

The Legitimizing Power of Contestation: Grounding Global Multi-Stakeholder Initiatives in the Rawlsian Theory of Justice

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Global multi-stakeholder initiatives (global MSIs) have become a cornerstone of modern governance. However, critics disparage MSIs (1) for giving too much power to private actors, specifically corporations, and (2) for allowing organizations from one state to influence another's affairs. This criticism holds true in particular for the Habermasian approach to political corporate social responsibility (political CSR). By contrast, this paper grounds global MSIs in John Rawls's theory of justice, arguing that both legitimacy issues can be overcome when all those affected by a global MSI possess a means of contestation able to effectively contest the MSI's activities. This entails that global MSIs, when affecting states that are unwilling or unable to protect their own citizens, must themselves provide their stakeholders with such means. It is argued that this Rawls-based approach to political CSR can rectify the shortcomings of the Habermasian approach without requiring a change in the composition of MSIs.

Key Words: multi-stakeholder initiatives, legitimacy, Rawls, Habermas, political corporate social responsibility

In a globalized economy marked by an ever-rising degree of complexity, multi-stakeholder initiatives (MSIs) have emerged as an increasingly important governance device (Apffelstaedt, Schrage, & Gilbert, 2024; Barlow, 2022; De Bakker, Rasche, & Ponte, 2019). In MSIs, organizations from the politics, business, and civil society sectors join forces to engage in open and direct exchange with the goal of furthering social and environmental causes (Helms, Oliver, & Webb, 2012; Soundararajan, Brown, & Wicks, 2019). In particular global MSIs like the Forest Stewardship Council, the Fair Labor Association, and the Extractive Industries Transparency Initiative have been praised for their potential to overcome governance gaps and bring about direly needed improvements (Baumann-Pauly, Nolan, van Heerden, & Samway, 2017; Bell & Hindmoor, 2012; Rustad, Le Billon, & Lujala, 2017).

However, despite these strengths, the normative legitimacy of MSIs continues to raise concerns. First, critics maintain that the shift from centralized state politics to collaborative forms of governance weakens the power of governmental authorities and gives too much power to private actors (Benner, Reinicke, & Witte, 2004; Levy,

Reinecke, & Manning, 2016). Particularly if corporations come to wield political power, this can become a threat to state sovereignty, as corporations are often seen as acting solely upon their self-interest and thus unfit to assume political tasks (Fooks, Gilmore, Collin, Holden, & Lee, 2013; Huber & Schormair, 2021; Mir-aftab, 2004). Second, global MSIs operate across borders, allowing organizations from one state to influence another's domestic affairs (Martens, van der Linden, & Wörsdörfer, 2017; Mena & Palazzo, 2012). This second point is especially critical in light of some political systems being unwilling or unable to provide protection for their citizens, thereby leaving them exposed to foreign influences (Banerjee, 2018; Hsieh, 2009).

These two points of criticism hold true in particular for the Habermasian approach to political corporate social responsibility (political CSR), which embeds MSIs in the theory of deliberative democracy (Scherer & Palazzo, 2007, 2011). Although this approach is arguably the most prevalent in the literature on political CSR, critics have accused it of paying too little attention to the differences between state actors and corporations, overlooking how, in most states, the economic system is embedded within the political system rather than merely being a parallel, independent sector (Hussain & Moriarty, 2018; Sabadoz & Singer, 2017). This mirrors the first of the two legitimacy issues given in the above. Moreover, the cosmopolitan orientation of the Habermasian approach to political CSR downplays the value of statehood and ignores the great differences in the types of states around the globe (Whelan, 2012, 2013). This mirrors the second of the two legitimacy issues identified above. Thus, the Habermasian approach to political CSR appears to reinforce, rather than dispel, the significance of the legitimacy issues of MSIs.

In this paper, I address the problem of MSI legitimacy by grounding global MSIs in the Rawlsian theory of justice. Rawls's work not only stands out as one of the most influential contributions to political philosophy of the last century (Freeman, 2007: x), but it is also well-suited for this research inquiry because it helps us to explicitly address the two major issues of MSI legitimacy. First, Rawls provides a specification of the relationship between public and private actors and their respective responsibilities (Rawls, 1971, 2001, 2005), giving guidance on how to assess the assumption of public responsibilities by private actors. Second, Rawls's international adaption of his own theory—*The Law of Peoples* (1999)—defines the principles with which to pursue questions of justice in an international society of states and thereby explicitly includes those states that are closer to the Rawlsian ideal as well as those more distant. The research question for this paper is thus: *To what extent and under which conditions are global MSIs normatively legitimate within the framework of the Rawlsian theory of justice?*¹

I will demonstrate that global MSIs are legitimate when those affected by them are provided with a means of contestation able to effectively contest the MSI's activities. Such means of contestation are embedded in the basic structure of a *well-ordered*

¹ I discuss the *normative* legitimacy of global MSIs, that is, in how far the governance via such institutions can be justified according to objective rational standards—not the *descriptive* legitimacy, that is, the perception of whether an institution complies with such legitimacy standards.

society (WOS), that is, a state meeting or close to meeting the Rawlsian ideal, yet they lack in a *non-well-ordered society* (non-WOS), that is, a state unwilling or unable to assume its regulatory responsibilities (Rawls, 1999). For global MSIs, this implies that activities affecting WOSs require only a political representative of the state in order to provide a means of contestation, whereas activities affecting non-WOSs require that the state representatives be complemented by additional actors, such as NGOs, so that more citizens can be represented. Moreover, the paper provides a comparison between the Rawlsian and Habermasian approaches to political CSR, arguing that the Rawls-based approach taken in this paper can serve as a viable framework to rectify the shortcomings criticized within the topic of MSI legitimacy in general and the Habermasian approach to political CSR in particular. For this, the composition of MSIs commonly proposed in the literature requires no change. The conclusion of this paper sets this paper's Rawls-based approach in contrast to those voices questioning whether Rawlsian philosophy can at all be applied in the context of business ethics (Dierksmeier, 2022; Singer, 2015).

The paper also adds other arguments brought forward in the literature. It contributes to the works discussing whether corporations should be part of the (Rawlsian) basic structure of society (e.g., Blanc & Al-Amoudi, 2013; Heath, Moriarty, & Norman, 2010; Moriarty, 2005; Singer, 2015) by arguing that even in light of the massive influence corporations have on today's societies, it is a more consistent application of Rawlsian thinking to build and strengthen political institutions capable of constraining corporations rather than including corporations in the basic structure. The paper also responds to those works which emphasize the division of moral labor as an argument against corporations assuming political responsibilities (e.g., Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012) by demonstrating that some political activities by private actors go hand in hand with public aims and that private actors can realize certain public goals more successfully or more efficiently. Lastly, adding to Hsieh's (2009) point on the importance of internationally operating corporations being constrained by political institutions in host states, this paper contends that such constraints may be more immediately created when the corporations engage in MSIs rather than help to build political institutions from the ground up.

The remainder of the paper is structured as follows. After shortly reviewing the main features of global MSIs, I discuss the legitimacy of private actors assuming public responsibilities and then the legitimacy of international actors assuming domestic responsibilities in foreign states. Next, I draw conclusions for the legitimacy of global MSIs and then compare the Rawlsian approach to political CSR to the Habermasian approach. Finally, a discussion and a conclusion on this paper's main findings are provided.

GLOBAL MULTI-STAKEHOLDER INITIATIVES

Global MSIs transcend both sectoral and national borders and draw on open and fair discourse among all those affected by an issue in order to reach joint agreements (Gilbert & Rasche, 2007; Levy et al., 2016; Scherer & Palazzo, 2011). Common

examples of the political activities from global MSIs are the creation of standards of (self-)regulation (e.g., raising environmental standards in international supply chains) as well as the provision of public goods (e.g., investing in the infrastructure of developing countries) (Scherer & Palazzo, 2011). Typical fields of work include labor conditions (Baumann-Pauly et al., 2017), health care (Dräger, Gedik, & Dal Poz, 2006), food security (Fuchs, Kalfagianni, & Havinga, 2011), forestry regulation (Moog, Spicer, & Böhm, 2015), fishing rights (Ponte, 2012), sustainable resource extraction (Rustad et al., 2017), and pollution avoidance (Joutsenvirta & Vaara, 2015).

Global MSIs promise many advantages. Proponents praise their unconventional approach to governance for fostering constructive argumentation and mutual learning (Fransen & Kolk, 2007), their strong reliance on expertise and focus on results (Bäckstrand, 2006), and, ultimately, their fair and joint decision-making (Scherer, Rasche, Palazzo, & Spicer, 2016). As a case in point, Fransen and Kolk (2007: 673) argue that regulatory standards deriving from MSIs are usually far more “specific in their description of rules, criteria and policies” than those created by the representatives of one sector alone.

Even for corporations, which are often viewed as the cause of many social and environmental problems (Korten, 1995), participation in MSIs can be highly valuable. Corporations of today often find themselves caught between, on the one hand, the rising expectations to improve their social and environmental performance, articulated by a broad set of stakeholders including consumers and employees (Aguilera-Caracuel, Guerrero-Villegas, & Morales-Raya, 2015; Price & Sun, 2017) and, on the other hand, an increasingly complex and vague international business environment characterized by uncertainties and governance gaps (Baumann-Pauly et al., 2017; Mena & Palazzo, 2012). For corporations, assuming a political role by engaging in self-regulation or by providing public goods can be a way to overcome this dilemma because it raises social and environmental standards while helping to close governance gaps (Huber & Schormair, 2021; Whelan, 2012). And while it is possible for a corporation to engage in these activities alone, it is usually beneficial to do so in collaboration with competitors in order to achieve a wider impact, share costs, and avoid mutual exploitation (Pies, Hielscher, & Beckmann, 2009; Vogel, 2010). Similarly, it makes strategic sense for corporations to collaborate with state and civil society organizations to profit from their expertise and increase the measures’ acceptance among key stakeholders (Clarke & MacDonald, 2019; Fransen & Kolk, 2007). For these reasons, global MSIs have gained significant importance in today’s global governance.

Despite their many strengths, the legitimacy of global MSIs remains subject to debate, and their skeptics typically raise two points of criticism. First, the collaborative form of governance—in which state authorities share their regulative power with private actors—lies in stark contrast to the widely established notion of the state as the central political actor granted power by its citizens in order to ensure peace and prosperity among them (Cerny, 1999; Mena & Palazzo, 2012). The assumption of political tasks by organizations other than state institutions not only lacks a comparable source of normative legitimacy, it may also weaken state institutions by

granting too much power to private actors (Benner et al., 2004; Levy et al., 2016). In particular, the idea of corporations wielding political power is seen by many as a threat to state sovereignty, as corporations are often considered as acting solely upon their self-interest and are thus unfit to assume political tasks (Fooks et al., 2013; Huber & Schormair, 2021; Mirafteb, 2004).

Second, global MSIs rely on an international form of governance, in which actors from one state affect actors from another state. However, political theorists tend to conceive such international interferences—be they from a foreign state, a foreign NGO, or a foreign corporation—as breaches of the affected state’s sovereignty. This holds true all the more given the wide variety of political systems around the globe, with some able to provide a high degree of protection for their citizens, whereas others leave them exposed to foreign influences (Banerjee, 2018; Hsieh, 2009). Particularly this latter case state sparks criticism regarding the legitimacy of global MSIs.

These two points of criticism are independent of each other; each can occur also in contexts other than that of global MSIs. The first point of criticism can, for example, be applied to MSIs that operate on a national level. The second point of criticism can, for example, be applied to the case of one state influencing another, as it can be observed when states from the global North leverage their power to shape the policies of states from the Global South. Finally, global MSIs present an example in which both points of criticism apply. Table 1 illustrates this relationship.

I will draw on these two points throughout the paper, discussing them from the perspective of the Rawlsian theory of justice. The next section will address the issue of private actors assuming public responsibilities; the subsequent section then addresses the issue of international actors assuming domestic responsibilities in foreign states (with these states ranging from Western democracies to developing states).

PRIVATE ACTORS AND PUBLIC RESPONSIBILITIES

The concept of MSIs rests on the idea that private actors such as corporations, rather than being mere rule-takers, assume political tasks in cooperation with public actors. To what extent and under which conditions is this assumption of public tasks by private actors legitimate within the framework of the Rawlsian theory of justice?

Table 1: The Two Points of Criticism

	<i>First point of criticism does not apply</i>	<i>First point of criticism applies</i>
<i>Second point of criticism does not apply</i>	1. Political actors assume political tasks within their state, e.g., a government enacts a law.	2. Private actors assume political tasks within their state, e.g., corporations engage politically in a national MSI.
<i>Second point of criticism applies</i>	3. One state assumes political tasks in another, e.g., a state from the Global North influences a state of the Global South.	4. Private actors from one state assume political tasks in another state, e.g., a corporation engages politically in a global MSI.

The Relationship between Public and Private Actors

How public and private responsibilities relate to each other can best be understood when drawing on Rawls's concept of the *basic structure of society*, defined as the set of all major political institutions of society, including the constitution, the political and judicial systems, and those major institutions regulating the economy (Rawls, 1971: 6–7, 172). *Liberal well-ordered societies* (liberal WOSs), as described in *The Theory of Justice* (1971), Political Liberalism (2005), and other seminal texts such as *Justice as Fairness* (Rawls, 2001),² are conceived by the help of the thought experiment of the *original position* (Rawls, 1971: 15–19). This means that their design is agreed upon by fictitious representatives of all citizens behind a *veil of ignorance*, leaving the representatives in the dark as to which citizen will eventually obtain which position in the society they are about to design (Rawls, 1971: 15–19). It is assumed that the representatives, coming together as free and equal persons, would first agree on the *principles of justice* (Rawls, 1971: 52–56), and, subsequently, on the *basic structure of society*, the institutional framework best suited to realize these principles (Rawls, 1971: 172). The institutions of the basic structure thus constitute the main pillars of a just society.

With the basic structure guaranteeing societal justice, private citizens are granted wide-ranging freedom in their actions (Rawls, 2001: 10; see also Michelman, 2003). These actions can only be confined by the basic structure when they violate the rights of other citizens in a manner that would not be deemed acceptable from behind the veil of ignorance (Rawls, 2005: 269). Importantly, this tenet of liberalism applies not only to individual citizens but also to the associations they form. In Rawls's understanding, these associations include such organizations as churches, universities, NGOs—and corporations (Berkey, 2021a; Singer, 2015).

In fact, Rawls was rather tight-lipped on the topic of corporations (a facet that appears to have become folklore in business ethics). Subsequently, some scholars pointed to the substantial influence corporations have on many of society's members and asked whether corporations should instead be considered part of the basic structure (Blanc & Al-Amoudi, 2013; Heath, Moriarty, & Norman, 2010; Moriarty, 2005; for an overview of the debate, see Singer, 2015). For instance, Blanc and Al-Amoudi (2013) point to the empirical phenomenon of the declining welfare state, that is, the decreasing capacity of the state to provide its citizens with essential goods and services. They contend that this trend increases the responsibility of corporations to step in the place of the state and that corporations, in consequence, should be considered part of the basic structure and be regulated more strictly in order to more strongly comply with the principles of justice.

² Although Rawls, in said works, employs only the term “well-ordered society” (WOS) to describe his ideal form of state, *The Law of Peoples* (1999) introduces the distinction between *liberal* WOSs (i.e., states meeting the Rawlsian ideal) and *decent* WOSs (i.e., states that come close to this ideal, yet fall short of providing all liberal citizenship rights). To accurately reflect these nuances, I will use the term “*liberal* WOS” when discussing the Rawlsian ideal state, “*decent* WOS” when discussing states close to the ideal, and “WOSs” when referring to both.

Given the structure of Rawls's argument, however, I hold it implausible that representatives behind a veil of ignorance would design the basic structure to be reliant on the support of such actors as corporations, regardless of whichever socio-political development may occur. Rather, they would seek to make the basic structure resilient to any socio-political development, thus enabling it to maintain the institutions and regulations necessary in order to realize the principles of justice, including both the reliable provision of essential goods and services to society's least advantaged and the prevention of too great an encroachment on individual (and entrepreneurial) freedom. Thus, when thinking within the confines of Rawlsian (ideal) theory, corporations—as well as other private associations, such as NGOs—should be placed outside the basic structure.³

Of course, one could ask whether there are developments that cannot be remedied by such a legislative approach, that is, developments where the basic structure is, to a certain extent, powerless. For example, Berkey (2021b) describes the case of a company that relies on a sexist advertising campaign, yet in which even many of the company's critics would not want the campaign to be banned, because this would violate freedom of expression. However, even in such cases in which the institutions of the basic structure cannot interfere directly with a legislative approach, there are indirect means available to them—such as by providing society with educational work in schools and universities, in art, culture, and other spheres of society—to create a moral-intellectual counterweight that takes away the root cause for discrimination. These means are not adequate to eradicate all forms of discrimination from a society, but they do contribute to a society's ability to effectively combat and reduce it.

In summary, rather than extending the basic structure to include powerful private actors such as corporations, political institutions should be strengthened such that they are able to prevent corporate misconduct. In this vein, Rawls's theory lays the foundation for a clear “division of moral labor” (Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012; Porter, 2009; Scheffler, 2005) between the public and the private sector. On the one hand, public institutions (i.e., institutions comprising the basic structure) have augmented responsibilities agreed upon from behind the veil of ignorance. On the other hand, private citizens and their associations (including corporations) are not part of the basic structure and have no such public responsibilities. Instead, they have comparatively large freedom to act upon their self-interest—as long as these actions remain within the confines set by the basic structure (Dierksmeier, 2022; Smith, 2019).

³Cordelli (2020) makes an argument similar to Blanc and Al-Amoudi's (2013), stating that states' growing tendency to privatize services such as prison management or warfighting requires us to abandon the Rawlsian distinction between public and private actors. Yet, again, representatives from behind the veil of ignorance would rather strive for means preventing a critical degree of privatization in the first place while maintaining liberties for individuals and their associations. Relatedly, Hussain (2012) enumerates cases in which market actors can evolve such societal power that they endanger the principles of justice; for example, by engaging in a boycott of certain societal groups that effectively prevents these from participating in society. But, again, this viewpoint does not consider that WOSs are designed with institutions that are able and aim to prevent precisely such cases of market concentration or discrimination.

The Ambiguity of Political Activities

Given the structure of Rawls's argument, particularly the above-described "division of moral labor" between the public and the private sector, one might deem it an obvious conclusion that any political activity originating from private actors is difficult to legitimize from a Rawlsian perspective. Yet this answer oversimplifies matters, overlooking that there exist some political activities that private actors can engage in which do not undermine the institutions of the basic structure or the principles of justice. Instead, corporations' increasing commitment to engage in political activities may improve the general well-being in a sense that goes hand in hand with the aims of the basic structure and the principles of justice. It is even conceivable that private actors can realize certain public goals more successfully, because they have a more direct view on where problems lie, or more efficiently, because they may benefit personally from solving them and therefore be willing to invest their own resources. Thus, the political activities of private actors should not be viewed as unequivocally negative, and categorically forbidding private actors to assume political tasks may lead them to forgo laudable undertakings.

However, it is also essential to recognize that political activities cannot be expected to lead to unequivocally positive outcomes, either. Rather, political activities are *ambiguous*, by which I mean that they, while appealing to some or even many people, will surely be viewed negatively by others. Political activities impress upon persons in diverse manners, prompt different interpretations and consequences, and may spark debates or even controversies, some of them irresolvable. Rawls encapsulates these realities in his concept of "reasonable pluralism," the fact that there is a plurality of irreconcilable reasonable doctrines—for example, moral, religious, or philosophical doctrines (Rawls, 1997). Consequently, it is impossible to conceive of a political activity that is viewed positively by everyone affected by it—a fact that we seem well aware of in the context of political debates, yet which we tend to neglect in the context of the political activities by MSIs or by the activities subsumed under such terms as "business ethics" or "(political) CSR." However, self-regulation and public-good provision, despite the benevolent appeal usually surrounding such activities, are equally ambiguous because there will always be some affected who perceive them negatively. We can see this, for example, in research on development aid, a topic with a significant overlap to those of business ethics and political CSR, which describes how certain political activities from the outside interfere with the dynamic systems of the recipient country, shifting power balances between social groups and thereby potentially triggering new conflicts (Bierschenk, 1988; Elwert & Bierschenk, 1988; Wood & Sullivan, 2015). It is even possible for development projects to have adverse effects such as the systematic redirection of donor funds to military purposes (Collier, 2007: 102–103) or the increased likelihood of a coup taking place in the recipient state (Collier, 2007: 104–105). In all of these situations, some of the affected would be worse off than if the development measure had not been taken at all.

Given this, we can assume self-regulation or public good provision by private actors to be equally ambiguous, even though this fact is usually overlooked in the

literature on business ethics and CSR (for some notable exceptions, see Börzel, Hönke, & Thauer, 2012; Hahn, Figge, Pinkse, & Preuss, 2018; Schrempf-Stirling, 2018). One could easily think of plausible examples: For instance, a corporation supporting infrastructure projects in its remote area of production may be applauded by many, while others oppose the measure because they assign greater weight to its negative effect on the environment. In a similar vein, if a corporation finances schools and universities, it may quickly touch upon fundamental debates over teaching and research, for example, related to such topics as religion, sexual education, or military affairs—topics that some would prefer not to be covered at all. Alternatively, when corporations engage in self-regulatory agreements to improve environmental conditions, this may also create side effects such as an increasingly complex work process for employees or the need for wage reductions. Again, in all of these situations, some of the affected will be worse off than if the measure had not been taken at all.

For our inquiry, we must therefore assess political activities by private actors in a differentiated manner. On the one hand, we must not reject them categorically, because this would prevent many important and laudable activities of MSI participants from coming into being; on the other hand, we must be aware of these activities' ambiguity, because neglecting this would mean to follow a romanticized image of business ethics.

The Legitimacy of Ambiguous Political Activities

So, under which conditions are political activities by private actors legitimate? Following the Rawlsian argument in the above, the legitimacy of such activities depends on whether they violate what would have been agreed upon behind the veil of ignorance—most importantly, the principles of justice and the rules and regulations issued by the institutions of the basic structure. This usually requires a balancing of rights. On the one hand, it may well lie within the liberties of private actors to engage in political activities and private actors may be more successful or more efficient in shaping these activities than institutions from the basic structure. It may also be that many of those affected by such an activity endorse it. Yet, on the other hand, there will most certainly be some who are negatively disposed to it. Thus, in order to determine the activity's legitimacy, all these rights must be balanced by recourse to what would have been agreed upon behind the veil of ignorance.

How can this weighing of rights best be initialized for a given political activity? Drawing on the above, I propose that a political activity by a private actor or an MSI is legitimate only if those affected by the activity are able to effectively contest it—so that the activity is prevented should it violate the principles of justice or the rules and regulations issued by the institutions of the basic structure. I will use the term “means of contestation” to describe those instruments that can voice dissent and thereby initialize a balancing of rights capable of preventing the activity if necessary. This concept as well as the terminology lean on the work of Philip Pettit (1997) and its emphasis on “contestability.”⁴ I hold that in a liberal WOS, means of contestation

⁴Indeed, Pettit's argument on the importance of democratic institutions allowing for contestability / contestation can also be applied to Rawlsian thinking, even though Pettit places emphasis elsewhere and arrives at different conclusions (Pettit, 1997: 183–85).

can be found in the basic structure as Rawls conceived it. In the event that citizens of a liberal WOS do not agree with an activity because they consider themselves negatively affected by it, they can appeal to the different institutions of the basic structure and ask to be protected, as this lies within their rights and liberties the basic structure is bound to assure. Most importantly, citizens can sue and appeal to the courts (Rawls, 1974: 209–10) and they can vote for a change of laws according to their preferences (Rawls, 1974: 194–200). Such institutions exist in liberal WOSs, ready to set in motion procedures that fairly balance the rights of all those affected.

Clearly, contesting an action would not necessarily render it illegitimate. Instead, the institutions of the basic structure would then be tasked to balance the rights of all actors (those conducting the political activity as well as all those affected by it), which means that they must find a fair regulation by recourse to what would have been determined in the original position. This can lead to a situation in which a political activity is contested by some of the affected, yet still found legitimate because it upholds more fundamental rights of other affected persons.

Given that means of contestation can be found in liberal WOSs, private actors in these states can legitimately assume political responsibilities, such as issuing rules of self-regulation or providing public goods, because those who feel disadvantaged by these activities are free to contest them using the institutions of the state's basic structure. It will then be the task of these institutions to determine whether the activities are legitimate. For example, if a corporation assumes political responsibilities by supporting an infrastructure project, those who consider themselves negatively affected can take legal action against the corporation, which leads to courts determining whether the corporation's assumption of political responsibilities was lawful or not. Additionally, the affected can vote for a legislation that better supports their case. Due to these means of contestation existing in liberal WOSs, corporations assuming a political role in this type of state do not necessarily violate the "division of moral labor." In fact, political activities by private actors can even exceed the possibilities of the basic structure. As has been argued in the above, corporations often have a precise knowledge of the problems they face and are capable of addressing them in a specific and effective manner. Moreover, their political activities often align public interest with self-interest because social and environmental commitment is usually rewarded by stakeholders or because overcoming the uncertainties of governance gaps creates new business opportunities. Therefore, corporations are usually willing to invest their own resources into these activities, which can be more successful or more efficient than if the basic structure had to provide for these measures on its own.

Of course, this rationale holds only when activities by private actors come *on top* of the basic structure, adding to existing regulation rather than replacing parts of it. This is important to highlight in the wake of the increasing privatization seen in many (particularly Western) states. Clearly, a systematic delegating of essential services from the state to private actors is capable of hollowing out a basic structure and eroding a liberal WOS (Cordelli, 2020). Given that some forms of privatization include institutionalized cooperation between state actors and

corporations, often under the name of “public-private partnerships” (Flinders, 2005), it is important to add that any such arrangement replacing parts of the basic structure, rather than situating itself on top of it, does not meet the conditions established in this paper.

To conclude, the legitimacy of public activities by private actors should be assessed via what I have termed “means of contestation.” Drawing on the idea that private actors should be constrained by strong political institutions (rather than be included in the basic structure and thus nationalized), means of contestation are the link between the liberty of the individual and societal justice. As long as means of contestation are in place, private actors can legitimately assume public responsibilities. Given that the basic structure of a liberal WOS features institutions that serve as means of contestation, private actors can legitimately assume public responsibilities in this type of state.

INTERNATIONAL ACTORS AND THE DIFFERENT TYPES OF STATES

International actors affect the domestic affairs of many states around the globe. Powerful states from the Global North influence the affairs of many other states, shaping the lives of their citizens. Global MSIs that enact regulations to protect the environment affect people living close to the protected areas, as well as corporations, their employees, and many others. To what extent and under which conditions is this assumption of domestic responsibilities in foreign states legitimate—especially in light of the fact that states differ in how they protect their citizens from foreign influences?

The Remaining Types of States in Rawlsian Theory

This question can best be addressed by turning to Rawls’s book *The Law of Peoples* (1999), in which he develops an elaborate concept for the extension of his theory to the international realm. He does so by describing other types of states besides liberal WOSs, in particular “decent WOSs” and two types of non-WOSs. Like liberal WOSs, these other types of states are to be seen as ideal types—they do not represent actual states, but stylized models that serve to facilitate our discussion. They will be explained in the following.

Decent Well-Ordered Societies

Decent WOSs differ from liberal WOSs most conspicuously in their deficits in providing liberal citizenship rights such as the freedom of speech and thought (Rawls, 1999: 59–62; Whelan, 2012). This is because Rawls did not conceive decent WOSs to be based on the thought experiment of the original position, which is why they are also not grounded in principles of justice (Rawls, 1999: 70). Nevertheless, decent WOSs share many similarities with liberal WOSs. Most importantly, decent WOSs also have high standards of material citizenship rights such as the integrity of the person or the right to property, as these are part of the “common good idea of justice” this type of state is grounded in (Rawls, 1999: 65–67, 71–72; Riker, 2009). Moreover, decent WOSs also feature a basic structure capable of imposing these

rights, which Rawls terms “decent consultation hierarchy.”⁵ Due to these similarities, liberal and decent WOSs are able to engage with each other on what Rawls calls “reasonable terms of fair cooperation” (Rawls, 1999: 14).

In his book, Rawls then makes a case for another original position on an international level in which fictitious representatives of all states would agree upon a set of eight international principles, the eponymous “law of peoples” (Rawls, 1999: 30–42, 63–64). Among these are the principles that all peoples are to be respected as *free* and *independent* (Principle 1), as *equal* (Principle 3), that they are to *honor human rights* (Principle 6), and that WOSs have a *duty of assistance* requiring them to support the institutional framework of burdened societies (Principle 8) (Rawls, 1999: 37). Due to the many similarities between liberal and decent WOSs, Rawls assumes that, at this international stage, both types of states will agree on the same set of principles, making the law of peoples valid for all WOSs (Rawls, 1999: 63–64).⁶

Non-Well-Ordered Societies

Rawls does not confine his analysis to those states that agree upon the law of peoples; he also includes those states non-compliant with it. There are two ideal-typical types of non-compliant states: *burdened societies*, which are prevented from compliance by their “historical, social, and economic circumstances” (Rawls, 1999: 90), and *outlaw states*, which are characterized as aggressive, either toward other states or toward their own citizens, and hence are non-compliant due to a lack of government goodwill (Rawls, 1999: 90).⁷ These two types of states thus mirror the phrase of states “unwilling or unable” to assume political responsibilities, as it is commonly used in business ethics (e.g., Crane, Matten, & Moon, 2004: 112; Moog et al., 2015: 472).

Regarding outlaw states, it is important to note that Rawls clearly focuses on those outlaw states that are aggressive toward other states, with the main part of his analysis discussing whether WOSs have a right or even a duty to wage war against these states (Rawls, 1999: 89–104). The case of states being aggressive toward *their own citizens*, most crucially by denying them human rights, is treated only in the footnotes (Rawls, 1999: 90, fn 1; 93–94, fn 6)—yet this is not only an equally relevant case (Luban, 1980), it is also the case that most business ethicists have in mind when they speak of states *unwilling* to perform their duties and which is far more likely to be engaged in an MSI or open its markets to foreign corporations. Given this, I will concentrate on this latter type of outlaw state in my argument, using the term “non-WOSs” for outlaw states that are aggressive toward their *own* citizens as well as for burdened societies.

⁵ Even though Rawls posits that not *all* decent WOSs feature a decent consultation hierarchy, it is implied that they exist in most decent WOSs (Rawls, 1999: 4).

⁶ Although liberal WOSs and decent WOSs would both agree upon the law of peoples, Rawls emphasizes that they would do so independently in two separate original positions (Rawls, 1999: 70–71).

⁷ Rawls also identifies “benevolent absolutism” as one additional form of state that honors human rights but forbids citizens from partaking in political decision-making (Rawls 1999: 63). However, as this form of state is only briefly mentioned in *The Law of Peoples*, it is not possible to draw any substantiated conclusions for the present inquiry.

Even though non-WOSs may not agree upon the law of peoples, its principles still regulate how WOSs shall interact with non-WOSs. For example, the duty to *honor human rights* (Principle 6) defines certain “universal” rights that “are intrinsic to the Law of Peoples and have a political (moral) effect whether or not they are supported locally” (Rawls, 1999: 80).⁸ Also, the *duty of assistance* (Principle 8) urges WOSs to support the institutional framework of burdened societies in such a manner that they are enabled to overcome the conditions constraining them and, subsequently, become WOSs themselves (just or decent) (Rawls, 1999: 37, 111).⁹ Table 2 provides an overview of the different types of states in Rawlsian theory.

The Conditions for Legitimacy in the International Context

Foreign Influences on Liberal Well-Ordered Societies

I have already discussed that the ambiguity of political activities requires means of contestation as they can be found in the basic structure of liberal WOSs. Although my argument drew on a domestic perspective (i.e., to what extent can private actors within liberal WOSs legitimately assume political tasks) it can easily be transferred to the case of international (foreign) activities affecting the domestic affairs of a

Table 2: The Different Types of States in Rawlsian Theory

	WOSs		Non-WOSs	
	Liberal WOS	Decent WOS	Burdened society	Outlaw state (aggressive toward their own people)
<i>Original position?</i>	Yes	No	No	No
<i>Foundational principles</i>	Principles of justice	Common good idea of justice	No internal principles, yet WOSs are to interact with these states on the ground of certain “universal” rights “intrinsic to the Law of Peoples” (Rawls, 1999: 80).	
<i>Basic structure?</i>	Just	Decent (<i>Decent Consultation Hierarchy</i>)	Neither just nor decent	Neither just nor decent
<i>Member of an international original position</i>	Yes, among liberal WOSs	Yes, among decent WOSs	No	No
<i>Complying with the law of peoples?</i>	Yes	Yes	No, unable to do so	No, unwilling to do so

⁸ It is this universality of human rights that underpins the reasons for sanctions (or even military actions) against outlaw states (Rawls, 1999: 81).

⁹ Rawls restricts the duty of assistance to the support of burdened societies (Rawls, 1999: 43), most likely due to his focus on the form of outlaw states that is aggressive toward other states. Clearly, in the light of aggressive acts toward other states, support of the outlaw state’s political institutions could be expected to escalate a conflict-laden situation. Yet, in the case of outlaw states that are aggressive toward their own people, the support for state institutions that protect basic rights and liberties may be a suitable means to improve the situation. As such, I hold it an appropriate extension of Rawls’s writing that the duty of assistance should also include the support of this latter form of outlaw state.

liberal WOS. Given that the law of peoples contends that all states recognize one another as free and independent (Principle 1) as well as equal (Principle 3) (Rawls, 1999: 37), any international political activity influencing the domestic affairs of a liberal WOS must recognize its principles of justice and its basic structure—and this also includes its means of contestation. If political activities are found to violate what would have been agreed upon behind the veil of ignorance, they must cease, regardless of whether they originate from inside or outside the liberal WOS. In other words, as long as a political activity can be effectively contested by the citizens of a liberal WOS, it makes no difference whether this activity is foreign or domestic (nor whether it derives from a state, a corporation, or an NGO).

This argument is also mirrored in the fact that Rawls, despite his silence in addressing the topic of corporations, was hardly an opponent of international business activity. After all, he advocated for private international trade, as long as international economic actors are “suitably regulated by a fair background framework,” thereby ensuring that a “free competitive-market trading scheme is to everyone’s mutual advantage” (Rawls, 1999: 42–43). This again emphasizes the significance of states respecting one another’s basic structures.

The importance of the premise that political activities must cease after they have been contested and found illegitimate by the institutions of the basic structure must be highlighted particularly against the backdrop of power imbalances in the international context. While it is easy to realize this premise *within* a WOS due to the power that state institutions usually wield in relation to private, domestic actors, in the international setting it is conceivable that a powerful corporation from a wealthy state could more effectively enforce its interests against those of a small state, despite the latter state being a WOS.¹⁰ In this case, it is paramount that the international actor commit to the requirements of the WOS’s basic structure: Should the institutions of the basic structure urge the private actor to stop a measure, the measure should stop.

Thus, to summarize, international actors can legitimately assume political responsibilities in liberal WOSs due to the presence of a means of contestation in these states.

Foreign Influences on Decent Well-Ordered Societies

Although the argument drawing on means of contestation strongly leaned on the principles of justice as they are akin to liberal WOSs, it can easily be transferred to the case of decent WOSs. Despite this type of state being introduced rather late in Rawls’s work, we learn enough about it to understand that it allows for contestation in a similar manner to liberal WOSs. The common good idea of justice in which decent WOSs are grounded takes the place of the principles of justice in liberal WOSs and serves as a guiding foundation for the state’s course (Rawls, 1999: 65–67, 71–72; Riker, 2009). The decent consultation hierarchy takes the place of the liberal basic structure and provides the citizens with a set of representative bodies with

¹⁰ As Rawls (1999: 107) wrote: “Great wealth is not necessary to establish just (or decent) institutions. How much is needed will depend on a society’s particular history as well as on its conception of justice. Thus the levels of wealth among well-ordered peoples will not, in general, be the same.”

which to contest the political activities made by the government and other state institutions (Rawls, 1999: 64–67, 71–72). In the case of such a contestation, a decent consultation hierarchy guarantees that judges and political officials address the objections and, if necessary, do their part to improve the situation (Rawls, 1999: 71–72; Riker, 2009). This means that, if the actions of an international actor (for example, a global MSI enacting environmental regulation) were to be opposed by some of the people affected (e.g., by local employees who feel that their jobs are at risk, or by locals who fear that the economic development of their region is severely limited), then these affected people would have the chance to engage the institutions of the basic structure, much as it was described for liberal WOSs, for example by suing or voting. All these means of contestation would initialize a balancing of rights capable of preventing the activity if it were found to violate the common good idea of justice or the rules issued by the institutions of the decent consultation hierarchy.

Thus, although there are certain limitations to how contestation can be carried out in decent WOSs due to the fact that citizens of this type of state are limited in publicly criticizing their government or in inducing change by becoming involved in politics—liberties that citizens of liberal WOSs possess—the decent consultation hierarchy is, according to how Rawls conceives it, sufficient in providing adequate protection to its citizens. From this, it follows that international actors must recognize the basic structure of a decent WOS, just as they must recognize the basic structure of a liberal WOS. This also means that international actors can legitimately assume political responsibilities in decent WOSs due to the presence of a means of contestation in these states—just as it is the case for liberal WOSs.

Foreign Influences on Non-Well-Ordered Societies

With the foundational principles laid out for both types of WOSs, we now turn to non-WOSs. Given that non-WOSs are grounded neither in principles of justice nor in a common good idea of justice, we must ask whether the argument drawing on means of contestation can also be applied to non-WOSs.

A strong case supporting this idea can be made by drawing on the influential contribution by Hsieh (2009). In his argument, Hsieh takes some of Rawls's international principles like the duty to *honor human rights* and the *duty of assistance*, and blends these into the maxim to *do no harm*, as it is prevalent in ethics (Ruggie, 2008; Suchanek & Entschew, 2018; Wettstein, 2010). He thereby makes a case for some “specific universal moral constraints” protecting the citizens of non-WOSs and their associations from “treatment that would involve wronging them in some significant way, such as by harming an important interest of theirs” (Hsieh, 2009: 256; see also Shue, 1980).¹¹ This argument, Hsieh contends in a 2004 paper, can also be grounded in the conception of republican freedom put forward by Philip Pettit, according to which one is free only when one is free from arbitrary interferences (with the term “interferences” relating to actions by someone else that limit one's

¹¹ Hsieh focuses on burdened societies, yet, as was explained in footnote 9, it seems an appropriate extension of Rawls's writing that a duty of assistance is also applicable to outlaw states aggressive toward their own people.

choices) (Pettit, 1997: 52; see also Hsieh, 2004).¹² As a conclusion, Hsieh proposes that non-WOSs should possess political institutions that enable their citizens to determine for themselves whether they agree with how they are affected by foreign influences. In the language of this paper, citizens of non-WOSs also should be provided with a means of contestation when affected by an international actor.

While WOSs possess institutions of the basic structure with which people have the chance to contest political activities, non-WOSs do not. Non-WOSs are either burdened societies, in which states are unable to provide suitable means of contestation, or outlaw states aggressive toward their own citizens, in which states are unwilling to allow such means. It follows that international actors affecting these states must find ways to assure that their activities are, indeed, legitimate. In his above-mentioned contribution, Hsieh (2009) discusses this issue using the example of multi-national corporations (MNCs) that produce severe *negative* externalities in non-WOSs, arguing that these MNCs should support the local infrastructure in order to build up means of contestation. However, drawing on the above, two important enhancements must be made.

First, Hsieh develops the argument in the context of MNCs producing *negative* externalities, yet with the prior analysis, we can now enlarge Hsieh's argument to include the ambiguous political actions prevalent in the context of MSIs (even if they are grounded in benevolence). In order to comply with the duty to do no harm, anyone affected by the political activities of private actors must have the means to contest such actions. Yet, with non-WOSs lacking a basic structure with institutionalized means of contestation, the duty to prevent injustices falls to the private actors, which means that private actors must themselves provide means of contestation to all those affected by their political activities. Moreover, due to the lack of institutionalized mechanisms capable of balancing rights (e.g., courts or electoral systems in WOSs), any usage of a means of contestation necessarily equals a veto mechanism to the political activity. In sum, private actors, in order to fulfill the maxim to "do no harm," must provide those affected by their actions with a means of contestation equivalent to a veto mechanism.

Second, in his conclusion, Hsieh follows the Rawlsian duty of assistance, arguing that the best way for MNCs to enable a means of contestation is for them to engage in "activities that promote the institutional framework" to help the state develop into a WOS (Hsieh, 2009: 263). This activity is not to be confused with the support for certain specific laws or regulations, which private actors should instead abstain from; rather, the local political structures shall be developed to enable the citizens of the host state to make their own decisions. Although this argument appears well aligned with the Rawlsian theory, it disregards how establishing democratic institutions akin to those of a WOS is a long and laborious process shaped by many contingencies (Acemoglu & Robinson, 2006; North, Wallis, & Weingast, 2009). The corporate activities we discuss here—be they perceived as negative or positive

¹² Moreover, Hsieh (2009) also holds his argument in line with the work by O'Neill (2001), who has contended that non-state actors such as corporations, when operating in non-WOSs, have an additional responsibility to contribute to justice in said areas.

—are usually carried out under a far shorter planning horizon. From this timeline, it follows that even if MNCs were willing to support the establishment of institutions that make their activities contestable, it is questionable whether these institutions would come into being in time, if at all. This issue holds true all the more given that Hsieh also indicates that the MNCs' efforts to support just institutions should be strictly limited, in fact "as limited as possible" (Hsieh, 2009: 263), in order not to overburden the MNCs. In summary, the prospect of this strategy actually creating a means of contestation is vague at best.

However, if MNCs chose to channel their resources to enact MSIs, rather than to invest in the establishment of just institutions, this could create more immediate means of contestation. With their openness and reliance on direct exchange, MSIs can easily serve as low-threshold means of contestation, giving all their participants the chance to express their disapproval about the measures of an MNC. This means that, if the enactment of an environmental regulation is under debate, those opposed to it can express this in the MSI, thereby automatically making the activity illegitimate. As a consequence, there could be room to discuss regulatory improvements of the activity, ideally resulting in an agreement among all parties involved.

The downside of the use of MSIs, however, would be that MSIs are only temporary solutions and it is uncertain how far they would support the establishment of well-ordered institutions in non-WOSs. In this vein, the use of MSIs might not contribute to the Rawlsian long-term goal of all states becoming WOSs and being part of the law of peoples (Rawls, 1999: 89). Yet, on the other hand, the use of MSIs aligns with the Rawlsian premise that overall prosperity or long-term development cannot be bought with the severe detriment of some, which, after all, may be the most significant idea of his work.

In sum, international actors can legitimately assume the domestic responsibilities of non-WOSs, as long as they provide means of contestation for all those affected by their activities. MSIs are a low-threshold device for achieving this.

THE LEGITIMACY OF GLOBAL MULTI-STAKEHOLDER INITIATIVES

With the two issues of MSI legitimacy discussed, we can now combine the elements to address the legitimacy of global MSIs. Given Rawls's reliance on the state as the central political actor, even in the international realm, it is clear that political measures can only be legitimized *bottom-up*, with the legitimacy being assessed separately in all affected states and with respect to how far citizens of all affected states possess means of contestation.

If the activities of a global MSI affect WOSs, a political representative of each WOS must have the opportunity to contest the actions of the MSI on the grounds that it infringes on the liberties of its citizens. Ideally, the representative is appointed by the government and can speak for the whole nation, as their appointment is (at least indirectly) based on appropriate forms of elections. The inclusion of further representatives from the WOS's civil society to address matters specific to this state is not necessary, even though their involvement might grant additional expertise or social acceptance.

If the activities of a global MSI affect non-WOSs, the legitimacy of those activities depends on whether all those affected had the chance to contest them. In contrast to the case of WOSs, this includes not only a representative of the state, but also representatives of those additional groups for which the state representative cannot be expected to speak. Global MSIs have the responsibility to grant means of representation, especially to those stakeholders most in danger of marginalization, which they can achieve best by the help of domestic or international NGOs (Banerjee, 2018; Reinecke & Donaghey, 2021). Although this premise might appear to be an additional burden, MSIs are by definition highly suitable to allow for such an open and direct exchange of most diverse actors.

Importantly, while contestation within WOSs leads to the involvement of the basic structure, there are no such institutionalized mechanisms capable of balancing rights on the international scale. Thus, like in the case of non-WOSs, any usage of a means of contestation necessarily equals a veto-mechanism to the political activity. This makes means of contestation a powerful tool for all participating actors. And even when MSIs possess no established procedure on how to bring together the perspectives and the rights of different stakeholders, they can work out such a procedure themselves with every participant having the chance to veto any suggestion, as is illustrated in the work by Arenas et al. (2020).

Establishing means of contestation is also a position in line with the “Ruggie Principles” (United Nations Human Rights Council, 2011, see also Rasche & Waddock, 2021; Ruggie, Rees, & Davis, 2021), which suggest that corporations and MSIs establish accessible and equitable grievance mechanisms for all of their stakeholders (Principles 29 to 31). Despite this premise being enshrined in this seminal document, recent reports show that, particularly in the context of global MSIs, “weaker” stakeholders encounter difficulties making their voices heard (Alm & Brown, 2021; Banerjee, 2018; Eikelenboom & Long, 2023; Reinecke & Donaghey, 2021). The organization MSI Integrity states in a comprehensive study that for many existing MSIs, a lack of rights of those affected by the outcomes and the insufficient restriction of corporate power limits MSIs’ capabilities to protect human rights (MSI Integrity, 2020). Going beyond this, Alamgir and Banerjee (2019: 294) observe that some non-WOSs even use “state violence to suppress dissent” in order to undermine MSI initiatives that strive to improve working conditions in garment factories.

Such tendencies of some stronger groups to dominate others are not unheard of and obviously not only affect the topic of MSIs. Rawls, in general, regarded tendencies toward domination with suspicion, highlighting in particular the threat that power monopolies in the political and economic spheres pose to the equality between citizens (Rawls, 2001: 130–32). “It is as equal citizens that we are to have fair access to the fair procedures on which the basic structure relies,” he wrote (2001: 132) and, given that I tried in this paper to conceive MSIs as capable of substituting for the insufficiencies in the basic structures of non-WOSs, this Rawlsian premise of equality should hold no less for the participants of MSIs. Thus, while MSIs—with their reliance on open and direct exchange—appear, in theory, most qualified to consider the needs of all stakeholders, this theoretical idea of an MSI must, in

practice, be imposed against the lack of willingness and effort by the “stronger” stakeholders, in particular MNCs. It is only in overcoming this problem that MSIs can become a legitimate governance device.

THE HABERMASIAN APPROACH TO POLITICAL CSR

The topic of corporations engaging in MSIs has famously been discussed under the headline of political CSR. Although some authors provide interpretations of how to conceive a Rawlsian approach to political CSR (Alm & Brown, 2021; Hsieh, 2009; Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012; Smith, 2019; Whelan, 2012), the dominant line of thinking in political CSR research is that of Habermasian deliberative democracy. This latter perspective sees MSIs as devices that allow for rational discourse among all those affected by political measures, making the legitimacy of these measures dependent on what the discourse participants can agree on (Scherer & Palazzo, 2007, 2011). NGOs play a crucial part in this model due to their potential to engage in what Habermas termed *communicative action* (Habermas, 1984: 285–86; Risse, 2000). Their ability to “map, filter, amplify, bundle, and transmit private problems, needs, and values” makes them (as well as other civil society actors) “the core actors in the process of democratic will formation” (Scherer & Palazzo, 2007: 1107). Unlike political and corporate actors, which are bound by the so-called steering media in their respective systems (*power* for political actors, *money* for corporate actors), NGOs are capable of engaging more openly with other discourse participants and of being persuaded by their arguments, should these prove better than their own (Barlow, 2022; Gilbert & Rasche, 2007; Smith, 2019). This openness is a prerequisite for the outcome of a discourse being legitimate. Hence, in order for the joint decision process of an MSI to produce results legitimized from a Habermasian perspective, the participation of NGOs is indispensable.

Despite its prominence, the Habermasian approach to political CSR is subject to two major points of criticism that mirror the two legitimacy issues given above. The first point of criticism is that the Habermasian approach to political CSR treats the political and economic sector and their differences rather superficially (Hussain & Moriarty, 2018; Sabadoz & Singer, 2017), neglecting how, in most states, the economic system is embedded within the political system rather than merely being a parallel, independent sector. Thus, failing to consider the differences between the two sectors would mean giving corporations too much power and undermining state sovereignty. The second point of criticism lies in the cosmopolitan orientation of the Habermasian approach to political CSR, which does not address the differences in types of states around the globe (Whelan, 2012, 2013). Neglecting the importance of borders is particularly severe in the context of political systems unable or unwilling to provide protection for their own citizens.

In this paper, I have argued that these two points of criticism, which are directed at MSIs in general and at the Habermasian approach to political CSR in particular, can be overcome by grounding political CSR in the Rawlsian theory of justice. Importantly, although Habermas and Rawls proffer two different theories of political

philosophy, I hold that choosing the Rawls-based approach developed in this paper instead of the Habermasian approach to political CSR does not require changing the composition of global MSIs. Both approaches contend that, in the absence of established global rules, international actors of all three sectors are to come together and jointly decide on rules and regulations. Scholars who draw on Habermas emphasize the role of rational discourse of all those affected by an issue, leading to ethically sound outcomes. The Rawls-based argument of this paper draws on all those affected by an issue having the possibility to effectively contest an activity. Thus, both approaches can be linked to the “all-affected principle” (Goodin, 2007; Koenig-Archibugi, 2017; Näsström, 2011), which requires those affected by a political activity to be able to participate in the decision-making process and to agree on the outcome.

In the case of Habermas, the link to the all-affected principle is evident. The principle can be considered a cornerstone of his theory (McMahon, 2011), featuring as a central element in his Universalization Principle (U) (Habermas, 1998: 42) and, henceforth, the Discourse Principle (D) in his discourse ethics (Habermas, 1991: 66) as well as the principle of democracy in his work *Between Facts and Norms* (Habermas, 1996: 110). This notion is echoed in the many approaches of deliberative democracy and also political CSR that demand the participation of—or even a consensus among—all those affected by an issue (or their representatives).

In the case of Rawls, however, the link to the all-affected principle requires more explanation as the principle does not emerge directly from his work. In Rawls’s derivation of the WOS, the thought experiment of the original position draws on fictitious representatives with limited information rather than actual people with actual interests. The decisions in the original position are thus based on a hypothetical consent rather than an actual consent (Finlayson, 2019: 148). Yet, when one abstains from the context of the WOS and turns to a more international context, this argument requires adaptation. This was explained throughout the paper: Some states do not feature just or decent basic structures, nor does the international community have a basic structure, so there are no institutionalized mechanisms capable of balancing rights (e.g., courts or electoral systems). The balancing of rights can thus not be “delegated” to institutions; instead, all those affected must get involved to voice their opinions, to contest any infringements of their rights and to reach agreements with other actors that benefit all of the affected. This is how the all-affected principle can be linked to Rawlsian thinking.

Following this, both lines of thought would ascribe high importance to NGOs. In Habermasian thinking, NGOs are essential due to their capability to engage in communicative action, whereas, in the Rawls-based argument of this paper, they are qualified actors to represent the voices of those who lack representation by their governments in non-WOSs. Thus, both the Habermasian approach to political CSR and Rawls-based argument of this paper attach great importance to NGOs, despite assigning them different roles.

Regarding their comprehensive theories, Habermas and Rawls were far from agreeing on all points, as was made clear in their famous debate in the *Journal of Philosophy* in 1995 (Finlayson & Freyenhagen, 2011; Hedrick, 2010: 10; Moon, 2003). Their

disagreement even affects some parts of their theories that can be used to inform the context of MSIs, as, for example, the two scholars had different views on the likelihood of deliberations reaching a consensus (Habermas views consensus as an ideal that discourse should aim for, even though it will not always be reached in practice; Rawls, on the other hand, is more skeptical as to whether consensus can be achieved at all in society due to reasonable pluralism; see Rawls, 1997). Nevertheless, regarding the question how far and under which conditions global MSIs can legitimately assume public responsibilities, it becomes clear that the Habermasian approach to political CSR and the Rawls-based approach of this paper are highly compatible.¹³

Whelan (2012), regarding Habermasian and Rawlsian political CSR as incompatible, draws on the case of Google's campaign for internet freedom in China, a campaign that the MSI Global Network Initiative also backed. He argues that this case, although in line with Scherer and Palazzo's take on political CSR, contrasts with the Rawlsian premise that actors from WOSs should refrain from interfering in a foreign state's affairs, in particular other WOSs. Yet, this argument, while thoughtful, overlooks how the contents of this campaign were predominantly factual contributions to the discussion, that is, arguments appealing to persuade the opposing side as well as an impartial audience, rather than moves imposing political measures (however agreeable) on a foreign state against its will. The Chinese government was able to refuse all suggestions and pleas made by Google and the Global Network Initiative—in other words: They had a means of contestation. Hence, from the perspective of this paper's argument the efforts by Google and the Global Network Initiative were legitimate—which they would not have been had the Chinese government been forced to obey.

In sum, the Rawls-based approach presented in this paper serves as a viable framework to rectify the shortcomings of MSI legitimacy in general and the Habermasian approach to political CSR in particular. For this, the composition of MSIs commonly proposed in the literature requires no change.

DISCUSSION

This paper raises several points that merit further discussion. First, one might wonder whether means of contestation, as endorsed in this paper, do not too easily create standstills. It is, however, crucial to distinguish between dissenting opinions on a certain topic with a subsequent veto of one specific measure and, on the other hand, a fundamental disagreement with a subsequent veto of every possible measure. For example, one stakeholder may veto a certain measure to further the infrastructure because they have environmental concerns, but they will not deny the importance of making a remote area easier to reach. This situation may allow for a joint search for alternative solutions—for example, more sustainable forms of

¹³ For an argument that the theories by Rawls and Habermas have approached each other over the course of time, see McMahon (2002). For a broader discussion on how contract-based approaches and deliberative approaches can be bridged in the context of business ethics, see Ruehle (2023).

transport. Arenas, Albareda, and Goodman (2020) show several examples of MSIs in which the actors, although dissenting on certain issues, still honor some more fundamental principles, based upon which they can agree to continue working together. The authors link this to the concept of “meta-consensus” by Niemeyer and Dryzek (2007). Rawls himself employs a similar concept in his *overlapping consensus* by which he understands the idea that citizens are, even when adhering to the most divergent comprehensive doctrines (e.g., religion or philosophy), able to abstract from their doctrines’ evident incongruencies and agree on a political conception of justice (Rawls, 2005: 133–68; 1997).¹⁴ An approach similar to the idea of meta-consensus, but more in line with rational choice thinking, is presented by Hielscher, Beckmann, and Pies (2014), who draw on Buchanan’s distinction between actions and rules to illustrate how dissent related to a specific topic can be overcome by finding common ground on a more abstract level (see also Pies, Beckmann, & Hielscher, 2014, as well as Hielscher, Everding, & Pies, 2022).

Second, the focus on contestation taken in this paper can also be further informed by the growing amount of publications analyzing political CSR from the perspective of “agonistic pluralism,” that is, a perspective emphasizing the conflicting nature of different stakeholders and the role of dissent in deliberations (Brand, Blok, & Verweij, 2020; Dawkins, 2015; Sorsa & Fougère, 2021). It is, however, important to point to the large variety of approaches in agonistic pluralism (Dawkins, 2022), as some of them seem rather eager in their focus on contestation, eventually neglecting or even negating the possibility for finding agreements. By contrast, the argument in this paper holds that MSIs benefit when contestation and the goal to achieve consensus are equally embraced (for a similar approach, see Arenas et al., 2020). In his overview on the different “varieties of deliberation,” Dawkins (2022) labels this latter form of argument “pluralist” views of deliberative democracy and political CSR.

Third, it is vital to address the dispute among Rawlsians generated by *The Law of Peoples*. Rawls’s insistence on building his international theory on top of his domestic one has sparked criticism, most famously brought forward by Charles Beitz and Thomas Pogge, who plead for a global original position (Rawls, 1999: 115; Wenar, 2006). This approach would increase the duties of the affluent toward the poor; however, Rawls rejects this view, arguing that the law of peoples already supports the poor by providing a path for all nations to become WOSs (Rawls, 1999: 111). He clarifies that, in his view, there are no justifiable reasons for WOSs to influence the affairs of other WOSs beyond what the law of peoples prescribes, nor are there justifiable reasons for nations to demand more from others (Rawls, 1999: 119). I followed this Rawlsian position in my analysis, but with the approach by Beitz, Pogge, and others being established in contemporary academic debate, it may be an equally relevant avenue for further research to assess MSI legitimacy from this perspective.

¹⁴ On the relationship between meta-consensus and overlapping consensus, see Dryzek and Niemeyer (2010).

CONCLUSION

Despite Rawls's immense significance in political philosophy, business ethics scholars still struggle to transfer his work to their field. Those who attempted to bridge this gap frequently stalled over the question of whether corporations should be considered part of the basic structure or not (Blanc & Al-Amoudi, 2013; Heath et al., 2010; Moriarty, 2005; Singer, 2015). If they are not, no assertion on corporations could be derived from Rawlsian thinking; however, if they are, corporations were de facto nationalized, rendering most of the original questions of business ethics obsolete. This dichotomy left little room for further theorizing, and while some publications like those on the Rawlsian approach to political CSR (Alm & Brown, 2021; Hsieh, 2009; Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012; Smith, 2019; Whelan, 2012) have made important advances, they remain underrepresented in the field.

To be sure, Rawls's reticence on the topic of corporations has complicated matters for scholars of business ethics, as they must inevitably expand and interpret Rawls's theory when applying it to their field, especially in the context of international governance. It is, therefore, fair to say that Habermas's philosophy lends itself more intuitively to the topic of business ethics than does Rawls's. Some even go so far as to suggest that Rawls's theory "has serious shortcomings at *all* analytical levels of business ethics" (Dierksmeier, 2022: 289) and "cannot be applied effectively to questions of business ethics and corporate governance" (Singer, 2015: 65).

This paper has attempted to overcome this hurdle. The foundations of Rawlsian philosophy were presented in detail, then carefully supplemented and expanded to facilitate their less intuitive application to topics of business ethics in general and political CSR in particular. Most importantly, the concept of "means of contestation" was introduced. This concept leans on the work by Philipp Pettit's notion of "contestability" (1997) and is not inherent to Rawls's work, yet it describes elements that can be found in Rawls's work, most importantly citizens' rights to sue and appeal to the courts (Rawls, 1974: 209–10) and their rights to vote for a change of laws according to their preferences (Rawls, 1974: 194–200). Thereby, I have tried to demonstrate that Rawlsian thinking can indeed be applied to the context of business ethics. Regarding this assertion, there are some points that I would like to highlight.

First, corporations should not be considered part of the basic structure of society. In light of the massive influence corporations have on society, the reflex of including them in the basic structure may well be understandable. Yet, as this paper has shown, it is a more consistent application of Rawlsian thinking to rather build and strengthen those political institutions that are able to constrain corporations in the first place. Many present-day examples of powerful corporations can be seen as indicators that political institutions are weaker than they should be according to the ideal of a liberal WOS.

Second, the paper has highlighted that the ambiguous nature of political activities deserves more recognition. Those who hold any political activity by corporations as necessarily bad should consider more carefully that activities even of such self-interested actors as corporations can have positive effects on others. Furthermore,

those who think any activity labeled “CSR” is necessarily good, should look for possible negative effects created for some, despite the benevolent intentions CSR activities may have in the first place. Throughout the article, I have linked the term “ambiguity” to Rawls’s concept of “reasonable pluralism.” I hold that this idea can help business ethics scholars to have a more differentiated view on corporations’ political activities.

Third, corporations that assume political responsibilities are often criticized in relation to the division of moral labor (Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012). Such criticism is an oversimplification, as political activities by corporations should be evaluated on an individual basis. In this regard, my argument aligns more closely with that of Caulfield and Lynn (2024), who, in their concept of “Federated Corporate Social Responsibility,” draw on the division of moral labor to derive what they call “constitutional devices,” that is, institutional arrangements that effectively constrain corporate power. I hold that an MSI featuring means of contestation in the sense of this paper represents a “constitutional device” amenable to constrain corporate power in the sense of federated CSR.

Fourth, my analysis on the law of peoples begins with a suggestion of how this complex work can be applied more practically to questions of business ethics. For example, the distinction between WOSs and non-WOSs draws more closely together outlaw states that are aggressive toward their own citizens with burdened societies, mirroring the phrase *unwilling or unable* often used in business ethics when talking about states lacking political governance. Despite such adaptations, my analysis aims to stay aligned with Rawls’s categorization, thus demonstrating how ideas of the law of peoples can be transferred to current questions of international business ethics.

Fifth, drawing on Hsieh’s (2009) argument that international corporations should be constrained when operating in non-WOSs, this paper contends that corporations can create more immediate means of contestation by engaging in MSIs than by building up democratic institutions in non-WOSs. While the creation of democratic institutions in these states is essential to realize Rawls’s long-term goal of making every state a WOS, the long and laborious process to get there may lead to many voices being unheard. In contrast, MSIs can serve as low-threshold means of contestation capable of making dissent heard. I have highlighted in the above that one of the central ideas in Rawls’s work is that overall prosperity or long-term development may not be bought with the severe detriment of some. Yet, it is also important to add that the here-described trade-off between making all states WOSs and immediately giving rights to the most disenfranchised is difficult to resolve from the law of peoples alone (for a similar discussion, see Martin, 2015). In the end, my cautious reference to Rawls’s central idea is not to be read as an attempt to ultimately resolve this trade-off, but rather as an attempt to raise awareness that this trade-off exists and that MSIs can be an instrument to address one of the legitimate objectives of the trade-off. Moreover, the decision of corporations whether to engage in MSIs must be considered in light of the above-mentioned fact that the law of peoples already obligates all WOSs (i.e., their governments!) to support the creation of strong democratic institutions in non-WOSs.

In sum, although Habermasian theory appears to dominate the literature on political CSR, it cannot overcome the criticism often directed at MSIs. However, by grounding MSI legitimacy in the Rawlsian theory of justice as demonstrated in this paper, these problems can be overcome without this requiring a change in the composition of MSIs. This allows us to combine the strengths of the Habermasian approach, including its intuitive accessibility in the international context, with that of Rawls—most importantly its ability to assess the assumption of public responsibilities by private actors and to pursue questions of justice in an international society of states (with some closer to the Rawlsian ideal than others). This compatibility is important—after all, one of the most significant merits of all those contributions that can roughly be subsumed under the “political CSR” heading is to demonstrate how ethical considerations, for example, the respect for human rights, fair working conditions, and environmental protection, can and should be reincorporated into the debate on a globalized economy. Basing this argument on the considerable common ground between Rawlsian and Habermasian thinking may, after all, be the most promising strategy for furthering this endeavor.

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