose is not to produce goods or services for public consumption, but to achieve a social goal. Secondly, unions are not organized to

generate profits. Their success is not measured by a financial proxy, but by how well they advance their members' interests. Like all not-for-profit organizations, unions are organizations in which members voluntarily pool their resources to achieve specified substantive ends.

The commonalities with and differences between unions and for-profit corporations make unions a good vehicle for exploring the reach of stakeholder theory. Unions have enough in common with for-profit corporations so that if the stakeholder theory does not apply to them, the reason why would necessarily be enlightening. And because unions possess the essential features of the non-profit organization, if stakeholder theory applies to unions, it would appear to apply to all non-profits. Once again, if it does not, the reason why would be enlightening.

So, does stakeholder theory apply to labor unions?

II. What This Article is About, Part 1

The difficulty in answering this question lies in knowing what we are talking about. It is not an easy matter to identify precisely what stakeholder theory is. Indeed, R. Edward Freeman, the theory's originator, suggests that it may be impossible because

“[t]he stakeholder theory” can be unpacked into a number of stakeholder theories each of which has a “normative core,” inextricably linked to the way that corporations should be governed and the way that managers should act. So, attempts to more fully define, or more carefully define, a stakeholder theory are misguided.⁴

In their recent work on the subject, Freeman and his collaborators explain that they are philosophical pragmatists, and as such, are offering stakeholder theory for its usefulness in

⁴R. Edward Freeman, *Stakeholder Theory of the Modern Corporation*, in *ETHICAL ISSUES IN BUSINESS* 38, 44 (Thomas Donaldson, et al. eds. 7d ed. 2002).

improving the human condition.⁵ Accordingly, they do not view stakeholder theory as univocal in nature. They explain that

[t]here has been a great deal of discussion about what kind of entity "stakeholder theory" really is. Some have argued that it is not a "theory," because theories are connected sets of testable propositions. Others have suggested that there is just too much ambiguity in the definition of the central term for it ever to be admitted to the status of theory. Still others have suggested that it is an alternative "theory of the firm," contra the shareholder theory of the firm. As philosophical pragmatists we do not have much to say about these debates. We see "stakeholder theory" as a "framework," a set of ideas from which a number of theories can be derived.⁶

Hence, Freeman and his collaborators regard it as “a mistake to see stakeholder theory as a specific theory with a single purpose. Researchers would do well to see stakeholder theory as a set of shared ideas that can serve a range of purposes within different disciplines and address different questions.”⁷

In their oft-cited article, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*,⁸ Thomas Donaldson and Lee E. Preston identified three types of stakeholder theory: descriptive/empirical, instrumental, and normative. Descriptive/empirical stakeholder theory is “used to describe, and sometimes to explain, specific corporate characteristics and behaviors.”⁹ Instrumental stakeholder theory “is used to identify the connections, or lack of

⁵R. EDWARD FREEMAN ET AL., *STAKEHOLDER THEORY: THE STATE OF THE ART* 73 (2010) (“[P]ragmatists see the goal of inquiry as generating insights that help us to lead better lives. If an insight or method is “useful” in this sense . . . , then the pragmatist would embrace it . . .”).

⁶*Id.* at 63 (footnote omitted).

⁷*Id.* at 79.

⁸Thomas Donaldson and Lee E. Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, 20 *ACAD. MGMT. REV.* 65 (1995).

⁹*Id.* at 70.

connections, between stakeholder management and the achievement of traditional corporate objectives (e.g., profitability, growth).”¹⁰ And normative stakeholder theory “is used to interpret the function of the corporation, including the identification of moral or philosophical guidelines for the operation and management of corporations.”¹¹ Freeman, however, “explicitly and vehemently rejects the idea that we can distinguish sharply between [sic] the three branches of stakeholder theory,”¹² arguing that

all these forms of inquiry are forms of storytelling and that, conceptually, all three branches have elements of the others embedded within them. . . . The focus of theorizing needs to be about how to tell better stories that enable people to cooperate and create more value through their activities at the corporation. Creating compelling stories involves all three elements of stakeholder theory, as well as a fourth - that it is managerial. To be a good story, a given normative core has to help managers create value for stakeholders and enable them to live better lives in the real world, not in some imaginary fantasy of philosophers.¹³

Nevertheless, Freeman and his colleagues recognize that not all philosophers are pragmatists and many, if not most, of those who do business ethics regard stakeholder theory as a normative theory.¹⁴ Thus, a significant portion of the academic community treats stakeholder theory not as an invitation to engage in better storytelling about value creation, but as a moral theory designed to provide ethical guidance to managers—one from which definite prescriptions as

¹⁰*Id.* at 71.

¹¹*Id.*

¹²FREEMAN ET AL., *supra* note 6, at 213.

¹³*Id.*

¹⁴*See id.* at 220-21.

to how managers should act can be derived. Although clearly not happy about this,¹⁵ Freeman and his colleagues “nonetheless agree that a critical part of managing a business with integrity and self-reflection requires that managers face the normative questions at the heart of this line of inquiry.”¹⁶

In this article, I intend to explore the scope of stakeholder theory not as a pragmatic framework, but as a normative theory of business ethics. In adopting this approach, I am aware that I will not be engaging with the version of stakeholder theory actually proposed by Freeman and his collaborators, but with one of the specific uses to which it has been put by others. However, because most philosophers and practitioners do, in fact, treat stakeholder theory as a normative theory of business ethics, I believe the exercise to have considerable value.

The question I am addressing, then, is: Does the instantiation of stakeholder theory that identifies managers’ ethical obligations apply to the managers of labor unions as well as to the managers of for-profit corporations? Does *normative* stakeholder theory apply to labor unions?

III. What This Article is About, Part 2

The difficulty in answering this somewhat more refined question remains knowing what we are talking about. For, as was the case with stakeholder theory in the abstract, it is not easy to identify precisely what normative stakeholder theory is. It provides ethical guidance to managers. But what precisely does it prescribe? What is the essential content of normative stakeholder

¹⁵Freeman may reasonably feel that his creation is being abused. This appears to be an occupational hazard for pragmatists. After all, Charles Peirce, the creator of pragmatism, felt compelled to rename his theory “pragmaticism” to distinguish it from what he regarded as other philosophers’ improper application of his method.

¹⁶FREEMAN ET AL., *supra* note 6, at 196.

theory? These questions are surprisingly difficult to answer.

Part of this difficulty derives from the fact that as stakeholder theory has evolved, it has become more amorphous in nature.¹⁷ As a result, it may require a bit of archival research to identify normative stakeholder theory's essential characteristics.

The most recent articulation of the theory, discussed in Section II above, is only marginally helpful. In this rendition, stakeholder theory arises out of a combination of four ideas: the separation fallacy—the fallacious belief that business and ethics are separate realms; the open question argument—the claim that it always makes sense to ask whose interests, values, and rights are enhanced or undermined by any business decision; the integration thesis—the claim that it makes no sense to talk about either business or ethics without talking about the other as well; and the responsibility principle—the claim that people usually want to accept responsibility for the effects of their actions on others.¹⁸ As Freeman and his collaborators explain it, “‘stakeholder theory’ is simply the integration thesis plus the responsibility principle. Give up the separation fallacy, in part because of the open question argument, and there is not much alternative.”¹⁹ The only normative implications that derive from this are that “[p]eople engaged in value creation and trade are responsible precisely to ‘those groups and individuals who can affect or be affected by

¹⁷This may sound like a critique, but it is not. As discussed in Section II above, the more recent iterations of stakeholder theory are advanced as pragmatic invitations to dialog. In 2010's *Stakeholder Theory: The State of the Art*, the authors explicitly declare that as pragmatists, they “aim to tell a new narrative about business, rather than to prove or disprove propositions and hypotheses.” FREEMAN, ET AL., *supra* note 6, at xvii. Hence, it should be unsurprising that their explanation of stakeholder theory is more open-ended than traditional normative theories.

¹⁸*See id.* at 6-8.

¹⁹*Id.* at 9.

their actions’—that is, stakeholders,”²⁰ and hence, that businesses must “pay[] attention at least to customers, employees, suppliers, communities, and financiers.”²¹

The injunction that businesses “pay attention” to stakeholders does not mark out any definite normative theory, however. This requirement is so broad that it is difficult to think of any normative theory of business ethics that would not qualify as stakeholder theory under it. Even Milton Friedman’s “stockholder theory” that is usually offered in opposition to stakeholder theory²² would be included, and indeed, Freeman and his collaborators argue explicitly that “Friedman’s maximizing shareholder value view is compatible with stakeholder theory.”²³ Under this version of stakeholder theory, a normative theory of business ethics would have to specifically instruct managers to ignore the interests, values, and rights of one or more category of persons to fail to qualify as stakeholder theory. Since there are no such theories,²⁴ all normative theories of business ethics would be stakeholder theories, rendering the designation vacuous. This suggests that normative stakeholder theory can only be understood—as its pragmatist authors apparently

²⁰*Id.*

²¹*Id.*

²²*See id.* at xv.

²³*Id.* at 12.

²⁴Theories that require that shareholders’ (or any other particular stakeholders’) interests be given preference to those of other stakeholders do not instruct managers to ignore the interests of the other stakeholders. Even the most extreme versions of the shareholder theory do not instruct managers to violate the firm’s contracts with employees, customers, suppliers, and local communities or to advance corporate ends by criminal activity that harms third parties.

intend²⁵—as an exhortation to engage in ethical reasoning about how to manage organizations.²⁶

Nevertheless, at one point in their book, the authors do describe a feature of stakeholder theory that can distinguish it from other normative theories of business ethics. They state,

[t]here are a number of competing "standard accounts" of value creation and trade. They all revolve around the idea that shareholders or owners or investors are entitled to the residual gains that accrue from value creation and trade. Stakeholder theory suggests that matters are more complicated—that is, that stakeholder relationships are involved, and that human beings are more complex than the standard accounts assume.²⁷

This is useful because it identifies a normative position—that shareholders/owners/investors are entitled to the residual gains that accrue from value creation and trade—that is not consistent with stakeholder theory.

What the authors call the “standard account” is frequently referred to as agency theory, a position whose normative implication holds that managers are ethically obligated to advance the financial interests of corporate shareholders in preference to the interests of other

²⁵As the authors point out, the introduction of stakeholder theory is not one view of the firm, but an invitation to a conversation that forces managers and the public to examine together two questions that have both ethics and business thoroughly embedded in them: "what is the purpose of the corporation?" and "to whom are managers responsible?" FREEMAN ET AL., *supra* note 6, at 206.

²⁶An earlier article, R. Edward Freeman & Robert A. Phillips, *Stakeholder Theory: A Libertarian Defense*, 12 BUS. ETHICS Q. 331 (2002), is similarly unhelpful. Like *Stakeholder Theory: The State of the Art*, it identifies the normative thesis of stakeholder theory as “[m]anagers ought to pay attention to key stakeholder relationships.” *Id.* at 338. Its additional specification of “[a] ‘stakeholder theory’ [as] one that puts as a primary managerial task the charge to influence, or manage, or balance the set of relationships that can affect the achievement of an organization’s purpose,” *id.* at 334, is similarly too indefinite a prescription to supply the content of a normative theory.

²⁷FREEMAN ET AL., *supra* note 6, at 10.

stakeholders—that is, that managers have a fiduciary obligation to shareholders.²⁸ Fiduciary obligations arise when one party to a contract has no choice but to repose trust in the other, and hence is vulnerable to the other’s malfeasance or negligence. This may be the case due to disparities of knowledge or expertise (e.g., the doctor-patient relationship), the need for candor (e.g., the attorney-client and priest-penitent relationships), or the inability of the former to monitor the behavior of the latter (e.g., the trustee-beneficiary relationship). Agency theory views shareholders (and only shareholders) as standing in precisely this type of relationship to corporate managers. Why?

Agency theory conceptualizes the firm as “a nexus or network of contracts—both written and unwritten—among the firm’s stakeholders” in which “[t]hese contracts, or ‘internal rules of the game,’ spell out the respective rights and obligations of each stakeholder.”²⁹ It also asserts that there is a principled difference between the contracts that bind most stakeholders to the firm and the contract between shareholders and the firm. Most stakeholders contract with the firm for a fixed and guaranteed return. Thus, employees sell their labor to the firm for a specified set of wages, benefits, and working conditions. Suppliers sell goods or services to the firm for agreed-upon remuneration. Customers purchase goods and services of definite description that come with express and implied warranties of merchantability and fitness. And through municipal government, even the local community can specify definite conditions under which the firm must function.

In contrast,

²⁸See Ian Maitland, *The Morality of the Corporation: An Empirical or Normative Disagreement?* 4 BUS. ETHICS Q. 445, 448-49 (1994); Joseph Heath, *The Uses and Abuses of Agency Theory*, 19 BUS. ETHICS Q. 497, 504-06 (2009).

²⁹Maitland, *supra* note 29, at 449.

stockholders contract to assume a part of the risk associated with the cooperative enterprise in exchange for fiduciary claims on the corporation. The risk borne by stockholders—known as the “residual risk”—is the risk of the difference between the firm’s revenues and promised payments to other stakeholders. Stockholders are not entitled to a guaranteed return; they get what is left over (if anything) after everyone else’s contractually specified claims have been met.³⁰

By agreeing to bear the residual risk, shareholders act as sureties for the other stakeholders. For example, “[e]mployees’ wages are guaranteed for the duration of their contract(s) no matter if the corporation is mismanaged and runs at a loss. If the firm is managed inefficiently or corruptly, it is the stockholders who absorb any resulting loss.”³¹ Shareholders are thus uniquely vulnerable to managerial shirking or malfeasance, necessitating the imposition of a fiduciary obligation upon corporate management. Agency theory thus asserts precisely what the stakeholder authors deny—that “shareholders or owners or investors are entitled to the residual gains that accrue from value creation and trade.”³²

Having identified at least one normative theory—agency theory—that lies outside the ambit of stakeholder theory, it becomes reasonable to view normative stakeholder theory as more than merely an invitation to engage in a discussion of the ethics of management. For, we now have at least one substantive proposition that is constitutive of normative stakeholder theory—that managers do not have a *unique* fiduciary duty to shareholders/owners/investors. Under normative stakeholder theory, managers either do not have a fiduciary duty to shareholders/owners/investors at all, or, if they do, they have similar fiduciary duties to other stakeholders.

³⁰*Id.*

³¹*Id.*

³²FREEMAN ET AL., *supra* note 6, at 10.

Admittedly, this analysis provides a fairly meager account of the content of normative stakeholder theory. Fortunately, it can be supplemented with propositions provided by the description of stakeholder theory contained in an earlier article, *What Stakeholder Theory Is Not*.³³

The authors of this article open with the unpromising observation that stakeholder theory is a theory of extraordinary “conceptual breadth” such that “when used unreflectively, its managerial prescriptions and implications are nearly limitless.”³⁴ Indeed, they admit that defending the theory can be difficult “[o]wing in part to the ambiguity and breadth of the stakeholder theory itself.”³⁵ Further, scant help is provided by the section of the article entitled “What Stakeholder Theory Is.” For, in the that section, the authors again seem to define stakeholder theory as including all normative theories of business ethics. Thus, they assert that “[s]takeholder theory is distinct because it addresses morals and values explicitly as a central feature of managing organizations,”³⁶ and that “[a]ttention to the interests and well-being of those who can assist or hinder the achievement of the organization’s objectives is the central admonition of the theory.”³⁷

Somewhat ironically, however, the authors provide several additional propositions that are constitutive of normative stakeholder theory in the portion of the article entitled “What

³³Robert Phillips, R. Edward Freeman, & Andrew Wicks, *What Stakeholder Theory is Not*, 13 BUS. ETHICS Q. 479 (2003).

³⁴*Id.* at 479.

³⁵*Id.* at 480.

³⁶*Id.* at 481.

³⁷*Id.*

Stakeholder Theory Is Not.” In that section, the authors specifically identify the ways in which stakeholder theory differs from agency theory and any Friedmanesque stockholder theory both distributively—with regard to how the value created by the organization is distributed—and procedurally—with regard to who has input into managerial decisions. The authors explain that

stakeholder theory, when applied to for-profit business organizations, is consistent with value maximization. We should distinguish, however, between value maximization and *maximizing shareholder wealth* or *stock value/share price*. Maximizing value says nothing about who gets a say in the decision-making or who gets how much of this value, so maximized. It is only when the primary beneficiary of this profitability is constantly and exclusively a single stakeholder (e.g., equity share owners) that there is conflict between the theories. An organization that is managed for stakeholders will distribute the fruits of organizational success (and failure) among all legitimate stakeholders. Moreover, managing for stakeholders will include communication between managers and stakeholders concerning *how* profits should be maximized.³⁸

This makes our earlier derived principle—that managers do not have a unique fiduciary duty to shareholders—more definite by specifying that normative stakeholder theory requires managers to “distribute the fruits of organizational success (and failure) among all legitimate stakeholders.”³⁹ It also points us in the direction of a second substantive principle of normative stakeholder theory—that all relevant stakeholders must have input into the managerial decision-making process.

The authors emphasize the importance of this second principle, explaining that “[s]takeholder theory is concerned with who has input in decision-making as well as with who benefits from outcomes of such decisions. Procedure is as important to stakeholder theory as the

³⁸*Id.* at 486-87.

³⁹*Id.* at 486.

final distribution.”⁴⁰ Thus,

Among the prescriptions of much of stakeholder theory is that relevant stakeholders should have input in the decision-making processes of the organization. This may be for either instrumental reasons (e.g., achieving “buy in”) or for normative reasons—the organization has a moral obligation to its stakeholders requiring that they have input into how the organization is run. Thus, stakeholder theorists and critics should be fully cognizant of the procedural prescriptions of the theory as well as the distributive.⁴¹

Although the authors are agnostic as to the form of stakeholder input, declaring that “[t]he method of stakeholder input is an open question,”⁴² they make it clear that “however it is achieved, it is important for the sake of ethics . . . that stakeholders be accorded some say in determining not only how much of the organization’s outputs they receive, but how those outputs are created.”⁴³

Finally, the authors provide additional definition to the contours of normative stakeholder theory by identifying the parties to whom managers owe moral obligations. They explain that

stakeholders may be usefully separated into normative and distributive stakeholders. Normative stakeholders are those to whom the organization has a direct moral obligation to attend to their well-being. They provide the answer to the seminal stakeholder query “For whose benefit ought the firm be managed?” Typically normative stakeholders are those most frequently cited in stakeholder discussions such as financiers, employees, customers, suppliers, and local communities.⁴⁴

Identifying normative stakeholder theory with these two constitutive principles and this specification of normative stakeholders accords well with the traditional account of stakeholder

⁴⁰*Id.* at 487.

⁴¹*Id.*

⁴²*Id.* at 490.

⁴³*Id.*

⁴⁴*Id.* at 489.

theory that Freeman has provided over the past two decades in “A Stakeholder Theory of the Modern Corporation,”⁴⁵ an article that has appeared in several editions of two widely used business ethics texts, *Ethical Theory and Business*⁴⁶ and *Ethical Issues in Business*.⁴⁷ This article contains what is perhaps the classic expression of stakeholder theory in Freeman’s statement that

My thesis is that I can revitalize the concept of managerial capitalism by replacing the notion that managers have a duty to stockholders with the concept that managers bear a fiduciary relationship to stakeholders. Stakeholders are those groups who have a stake in or claim on the firm. Specifically I include suppliers, customers, employees, stockholders, and the local community, as well as management in its role as agent for these groups. . . . [E]ach of these stakeholder groups has a right not to be treated as a means to some end, and therefore must participate in determining the future direction of the firm in which they have a stake.⁴⁸

Freeman subsequently encapsulates the essence of stakeholder theory in what he calls the Stakeholder Enabling Principle, which states: “Corporations shall be managed in the interests of its [sic] stakeholders, defined as employees, financiers, customers, employees,[sic] and communities.”⁴⁹

At this point, it is fair to say that we have a robust enough definition of normative stakeholder theory to know what we are talking about. Normative stakeholder theory, as it is

⁴⁵Freeman *supra* note 5.

⁴⁶ETHICAL THEORY AND BUSINESS (Tom L. Beauchamp & Norman E. Bowie eds. 5th ed. 1997, 6th ed. 2001, 7th ed. 2004). An earlier version of this article authored jointly by Freeman and William M. Evan entitled, "A Stakeholder Theory of the Modern Corporation: Kantian Capitalism" appeared in preceding editions of this reader dating back to 1988.

⁴⁷ETHICAL ISSUES IN BUSINESS (Thomas Donaldson & Patricia Werhane eds. 6th ed. 1999, 7th ed. 2002, 8th ed. 2008).

⁴⁸Freeman *supra* note 5, at 39.

⁴⁹*Id.* at 47. The word “employees” erroneously appears twice in the text. Clearly the second occurrence of the word was intended to be “suppliers.”

being used in this article, may be summarized as follows. Managers of an organization do not have a unique fiduciary duty to any one stakeholder group, but rather, are obligated to ensure that the value created by the organization is distributed among all normative stakeholders and that all normative stakeholders have input into the managerial decisions that determine how the organization attempts to create that value. Normative stakeholders include the organization's financiers, employees, customers, suppliers, and local communities.

At long last, we are in a position to consider the question at hand. Does normative stakeholder theory apply to labor unions?

IV. Answering the Question

How broad is the range of application of normative stakeholder theory? Stakeholder theorists make it clear that stakeholder theory is not “a comprehensive moral doctrine”—one “which can address the full array of moral questions that arise without reference to any other theory.”⁵⁰ Rather, “stakeholder theory is a theory of organizational ethics,” which is distinguished from moral and political theory by its focus on voluntary associations rather than the basic structure of society.⁵¹

Normative stakeholder theory, then, is limited to the universe of organizations, which are understood as voluntary associations. But does it apply to all voluntary associations or only to some? To which organizations does normative stakeholder theory apply?

The vast majority of both academic and non-academic articles on stakeholder theory address the application of the theory to for-profit corporations. Indeed, as the stakeholder

⁵⁰FREEMAN ET AL., *supra* note 6, at 230.

⁵¹Phillips et al., *supra* note 34, at 493.

theorists themselves note, stakeholder theory is typically offered as a counterweight to Milton Friedman's stockholder theory, which specifically addresses the moral responsibilities of for-profit businesses.⁵² But this does not decide the matter. The vast majority of articles on Constitutional interpretation address the Equal Protection and Due Process Clauses. This does not imply that the theories of Constitutional interpretation apply only to those clauses. The focus on for-profit corporations in the former case and the Equal Protection and Due Process Clauses in the latter is a reflection of what most authors find to be of interest, not the conceptual limits of the theories.

The actual language and logic of stakeholder theory provide no reason to believe that its range of application is limited to for-profit corporations. According to its leading advocates, stakeholder theory was developed to address 1) the problem of value creation and trade, 2) the problem of the ethics of capitalism, and 3) the problem of the managerial mindset.⁵³ None of these problems concern for-profit corporations exclusively. Value creation and trade are engaged in by more than merely for-profit corporations; the ethics of capitalism will apply to all market actors, not just for-profit corporations; and the managerial mindset is relevant to any organization that must be managed.

Stakeholder theorists clearly indicate that their theory is intended to apply to more than merely for-profit corporations. Statements such as "stakeholder theory, *when applied to for-profit business organizations*, is consistent with value maximization,"⁵⁴ clearly imply that stakeholder theory can be applied in other contexts as well. Further, stakeholder theorists apply stakeholder

⁵²FREEMAN ET AL., *supra* note 6, at 10.

⁵³*Id.* at 4-5.

⁵⁴Phillips et al., *supra* note 34, at 486 (emphasis added).

theory to the management of health care organizations, the majority of which are non-profits.⁵⁵ Indeed, stakeholder theorists explicitly state that “limiting [stakeholder theory] solely to publicly traded corporations is a mistake that misses some of the potential richness of stakeholder theory,”⁵⁶ and that the theory is “potentially relevant to ‘small or family owned businesses, privately owned concerns of any size, partnerships, non-profit and governmental organizations.’”⁵⁷

Can we be more precise about the nature of the organizations to which stakeholder theory applies? Yes, because Robert Phillips has provided insight on precisely this issue in his book, *Stakeholder Theory and Organizational Ethics*.⁵⁸ In that work, Phillips makes it clear that stakeholder theory is a theory of organizational ethics, explaining that “[o]rganizations differ from individuals and from states in important ways. The ethical theory constructed to guide each should therefore differ in important ways.”⁵⁹ Phillips then goes on to provide three essential distinguishing characteristics of organizations: freedom of exit, value of contribution, and orienting aims and purposes. Freedom of exit is interpreted expansively, including both “the possibility of exit [that] is constitutive of organizational membership”⁶⁰ and “the possibility of

⁵⁵FREEMAN ET AL., *supra* note 6, at 172-77.

⁵⁶*Id.* at 230.

⁵⁷*Id.* at 230-31.

⁵⁸ROBERT PHILLIPS, *STAKEHOLDER THEORY AND ORGANIZATIONAL ETHICS* (2003).

⁵⁹*Id.* at 41. Phillips view is shared by the other leading stakeholder theorists as is evidenced by their ratification of it in *Stakeholder Theory: the State of the Art*. See FREEMAN ET AL., *supra* note 6, at 230.

⁶⁰*Id.* at 46.

ejection of one or several members by other members”⁶¹ of the voluntary association. Value of contribution refers to “the knowledge and control one has over one’s commitment and contribution.”⁶² Thus, “[a]t the level of private associations, it is acceptable for both individual members and organizations to have knowledge of the relative contribution of the other prior to a decision to interact.”⁶³ Finally, orienting aims and purposes refers to the fact that “[p]eople join and remain with associations, just as they are recruited and evaluated, on the basis of the association’s objectives.”⁶⁴

We may deduce from this that stakeholder theory applies to organizations understood as voluntary associations 1) formed to realize specified aims and purposes 2) that allow members to freely exit (and freely eject other members from) the association, and 3) that attract and retain (as well as recruit and evaluate) members on the basis of their interest in advancing the association’s objectives. Both for-profit and non-profit businesses obviously satisfy these conditions. In a market environment, all businesses are voluntary associations formed to realize specified aims and purposes. The distinction between for-profit and non-profit businesses is that the generation of profits for the firm’s shareholders/owners/financiers is among the aims and purposes of the former, but not the latter. Both forms of business permit members to freely exit—employees may quit, shareholders sell their stock, donors refrain from donating—and freely eject other members—employees may be fired, shareholders bought out, and donations rejected or returned.

⁶¹*Id.* at 47.

⁶²*Id.*

⁶³*Id.* at 48.

⁶⁴*Id.*

And both forms of business attract and retain (and recruit and evaluate) employees and financiers on the basis of their interest in advancing the firm's objectives, which in the case of for-profit businesses includes the generation of profits for the financiers. Stakeholder theory, then, appears to apply to all forms of business organization, whether for-profit or not.

Labor unions, however, are not businesses. Does this make a difference? Apparently not, since they nevertheless satisfy all three necessary conditions for the application of the stakeholder theory. Labor unions are voluntary associations that are formed to realize specific aims and purposes, one of which is almost always the improvement of the material well-being of its members. Union members are free to resign from the union and unions have the power to expel members. And members join and remain with unions entirely on the basis of their interest in the union's objectives and are recruited explicitly in order to advance those objectives. Labor unions obviously fit the stakeholder bill.

This should not be surprising. Although stakeholder theory is most frequently applied to publicly owned corporations, its advocates continually reiterate that it is a "managerial" theory⁶⁵—one that "is distinct because it addresses morals and values explicitly as a central feature of *managing organizations*."⁶⁶ Labor unions are organizations that designate a small number of executives to determine what actions the union should take as a collective entity. These executives are charged with managing the union's affairs to most effectively achieve its organizational objectives. Labor unions must be managed every bit as much as any for-profit or

⁶⁵See e.g., R. Edward Freeman, *Divergent Stakeholder Theory*, 24 ACAD. MGMT. REV. 233 (1999); Phillips et al., *supra* note 34, at 492; FREEMAN ET AL., *supra* note 6, at 213.

⁶⁶Phillips et al., *supra* note 34, at 481 (emphasis added).

non-profit business. If normative stakeholder theory is indeed designed to provide ethical guidance to managers of organizations, then there is no reason why it should not apply to labor unions as well as to for-profit and non-profit businesses.

Thus, based on both stakeholder theory's internal logic and the statements of its leading advocates, the answer to the question of whether stakeholder theory applies to labor unions is yes.

V. Implications

What are the implications of this conclusion? Stakeholder theorists contend that “[t]he question of what management should do, and who should matter in their [sic] decision making, is a central question of stakeholder theory.”⁶⁷ So, what does normative stakeholder theory tell us about what those who manage labor unions should do and who should matter in their decision making?

Recall that our prior analysis demonstrated that the substance of normative stakeholder theory consisted of the twin propositions that managers of an organization are obligated to ensure 1) that the value created by the organization is distributed among all normative stakeholders and 2) that all normative stakeholders have input into the managerial decisions that determine how the organization attempts to create that value. The initial difficulty in applying these propositions to labor unions lies in identifying their normative stakeholders.

Historically, who (or what) counts as an organization's stakeholders has been a bone of contention among stakeholder theorists.⁶⁸ Over the years, however, a rough consensus has been reached that the normative stakeholders of for-profit businesses consist of the firm's financiers,

⁶⁷FREEMAN ET AL., *supra* note 6, at 209.

⁶⁸FREEMAN ET AL., *supra* note 6, at 206-11.

employees, customers, suppliers, and local communities.⁶⁹ Because stakeholder theory has rarely if ever been applied to labor unions, the same level of consensus is not available regarding a union's normative stakeholders.

To fully resolve this question, we would have to return to the basic definition of a normative stakeholder—identified variously as “any group or individual who can affect or is affected by the achievement of the organization’s objectives,”⁷⁰ any “persons or group of persons [who] voluntarily accept the benefits of a mutually beneficial scheme of cooperation requiring sacrifice or contribution on the parts of the participants,”⁷¹ and “those groups without whose support, the firm would fail to exist,”⁷²—and attempt to apply it to labor unions directly. Such an undertaking is well beyond the scope of the present article. Nevertheless, even without a full specification of labor union’s normative stakeholders, we know enough about whom some of them must be to get the ball rolling.

It is clear that a labor union’s membership constitutes one of its stakeholder groups. Union members are the analog of financiers in the traditional stakeholder model of the firm. They supply the funding that is necessary to the union’s creation and continued operation, and they are completely invested in the union’s objectives. It is also clear that the businesses that employ a union’s members constitute another of the union’s stakeholder groups. Corporate employers may

⁶⁹*Id.*

⁷⁰FREEMAN ET AL., *supra* note 6, at 207.

⁷¹PHILLIPS, *supra* note 59, at 92.

⁷²Laura Dunham et al., *Enhancing Stakeholder Practice: A Particularized Exploration of Community*, 16 BUS. ETHICS Q. 23, 25 (2006).

be thought of as the analog of the customer in the traditional stakeholder model of the firm. They purchase the labor of the union's members, and both their and the union's success is crucially dependent upon the nature of their relationship.

The labor union analog of the employees, suppliers, and local communities of the traditional stakeholder model are not as easily identified. Labor unions have their own employees who would constitute a stakeholder group, but this group does not have the same relative level of importance that it has in the model of the firm. The same is even more true of the labor union's direct suppliers. A reasonable argument can be made that the corporate employer's suppliers are themselves stakeholders in the labor union because their well-being is dependent on labor union's relationship with the firm. A similar argument can be made on behalf of the corporate employer's customers, especially in cases in which the corporate employers supply essential, unique, or perishable goods and services. Finally, it is not clear that labor unions have "local communities" of their own. Nevertheless, a reasonable argument can be made that the local community surrounding the corporate employer, which, like the firm's suppliers and customers, would be directly affected by strikes, the outcome of labor/management negotiations, etc., is one of the union's normative stakeholders as well.

The uncertainty regarding the full complement of labor unions' stakeholders does not prevent us from drawing useful conclusions about how the substantive principles of normative stakeholder theory apply to unions. For example, the first proposition instructs that the managers of an organization do not have a unique fiduciary duty to any one stakeholder group, but are obligated to ensure that the value created by the organization is distributed among all the normative stakeholders of the organization. In the traditional stakeholder model of the firm, this

implies that managers do not have a unique fiduciary duty to shareholders, but must ensure that the value created by the organization is distributed among the firm's employees, suppliers, customers, and local communities as well. In the context of labor unions, this proposition can only mean that the union's managers do not have a unique fiduciary duty to the union's membership, but must ensure that the value created by the union is distributed among the union's corporate employers and other normative stakeholders—who we may assume *arguendo* to be the union's employees as well as the corporate employers' suppliers, customers, and local community—as well.

Similarly, the second substantive proposition of normative stakeholder theory instructs that managers must ensure that all normative stakeholders have input into the managerial decisions that determine how the organization creates value. In the traditional stakeholder model of the firm, this implies that managers must either provide a direct avenue of input for or act as representatives of the firm's employees, suppliers, customers, and local communities in deciding how the firm should act. In the context of labor unions, this proposition must mean that the union's management must either listen to or consider the interests of not only the union's members, but also its corporate employers and other normative stakeholders in deciding on the course of action that the union should undertake.

In practice, this means that those who manage the affairs of labor unions are ethically obligated to consider more than merely the interests of their members when negotiating wages and benefit packages, setting work rules and grievance procedures, threatening or authorizing strikes, endorsing and supporting political candidates, and attempting to influence public policy. Normative stakeholder theory obligates union leaders to consider the impact of all such activities

on the union's employees, corporate employers, and the employers' suppliers, customers, and local communities. Any value created by these activities may not be appropriated solely by the union membership, but must be distributed among all of the union's stakeholders, and all the stakeholders must have input into the decisions on whether and how to pursue such activities.

For example, a labor union's strategy in negotiating a collective bargaining agreement must take into account the costs its terms would impose on the union's corporate employers and the employers' suppliers, customers, and local communities, and be designed to arrive at a package that increases the well-being of not merely the union's members, but of all of these stakeholder groups. Further, each of these groups would have to have input into the determination of the union's negotiating strategy, whether the input comes from having an actual representative on the union's governing board or from the requirement that members of the board seriously represent the various stakeholders' interests.

The same would be true for the union's other activities. Employers would have to have input into decisions as to whether to authorize or continue a strike, and the union's management would be required to consider the effect of the strike not only on the corporate employer's bargaining position, but also on the well-being of the employer and its suppliers, customers, and local community. Should a strike reach a point at which continuing to pursue the interests of the union membership would inflict too much damage on the interests of the larger community of stakeholders, the union's management would be ethically obligated to terminate the strike. Similarly, union employees, corporate employers, and the employers' suppliers, customers, and local communities would have to be granted input into decisions as to whether and how to attempt to influence the outcome of elections or to engage in lobbying activity, and any such

activity would have to be designed to produce benefits for the entire community of stakeholders, not merely the union membership.

The preceding is merely a preliminary sketch of how normative stakeholder theory would apply to labor unions. It is based on quick assumptions about who a labor union's stakeholders would be and consists of a cursory application of the theory's normative principles. A more careful and sophisticated analysis would be required to truly work out the implications of normative stakeholder theory for union management. Do unions meet their ethical obligations merely by giving corporate employers input into decisions as to whether to strike or must unions be managed so as to render strikes (which can be value reducing for all stakeholders) unnecessary? If the corporate employer's customers are indeed one of the union's stakeholders, isn't the union ethically obligated to consider the effect of raising wages on the price of the employer's goods and service in determining its bargaining position? Can stakeholder theorists quantify the extent to which this effect must temper the union's wage demands? For that matter, is the assumption that the employer's customers (or suppliers or local community) are among the union's normative stakeholders correct? Questions such as these suggest that the application of normative stakeholder theory to labor unions constitutes a fruitful area for further research—one which accords well with stakeholder theorists' recognition that “for stakeholder theory to truly come into its own as a theory of strategic management and organizational ethics, it will need to be applied to more than just the large, publicly held corporation.”⁷³

VI. Conclusion

It may seem odd at first to assert that a labor union, which is organized and financed by its

⁷³Phillips et al., *supra* note 34, at 495.

members for the purpose of improving their material well-being, should not be managed exclusively for its members' benefit—that union leaders do not have a unique fiduciary obligation to the union's members to promote their interests in preference to those of their employers and others. But this feeling should dissipate upon reflection. For this assertion is surely no more odd than the claim that a for-profit business or corporation, which is organized and financed by its owners or shareholders for the purpose of improving their material well-being, should not be managed exclusively for its owners' or shareholders' benefit—that corporate managers do not have a unique fiduciary obligation to the firm's owners or shareholders to promote their interests in preference to those of the firm's employees, suppliers, customers, and local community. Indeed, from the perspective of stakeholder theory, what would be odd would be the assertion that union leaders *did* have a unique fiduciary obligation to union members.

When applied to the firm, the purpose of normative stakeholder theory is to bring the interests of all of the firm's normative stakeholders into the ethically proper balance. The objection to what stakeholder theorists call the "standard account" of the firm is precisely that the existence of a unique fiduciary duty to owners or shareholders makes achieving such balance impossible. The same must be true in the case of labor unions. A unique fiduciary duty to union members would necessarily make it impossible to achieve the ethically proper balance among all of the union's normative stakeholders.

Further, the application of normative stakeholder theory to labor unions appears to be a necessary compliment to the stakeholder model of the firm. The model identifies five main stakeholder groups: financiers, suppliers, customers, the local community, and employees. The financiers are represented by the firm's management, which under stakeholder theory is barred

from pursuing the financiers' interests exclusively. Suppliers are usually business firms themselves, whose management is bound by stakeholder theory to consider the interests of its customers in its decision-making. Hence, suppliers will similarly be barred from dealing with the firm exclusively to serve their financial self-interest. Customers are usually an unorganized group, and hence, typically do not have the capacity to exert excessive financial pressure on the firm. The local community is usually represented by the municipal government, which (at least in theory) is ethically bound to act for the common good. Thus, under stakeholder theory, all of these stakeholder groups are either ethically barred or unable to deal with the firm in an exclusively self-interested or exploitative manner.

In these circumstances, it would be both incongruous and disruptive of the effort to bring the interests of the firm's stakeholders into an ethically proper balance for a firm's employees, when represented by a labor union, to be free to ignore the interests of the firm's other stakeholders and to deal with the firm in a exclusively self-interested manner. Hence, the inherent logic of the stakeholder model of the firm itself seems to imply that normative stakeholder theory must apply to labor unions as well.

Stakeholder theorists complain that their position is frequently misinterpreted, and that, as a result, stakeholder theory is beset by a host of objections based on unsound "straw man" and "evil genie" arguments.⁷⁴ In this article, I have tried to be sensitive to this complaint. To that end, I have based my account of stakeholder theory almost exclusively upon the actual language of leading stakeholder theorists. In addition, I have been careful not to take this language out of context. By proceeding in this way, I have done my best to represent stakeholder theory fairly.

⁷⁴*Id.* at 482-83.

Whether I have succeeded, and whether my extension of normative stakeholder theory to labor unions will be regarded as a welcome or unwelcome contribution to the theory's development is not for me to judge. Either way, the conclusion of this article is that both the actual language in which stakeholder theory is expressed and the theory's internal logic imply that normative stakeholder theory applies to labor unions as well as to for-profit businesses. Hence, it appears that stakeholder theory exemplifies the old adage that what is sauce for the goose is sauce for the gander.