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None Of Your Business Ethics: Essays In Secrecy, Ethics, And Commerce

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Abstract

What is the place of secrecy in economic life? Using concepts from business ethics, organizational theory, legal theory, and normative political economy, this dissertation presents novel arguments concerning corporate and individual moral privileges to conceal information within firms and markets. Essay 1 addresses a range of theoretical issues in secrecy, transparency, and moral theory. Essay 2 considers a particular contested case of corporate secrecy—pay secrecy. This essay's applied discussion also generates several additional insights for a more general ethics of corporate secrecy and self-regulation. Essay 3 shifts away from the corporate perspective toward the market actor's perspective, investigating the moral-economic justifications we may have for refusing to transact with certain other actors in markets. It illustrates how secrecy and information asymmetries can serve as core, morally beneficial features of markets.

In total, this dissertation represents a significant step toward a more nuanced ethical perspective on secrecy: its role and value in markets; the reasons market actors may have to advance or thwart it; and the associated duties and privileges that attach to managers in relation to stakeholders and larger society.

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NONE OF YOUR BUSINESS ETHICS:

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ABSTRACT

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What is the place of secrecy in economic life? Using concepts from business ethics, organizational theory, legal theory, and normative political economy, this dissertation presents novel arguments concerning corporate and individual moral privileges to conceal information within firms and markets. Essay 1 addresses a range of theoretical issues in secrecy, transparency, and moral theory. Essay 2 considers a particular contested case of corporate secrecy—pay secrecy. This essay's applied discussion also generates several additional insights for a more general ethics of corporate secrecy and self-regulation. Essay 3 shifts away from the corporate perspective toward the market actor's perspective, investigating the moral-economic justifications we may have for refusing to transact with certain other actors in markets. It illustrates how secrecy and information asymmetries can serve as core, morally beneficial features of markets.

In total, this dissertation represents a significant step toward a more nuanced ethical perspective on secrecy: its role and value in markets; the reasons market actors may have to advance or thwart it; and the associated duties and privileges that attach to managers in relation to stakeholders and larger society.

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INTRODUCTION

Secrets structure our social lives. They allow us to shape our identity, to protect our innermost selves, and to avoid shame, humiliation, judgment, and influence. There can be no question that secrecy is an essential attribute of modern social life (Adut, 2018; Bok, 1989; Goffman, 1959; Jones, 2014). But what of our economic lives? This dissertation aims to shed light on the ethics of secrecy in economic life, both for managers of large firms and for individuals within markets. It is the first to inquire directly into the moral theory of secrecy in commercial contexts as it intersects with concepts from business ethics, organizational theory, legal theory, and normative political economy.

Essay 1 addresses a range of theoretical issues in secrecy, transparency, and moral theory. Essay 2 considers a particular contested case of corporate secrecy—pay secrecy. This essay's applied discussion also generates several additional insights for a more general ethics of corporate secrecy and self-regulation. Essay 3 shifts away from the corporate perspective toward the generic market actor's perspective, investigating the moral-economic justifications we may have for refusing to transact with certain other actors in markets. It also illustrates why more secrecy will in some cases be a morally beneficial feature of markets.

Essay 1: The Ethics of Corporate Secrecy: Transparency, Secrecy, & Moral Theory

Some may regard the question of how secrecy might be justified in our economic lives, distinct from its justification in our social lives, as foolish on its face. This is

because there is no clear separation between secrets we keep in social and economic life. This becomes clear when we consider whispered water cooler gossip to friends and colleagues (Fan & Grey, 2020; Fan, Grey, & Kärreman, 2020); when we have friends 'cover' for us when we want to play hooky from work; or when we form some of our most richly personal and intimate relationships at work. That our economic lives *are social* is the most obvious basis for a moral justification for secrecy in economic contexts (e.g., Bok, 1989; Grey & Costas, 2016). For if secrecy is justified given its instrumental role in a flourishing social life, and our social lives play out in economic contexts, then secrecy is justified in economic contexts. Because we do not shed our identities or our social nature when we work or make purchases, our use for secrecy permeates even the most impersonal of transactional environments. Aside from secrecy's moral justification, the jointly social nature of both secrecy and transactional environments is also the best argument for secrecy's *inevitability*: even processes such as organizational transparency initiatives may tend to produce even more or newer forms of opacity (Fenster, 2005). The tendency for an organizational process of information disclosure to simultaneously *reveal* and *conceal* suggests some "paradoxical" nature of transparency itself.

Essay 1 casts doubt on both arguments. First, with regard to moral justification, Essay 1 argues the fact that we retain within economic contexts, for instance, certain rights to medical privacy is not enough to vindicate secrecy as a morally neutral practice or feature. A short list of cases in which secrecy is permissible or morally valuable in commercial contexts does not itself establish the moral neutrality of secrecy. The case for moral neutrality instead requires a more general argument about the *pro tanto* moral

reasons that may (dis)favor secrecy. Essay 1 provides a new argument in defense of secrecy's moral neutrality.

Second, regarding the inevitability of secrecy and the derived "paradoxical" nature of transparency, Essay 1 argues that the scholarly discussion is plagued by an overly sociological definition of transparency. While it is true that secrecy or opacity may be inevitable in organizational processes, it does not follow that we lack or must reject any concepts of transparency that are *defined apart from* the social processes in which they are instantiated. Rather, I argue, such concepts are conceptually required. The very claim that a particular social process can be both transparent and opaque, or concealing and revealing, requires that we have concepts that can define what it would mean to be *truly* transparent or *fully* revealed. I propose a conciliation between sociological and idealized approaches to organizational transparency.

Essay 1 also considers how macro-social or "political" our perspective is in approaching the question of obligations of corporations to disclose information. Navigating around the contested terrain of the 'rights' of corporations, Essay 1 defines two different approaches of business ethics in relation to larger political and social values, and argues that, from the perspective of one of these approaches, there is a wide-ranging moral privilege for corporations to be secret.

Essay 2: Pay Secrecy, Discrimination, and Autonomy

Within markets, we face problems of competing with one another, cooperating with one another, and understanding and fulfilling our obligations to one another, all within a set of specially constructed institutional arrangements (markets, firms, and those

in between). Most important, markets rip us away from our small social world of neighbors, friends, and family, and force us to interact with strangers, or individuals with whom we share only transactional associations. The parties which affect and are affected by firms are usually called stakeholders, many of whom, though sharing a productive relationship with us, are essentially strangers—fellow employees, suppliers, contractors, what have you. Transacting goods and services not only require us to *interact with* strangers, but to *rely on* strangers, in virtue of differentiated labor and skills (Durkheim, 1984; Hayek, 1982). We rely on our stakeholders, who rely on other stakeholders, who rely on other stakeholders, comprising an unfathomably complex network of economic relationships which we now call markets. When we participate in markets, we come to rely on literally millions of strangers engaged in the productive and information-revealing activities that make markets work (Hayek, 1945, 1982).

This is all to say that secrecy in commercial contexts is different from secrecy in intimate social contexts, not least because inquiries into the ethics of commercial secrecy are ultimately subsidiary to larger questions of how we ought or may interact with strangers. In Essay 2, I examine secrecy as a denial of potentially valuable information to stakeholders, outlining when we may have reason to help others and, especially, when we *do not* have reason to help others. This is done via the analysis of a particular ethical issue in business: pay secrecy. While the inquiry is directed toward showing that pay secrecy may be permissible, it reveals a number of theoretical insights relevant to a more general ethics of secrecy in business. In particular, I argue that when there are a number of options that are available to managers to advance certain ends of justice, managers possess a good deal of discretion in choosing a course of action to reach the prescribed

ends. Some of these options may entail disclosure, whereas others may not. Where there are means to reach prescribed ends without using the tools of disclosure, then disclosure cannot be said to be obligatory, since it is one of a set of options from which managers are empowered to choose.

The pay secrecy discussion in Essay 2 also serves as a case study informing the broader relationship between self-regulation and more classical conceptions of 'regulation.' Many theorists argue self-regulation and regulation are essentially commensurable with one another—that the principles of self-regulation should resemble the principles of other-regulation (Norman, 2011). My critical analysis of the ethics of secrecy and value of disclosure suggests otherwise. Where transparency may be useful as a tool to regulate others, it is not as useful for us to regulate ourselves. I therefore show that the first-personal ethical perspective will sometimes imply ethical obligations and permissions for behaviors which differ from the desirable social behaviors encouraged by classical regulatory strategies.

Essay 3: You, Me, and the Market: From Amoralism to Impersonalism

While it is of course true that our economic lives intersect with our social lives, much as business intersects with society (Preston & Post, 1975), many theorists consider the market to be distinctive among other spheres. For instance, many theorists hold that 'the business of business is business,' and that otherwise well-intentioned efforts to advance justice should not be part of the corporate objective. In particular, when sellers interact with (potential) customers, it is often argued that we must be strictly *inclusive*—

i.e., that if we offer a product or service to anyone, we should offer it to almost everyone. This is what I call "broad (market) access rules."

Essay 3 begins by examining Amy Sepinwall's (2021) reconstruction of the economic approach to justifying broad access rules. Sepinwall, like many others, characterizes this economic view of market activity as essentially *amoral*. Essay 3 argues that, on reflection, this is not a plausible characterization.

I then (re)construct a moral-economic view for broad access rules, which I call impersonalism. This view argues on several grounds that markets should not be amoral, but *impersonal*. I systematize the commitments of impersonalism, drawing especially on the work of Hayek, Friedman, Frank Knight (as interpreted by Jules Coleman), and Ryan Calo. I illustrate how impersonalism is premised on a particular view about the relationship between domination, markets, social activism/politics, and a flourishing, free, pluralistic society.

Essay 3 concludes by extending this view to show the conditional value of *more secrecy* in markets. Where ethicists and philosophers often suppose that more information is better—in terms of both market efficiency and justice—the impersonal view provides resources for disputing this.

In total, this dissertation represents a significant step toward a more nuanced ethical perspective on secrecy: its role and value in markets; the reasons market actors may have to advance or thwart it; and the associated duties and privileges that attach to managers in relation to stakeholders and larger society.

ESSAY 1 THE ETHICS OF CORPORATE SECRECY: TRANSPARENCY, SECRECY, & MORAL THEORY

Consider an argument between a business ethicist who argues that it would obviously be good that companies be transparent, and an organizational theorist who argues that transparency involves complex social processes, and that businesses becoming transparent can sometimes make it easier for them to be *opaque*. How do these actors disagree, precisely?

Consider a different argument between an economist who argues secrecy in business is clearly virtuous because it encourages innovation (Dufresne & Offstein, 2008), and a business ethicist who argues secrecy is wrong because it removes the company from public accountability. How could this argument proceed? What are the points of disagreement between them?

Many moral disputes of these types can be traced back to larger theoretical differences in the methodology of moral inquiry into questions surrounding secrecy and transparency. It is for this reason that the vast majority of discourse in the small and little-known sub-field of 'information ethics' revolves around meta-conceptual issues, such as the suppositions about the value of information, and the shape or form (rather than the content) of ethical theory that is implemented (e.g., Floridi, 2005, 2013; Hauptman, 2017; Mather, 2006; Mathiesen, 2004).

The first part of this essay therefore addresses some key, contested defining features of moral methodology for information-related ethical problems in business ethics (cf. Van den Hoven, 1997, 2008):

1. **A definition of transparency or secrecy**: Some set of concepts to describe actions on and within information landscapes in business contexts, as well as concepts to describe the informational landscapes themselves.
2. **Clarity and justification of axiological assumptions:** There must be clarity in and some justification of the axiological assumptions informing the inquiry. In the case of corporate secrecy, of particular importance is the *value* of transparency or information (Mathiesen, 2004).
3. **Clarity and justification of deontological assumptions:** There must be clarity in and justification of the deontological[1] assumptions which form the starting point of inquiry. In the case of corporate secrecy, of particular interest is the common claim that transparency and secrecy are '*morally neutral*.' The meaning and justification of this moral neutrality claim demands attention.
4. **A specification of proper referent(s) for justification**: There remains a question of the level of justification or normative analysis which we should adopt (Norman, 2013; Solomon, 1991). Must we make reference to macro-social concerns, such as the foundations of the capitalist market

[1] Here, when I use deontological and axiological, I mean to refer to considerations relating to *the right* as opposed to *the good*, respectively.

> system (De George 1987), or some social ‘purpose’ of business (Donaldson, 1982: 36–37; Donaldson & Walsh, 2015), markets (Heath, 2014; McMahon, 1981), or firms (A. Singer, 2018a; Singer, 2019)? Instead, perhaps we can instead look merely at the micro-social transactional level (Marcoux, 2006, 2009), examining second-personal relationships and the claims individuals might make on one another in virtue of vulnerability, self-defense, autonomy, welfare, rights, etc.

One of the main contributions of this essay is the distinction it draws between two discrete methodological approaches to business ethics—the micro-moral philosophical, or what I call ‘bottom-up,’ approach and the macro-political philosophical, or what I call ‘top-down,’ approach. This distinction not only clarifies points of disagreement in debates around secrecy and transparency but is also relevant to a host of other contested issues in business ethics.

Thereafter, the essay, considering the value of information and moral status of secrecy, examines secrecy from the ‘bottom-up’ approach, yielding a generally permissive ethical appraisal of corporate secrecy.

II. Transparency, Secrecy, & the Definitional Quagmire

When using various concepts such as or related to transparency or secrecy, it is not always clear to what we mean to refer. Given the diversity of the moral, social, and organizational relations to which many of these concepts apply, this essay does not formulate a ‘grand theory’ of meaning for these terms. Instead, it adopts a pragmatic

approach, attempting to formulate and reformulate terms so as to best enable critical, intuitive, and productive moral reflection.

An emerging organizational theory literature on secrecy and transparency holds that the old notion of transparency—fundamentally concerned with *conveying truth* (Henriques, 2007: 30) and expressive of the *dissemination of digestible, true, relevant, and timely information* (Berglund, 2014; Forssbæck & Oxelheim, 2014)—should be ejected in favor of a definition that is expressive of actual complex social processes involved in filtering, constructing, and presenting information (for literature reviews, see Albu & Flyverbom, 2019; Ringel, 2019). This essay is the first to offer a (albeit qualified) defense of the more classical vision of transparency these theorists seek to displace.

After this theoretical exploration of transparency, I examine the definition of secrecy. Within the debate over the concept of secrecy, I argue, there is a similar conceptual divide as in the debate over the concept of transparency. In evaluating secrecy, I argue, it is productive to separate the practices of concealment (keeping secrets), and the fact of concealment itself (what *is* secret). This suggests, I argue, a corresponding bifurcation between considering the ethics of secrecy (as evaluating a set of agential practices in keeping secrets) and the justice of secrecy (as evaluating a particular distribution of information, i.e., what is secret).

Defining Transparency

A great deal of organizational scholarship on transparency has surrounded its definitional difficulties (Albu & Flyverbom, 2019; Baraibar-Diez, Odriozola, & Sánchez, 2017; Christensen & Cornelissen, 2015; Lamming, Caldwell, & Harrison, 2004; Parris,

Dapko, Arnold, & Arnold, 2016; Ringel, 2018; Schipper & Bojé, 2008). Here I argue for a synthesis of otherwise disparate approaches to transparency. As documented in Albu and Flyverbom's (2019) binary taxonomy, there exists a fundamental disconnect between two approaches to transparency:

> The *verifiability* approach "builds on set of assumptions which are informational in nature: a view of transparency as a matter of information disclosure, a focus on the quality and quantity of information that permits one to fully observe organizational actions, and a means of solving organizational and societal problems by improving the effectiveness and quality of transparency efforts."
>
> The *performativity* approach "is based on a set of assumptions that are processual: a perspective of transparency as a process which includes social action; a focus on the conflicts, tensions, and negotiations that can arise as a result of the dynamics specific to acts of making things visible in organizations; and an understanding that transparency enactment creates unintended consequences and leads to the management of visibilities in organizational settings."

For easy reference, we can distill each approach to the following: the verifiability approach sees transparency as a transmission of information from one node to another (let's call this 'informational transparency'), whereas the performativity approach sees transparency as a real-world social process, vulnerable to a number of influences and tensions that accompany the complexity of the real-world ('processual transparency'). The former approach characterizes most of the scholarship in business ethics, whereas the latter characterizes most of the scholarship in organizational theory. These approaches are often starkly contrasted, with performative theorists critiquing the informational view as based on a set of "naïve" assumptions about how communication in the world actually works (Hansen & Flyverbom, 2015; for a review, see Ringel, 2019). It is argued that transparency studies instead should be more realistic—that they should take a "sociological turn," shunning the "formalism" that characterizes other work (Pozen, 2020; also Grey & Costas, 2016).

Instead of seeing the informational and processual conceptions as in conflict, I argue it is best to understand them as examining two different, though not mutually exclusive forms of 'transparency.' An ethicist interested in secrecy or transparency can be interested in both types; on the one hand, they may be interested in information and the ethics of its disclosure, non-disclosure, and concealment. On the other hand, applied ethics will also concern itself with how some of the flaws of real-world transparency initiatives should inform our ethical prescriptions and larger theories of corporate social responsibility.

A potential conciliation between these approaches is most easily reached via a reflection on one of the primary claims of organizational theorists in support of processual transparency.

Processual Transparency Requires Informational Transparency

Perhaps the most pressing critique levied by processual theorists is that transparency can itself "paradoxically" promote more or newer forms of opacity (Albu & Flyverbom, 2019: 278–279; Christensen & Cornelissen, 2015; Fenster, 2005; Flyverbom, 2020; Hansen & Flyverbom, 2015; Ringel, 2019; also, Dobusch, Dobusch, & Müller-Seitz, 2019). To offer one example, this can occur because of the selective release of flattering information which can make the underlying (sometimes ugly) reality of organizations all the more inaccessible (Feldman, 1988). We can phrase this claim in the following way:

Processual Theorist Claim: Transparent organizations are often opaque.

Since opacity is typically deployed as an ‘opposite’ of transparency (Birchall, 2011a; Ghauri, Hadjikhani, & Pahlberg, 2014; Grey & Costas, 2016: 66; Ringel, 2019), we can rephrase the claim:

> *Processual Theorist Claim*:* Transparent organizations are often not transparent.

For this claim to avoid internal contradiction it must invoke two different concepts of transparency at the same time. The initial use of ‘transparent’ corresponds to what processual theorists take *transparent* primarily to denote—a real-world social process. Transparent organizations are those which contain or are engaged in these processes. But the latter use of transparent in the *Processual Theorist Claim** seems to refer to some metric that evaluates the degree to which representative information is accurately or effectively conveyed. Indeed, this latter use of transparent resembles precisely the *informational* concept of transparency that processual theorists otherwise purportedly reject. Using the terms employed here, then, the Processual Theorist’s Claim can be understood in the following way:

> *Processual Theorist Claim**:* Processually transparent organizations are often not informationally transparent.

This reformulation illustrates how this central critical claim advanced by processual theorists is intelligible only via the use of a concept that denotes what it means to be transparent or opaque in the informational sense. In other words, the only way the performative theorists’ can make sense of their claims is to accept ‘informational transparency’ as a coherent and valid metric to describe and understand the commercial

world. Transparency can refer either to a set of real-world processes or to a feature of the distribution or flow of information. Often, we will want to evaluate real-world processes in terms of the degree to which they achieve an ethical or just distribution or flow of information. We will also want to theorize about *potential* transparency processes and their promise to improve the just or ethical distribution or flow of information.

While performative theorists may be correct to reject a host of views about the effectiveness of current, real-world transparency initiatives in provisioning authentic informational transparency, they cannot in the same breath reject *the very concept of* informational transparency. They are right to remain skeptical of theorists who champion the implementation of transparency programs and processes as a simple process producing unqualified improvements in informational transparency (Fenster, 2015). But evaluations of current and potential transparency-oriented social processes in terms of a purer metric of informational transparency, even if they are currently "naïve" (O'Neill, 2006, 2009), need not be so. Rejecting such a naïveté neither requires nor sanctions the rejection of the concept of informational transparency itself. Far from it, informational transparency is a necessary concept in order to understand the goals to which transparency processes should be directed and the standards against which they should be evaluated or judged.

This dissertation takes transparency to denote the informational view of transparency, and to refer to those real-world transparency social processes simply as *transparency initiatives, programs, or practices.* All of these elements are important to

understanding the ethical problems involved in commerce, and so must be deployed in concert in discussing the practice of business and the ethics of transparency.

Instead of relying on the more cryptic pronouncements of the *Performative Theorist Claims*, it is pragmatically equivalent and more coherent to say that the organizations which *present* themselves as transparent or *seem* to or *purport* to be transparent are often *not truly transparent.* This is the strategy adopted by many theorists who argue that perceived transparency of organizations may be "illusory" (Coombs & Holladay, 2013; Gumpert & Drucker, 2007) or "nominal" (Heald, 2006a); that firms may "creat[e] a sense of transparency, rather than…being truly transparent to their diverse publics" (Vujnovic & Kruckeberg, 2016). These claims grasp the tensions between real-world transparency initiatives and the effective communication of organizational reality without deeming social reality stultifyingly paradoxical.

Pace performative theorists, my approach endorses an objective, non-processual notion of transparency. In holding transparency to fulfill some objective criteria of veracity, relevance, timeliness, and digestibility, here I cut against the popular practice of defining transparency merely in terms of *stakeholder perceptions* (e.g., Parris et al., 2016; Schnackenberg & Tomlinson, 2016). On the other hand, true to performative theorists' concerns, this approach avoids baking-in any problematic assumptions that posit a close correspondence between real-world transparency initiatives, programs, or practices and true informational transparency (Roberts, 2009).

The conciliation also leads to new insights into the structure of the morality of transparency. For once the aim of informational transparency is disaggregated from those

processes standardly associated with it, we can begin to characterize other kinds of processes as promoting informational transparency more than traditional 'transparency initiatives.' For instance, where transparency processes are often thought of in terms of direct disclosure, I argue in Essay 2 that the testimony of experts will sometimes be an equivalent or even superior substitute to direct disclosure in achieving transparency about certain facts. Thus, expert testimony may better contribute to informational transparency than direct disclosure does, even if expert testimony is not always considered a 'transparency initiative or process.' Thus, the separation of the concept of informational transparency from the processes with which it is usually associated preempts a status quo bias, allowing for the possibility that new or old processes that better advance the goal of informational transparency will be put at the center of our moral calculus, even if they may not sociologically be considered or legitimated as 'transparency processes.' In this way, what counts as a candidate transparency process is not always defined in terms of the existing social categorizations of social processes, but by objective evaluations of what, in fact, advances the idealized goal of informational transparency.

Also crucial to our analysis will be sufficiently defining a concept of secrecy, the concealed, and the unknown. This is the task to which I now turn.

Defining the Unknown and Concealed

The purpose of this section is to develop a concept of secrecy that is most productive for moral reflection and to evaluate secrecy's relationship with transparency.

Secrecy: 'Being Secret' and 'Keeping Secret'

Secrecy is commonly defined in terms of intentional concealment (Bok, 1989; Grey & Costas, 2016; Toegel, Levy, & Jonsen, 2021). This intentional concealment is not necessarily nefarious or entirely premeditated. Rather, the intentionality constraint is meant to exclude cases where we inadvertently forget to mention something (Grey & Costas, 2016; Scheppele, 1988)—if I forget to tell you about the impending rain today, I have not kept it secret. It also serves to exclude those cases where it does not occur to me to mention irrelevant information (Grey & Costas, 2016; Scheppele, 1988)—the fact that I never have occasion to tell you my favorite sports team does not make it a secret. Likely, though, we should add a conditional element to the concealment—it may be that I never had occasion to consciously block information or evidence of something from you, but certainly would if the need arose. As a trusting person, I might not have a passcode required to access my phone—but if I thought my personal text or email conversations were ever truly vulnerable to prying eyes, it could be the case that I would put a passcode on my phone. My conversations, then, are not secret to you necessarily because I have taken steps to conceal them from you, but because I would take such steps if I thought they were necessary to ensure their concealment.

Even where intentional concealment is the common definition, one shared across processual and informational theorists, there still exists a divide between them. Organizational literatures generally define secrecy in terms of "'the methods used to conceal…and the practice of concealment'" (Grey & Costas 2016, citing Bok 1989), fitting into a focus on "social processes of intentional concealment of information from actors by actors in organizations" (Costas & Grey, 2014; also Fan et al., 2020; Ringel, 2019). Business ethicists, on the other hand, sometimes deploy the informational

approach. Pompa (1992) imagines a manager or company that has information about future layoffs and examines what reasons should be considered when they must decide whether to disclose or conceal it. In this case, the ethical question does not surround the *method* or *process* of concealment—*how* should or may some information be concealed?—so much as *the fact of concealment itself*—should some information be concealed (or revealed)?

Other business ethicists more squarely examine the *methods of concealment*, as in the literature on deception in business negotiation. In such cases, it is debated what extent of deception, lying, bluffing, or puffery is justified and for what reason (Carson, 2012; Dees & Cramton, 1995; Strudler, 1995, 2005). It is notable that the *fact* of concealment in these cases is typically taken for granted when negotiating price. It is simply, and justifiably, assumed that it is perfectly permissible for a seller of a house, for instance, to not know the reservation price of their prospective buyer. In this scholarship, the relevant question is rather what kind of deceptive or misleading behavior the buyer may use to conceal or exaggerate their reservation price.

The methods of concealment denote how we *keep* secrets; the fact of secrecy denotes *what is concealed*. The notion that 'secrecy' may encapsulate both the ***fact*** of concealment and ***methods*** of concealment is subtly present in Bok's original definition of secrecy, which refers not only to the methods or practices of concealment, as it is sometimes selectively parsed (see Grey & Costas, 2016), but also to the concealment that *results* from the intentional keeping of secrets. Informational theorists focus on the *fact* of concealment, whereas processual theorists focus on the methods used to engender or

preserve this concealment. It is not the case that either group of scholars adopts a "more correct" or superior focus: 'secrecy', as a concept, implicates both.

I argue that we can leverage this *fact-method* divide by disaggregating what is typically considered the moral question of secrecy into two distinct though interrelated questions. First, evaluating the *fact* of concealment of X suggests some question about the propriety of an asymmetry of information about X. Such an asymmetry is fundamentally a question about the *distribution of information*. Ideally, who should have what information? The moral question of the *fact* of concealment is essentially the question of the desirability of a specific distribution of information.

Whereas the fact of concealment raises moral questions about the distribution of information, the methods of concealment raise moral questions about action taken to effect, affect, or preserve certain distributions or in spite of distributional consequences. This separation between the evaluation of action and the evaluation of a state of affairs or distribution closely resembles the foci that distinguishes moral and political philosophies—theories in moral philosophy typically focus on action, whereas theories in political philosophy often relate to assessing distributions or states of affairs. Questions of distribution naturally arouse corresponding questions of justice in political philosophy (Moriarty, 2005), whereas questions of action arouse questions of ethics in moral philosophy. Thus, we might say, ethics is to keeping secrets as justice is to being secret.

In the next section, I characterize two ideal-type approaches to business ethics; this exercise lends clarity as to how what choices we make in moral inquiry can lead to

different answers. But first, we must pause to briefly characterize the relationship between secrecy and transparency.

An Analytical Opposite to Transparency

Secrecy is not the opposite of transparency. One reason secrecy and transparency are often defined as opposites is because, in their *processual* forms, both denote distinct processes that purport to perform opposite functions—concealment and revelation, respectively (das Neves & Vaccaro, 2013).

But once we understand transparency in *informational* terms, secrecy is not its opposite. Secrecy denotes either the practice of *intentional* concealment or the state of *being* intentionally concealed. The opposite of informational transparency, since it is a concept meant to describe certain features of the informational landscape rather than the intentions of actors within it, must be able to describe the informational landscape regardless of agential intention. This analytical opposite, I argue, is best understood in terms of opacity. Something that is not transparent is opaque. When something becomes *less* transparent, it becomes *more* opaque. An organization that is not truly transparent is not necessarily a "secret" organization, but an opaque organization. This organization may be *secret* or *secretive*, but an organization may be opaque owing to reasons not related to whether it is itself intentionally concealed (as is a secret organization) or engaged in intentional concealment (a secretive organization).

III. The Micro-Moral or Macro-Political Approach to Secrecy: A New Vision

The Complexity of the Relationship Between Ethics and Justice in Commerce

We have suggested an *analytical* distinction between ethics and justice, distinguished primarily by what each takes as its primary focus or subject. But this says little about how the *content* of a theory of justice relates to that of ethics, or vice versa. Ethics, in terms of the moral norms which apply to action, does not always say something different from justice—some believe, for instance, that considerations of justice apply directly and in a binding way to individual and corporate action (Berkey, 2016, 2021). On the other hand, some hold that justice imposes no additional requirements beyond individuals' respect of certain basic individual rights, such that basic principles of ethics suffice to fulfill any considerations of justice and coercive attempts to correct resulting distributional patterns would indeed constitute grave injustice (Agarwal & Holmes, 2019; Godfrey, 2006; Nozick, 2013).

More often, the relationship between ethics and the demands of justice is relativized to certain domains of actions or spheres of society. For instance, a line is sometimes drawn between the private and public; 'private' firms, like individuals, are said to enjoy some sphere of protected autonomy (Humber, 2002; Hussain, 2012a); too, certain wide-ranging obligations of justice are said to simply be overly demanding of them (Hsieh, 2015a). As such, the personal sphere may sanction wide-ranging exceptions to the demands of justice; for instance, it has been argued, although justice demands principles of non-discrimination on the basis of sex in employment, such demands may not extend to those arenas that implicate intimate or "deep personal relationships" (Moreau, 2010: 161); examples of positions which have been argued to be morally

exempt from sex discrimination include those in childcare (Sarkar, 2016), life coaching, massage work, and sex work (Schultz, 2006).

More common in business ethics literature, exemptions from justice are premised on the market 'sphere' performing a specialized function, whereby justice considerations are applied only within branches of society or only to social institutions themselves (Hsieh, 2017; cf. Berkey, 2016). It is often supposed that business, markets, or firms have some 'purpose' that ground some immunity of market actors to certain demands of justice (Donaldson, 1982; Donaldson & Walsh, 2015; Heath, 2014; Martin, 2013; Singer, 2019). This immunity may not be absolute (Dunfee, 2006; A. Singer, 2018b; Smith, 2017, 2019a), but such an immunity may extend insofar as the demands of justice contradict the posited missions or purposes of business actors. A standard, compelling argument to this conclusion holds that, if the state is the actor which is quintessentially bound by all the demands of justice, there exist important disanalogies between states and corporations—in purpose, function, membership, competency, or capability—that render them morally distinct (Donaldson, 1989; Hsieh, 2015a; Phillips & Margolis, 1999; Singer, 2019; Smith, 2019a; cf. Scherer & Palazzo, 2007; cf. Moriarty, 2005). This critical argument derives its force from the contrast between the ends and purposes of states and business firms.

By way of positive justification for this immunity, there are modern and classical variants. The modern justification for the cordoning off of the market from such justice concerns typically involves reference to the idealized role of other branches of society to pick up the slack in correcting injustice (McMahon, 1981; Rawls, 2009; Hsieh, 2017;

critically, Moriarty, 2020a). The classical justification for the isolation of the market sphere, on the other hand, invoked concerns with the corporation converting its economic power into civil or political power (Berle & Means, 1933; Walzer, 1984; Hussain & Moriarty, 2018), whereby the aggregation of additional social responsibilities would open the door for rent-seeking and other corporate behavior which would encroach on civil or political liberty (Chamberlain, 1973; Friedman, 1962; Levitt, 1958; Stone, 1975; Jensen, 2002).[2] Whereas the modern justification appeals to consistency in the design of states and markets (Heath, Moriarty, & Norman, 2010)—the need for an integrative vision of the roles each of us is to play within a state order (Martin, 2013) or global political order (Santoro, 2010; Scherer, Palazzo, & Matten, 2014)—the classical justification appeals to how permissions or concepts revolving around social responsibility, being sufficiently malleable, may be *mis*-used for illicit purposes (Jensen, 2002; Marcoux, 2000).

Where once social justice was argued to be a mirage because of its lack of specified content or conceptual features (Hayek, 2012), on the classical account, CSR is also a kind of new mirage,[3] meaning something different to everyone (Votaw, 1972) and ripe for exploitation and abuse in markets and firms. In the way Hayek critiqued central authorities for engaging in "visible 'social justice'…in a manner which gratifies natural emotions" (Hayek, 1982: 147), it could be said CSR is most easily oriented toward

[2] Whereas this was once the position most popular among conservative economists, modern progressive commentary has circled back to this sort of position, criticizing corporate social responsibility programs as well as private philanthropic initiatives on similar grounds (Aschoff, 2015; Giridharadas, 2018; Robert B. Reich, 208, Rob Reich 2018).

[3] Many efforts to determine some essential meaning or definition of CSR have been described as akin to "nailing jello to the wall" (Lewis, 1985; Sheehy, 2015). Many CSR scholars have therefore largely given up the attempt at distilling CSR down to some fixed meaning (Crane, McWilliams, Matten, Moon, & Siegel, 2008; Mitnick, Windsor, & Wood, 2020; Okoye, 2009; cf. Sheehy, 2015)

mollification rather than justice. Indeed, this orientation toward satisfying preferences or concerns is instantiated in models which orient corporate social performance toward being "responsive" to stakeholder demands rather than toward just ends (Frederick, 1994; Wartick & Cochran, 1985). The problems in connecting design of CSR programs to accountability—which follow from non-ideal conditions of the real world—hence affects the degree to which justice should be part of the corporate mandate (this is expanded on in Essay 3).

This brief integrative review of the literature showcases the complexity of the relationship between ethics and justice in the commercial realm. It is the theorist's task, however, to propose simplified models, however inevitably reductive, to better understand relationships and to apply them to specific problems (Corley & Gioia, 2011). This is where I turn next, in defining a simpler model of the relationship between ethics and justice. It is only once this larger distinction in moral methodology is understood that we can begin to understand differences of opinion in the ethics of secrecy.

Bottom-up and Top-down approaches to Business Ethics

I argue there is a more parsimonious way of representing the relationship between justice and ethics in approaches to ethical questions; I focus on two ideal-types, which I call top-down and bottom-up ethics.

What I call bottom-up ethics largely sees ethics from the micro interpersonal standpoint, relying either on intuitional reasoning about interactions between individual actors in a particular exchange or negotiation, or on some posited set of formal rights or obligations that are shared among individuals. In these cases, ethical obligations can be

formulated and established by reference to these interpersonal norms. Many bottom-up theorists argue that more "basic" interpersonal ethics, such as duties to avoid harm, provide a sufficient guide for business ethics inquiry (Goodpaster, 1991; Hsieh, 2017), and that several other norms—such as fulfilling one's contracts, based on promissory morality, and respecting property rights, based on considerations of autonomy— arise naturally in our own interactions in everyday exchange (Freeman & Phillips, 2002; Hasnas, 2004, 2020; Quinn & Jones, 1995; van Oosterhout, Heugens, & Kaptein, 2006). These theorists resist a business ethics that is, in Marcoux's (2009) telling, worrisomely "*derivative* of normative political philosophy," and which is overly "grandiose" in its "contentious claims *about* justice, derived from contending and often conflicting theories *of* justice." In according particular attention to the individual, these approaches resist folding interpersonal claims into larger considerations of justice or efficiency. This is most easily seen in prescriptions based primarily in rights which operate to "trump" other considerations (Donaldson, 1989). In the particular case of secrecy, it might be argued that violations of certain interpersonal norms or individual rights cannot be justified *whatever* the salutary social consequences (Bok, 1989: 147–152).

On a bottom-up approach to disclosure and non-disclosure in commercial contexts, "social ideals" are shunned in favor of the "complex moral relations among individual[s]" (Strudler, 1997; cf. Scheppele, 1988). Such complex moral relations do not make reference to ideals of justice so much as they pay attention to individuals and the "morally legitimate" differences among them (Strudler, 1997). The proper examination of an ethic of concealment or disclosure will, on a bottom-up approach, "pay attention to the moral drama" between the specific parties "and to the source of individual[s']…grievances about

exploitation, deception, and betrayal" (Strudler, 1997). To put this more formally, ethics, on this approach, will focus on norms we can derive from the *first-personal* (Bowie, 2017; Korsgaard, 1996) perspective, or *second-personal* (Cornell, 2015; Darwall, 2006) relationships between individuals in market contexts.

Other approaches to business ethics are what I call 'top-down.' Under top-down ethics, business ethics questions are largely resolved with reference to larger political considerations of justice. This is not to say that the content of ethics in the market and content of justice are necessarily *the same*, e.g., that they both counsel the same prescription for states, corporations, and individuals (e.g., Berkey, 2021). Rather, this is a view that "business ethics questions must be grounded in a politically comprehensive view of society" (Martin, 2013); on this view, our inquiry into normative concepts, principles, rights, or duties can be formulated only in view of the market as a social institution among other institutions (Boatright, 1999; Heath et al., 2010) and firms as purposive entities within this institution (Boatright, 1994; Singer, 2019). Thus, business ethics duties must be part of a "unified normative theory" that specifies consistent principles informing the political, social, and self- regulation of business (Heath et al., 2010; also, Mäkinen & Kasanen, 2016; Mäkinen & Kourula, 2012; Smith, 2019a). Importantly, on this approach, self-regulation and regulation are seen as commensurable, insofar that the principles informing the latter ought to inform the former, and the former may sometimes serve as a substitute for the latter (Norman, 2011). The political perspective therefore finds new ground to connect traditional forms of state-based regulation with self-regulation in a theoretically rich way (e.g., Schrempf-Stirling, 2018).

Within this top-down approach, the determination of what 'kind' of entity the firm is, or its 'foundation for existence' (Donaldson, 1989), has high-stakes, since individual obligations are largely to be formulated in view of the political nature of the firm (A. Singer, 2018a). In one top-down approach, we consider the firm an extra-market institution typified by bureaucracy rather than market exchange (Chandler, 1977; Ouchi, 1980), one which performs functions of primary public concern; using political philosophy, we can then back out a host of obligations that align with those we typically attach to states (Anderson, 2017; Ciepley, 2013; Eells, 1962; Ferreras, 2017; Miller, 1960; Moriarty, 2005; Scherer & Palazzo, 2007; Scherer et al., 2014).

In a second top-down approach, the market is construed as an institution with a specific political function within a liberal society's moral division of labor (Smith, 2019a). The market, and firms within it, share a purpose in pursuing some kind of social efficiency, utility, or social value. In these cases, it is not that corporations have substantively similar obligations to states—the content of their obligations will differ drastically given differing roles—but rather that they share a similar "*need for justification*" (Donaldson 1982: 37, emphasis added), one primarily of a social or political nature. Given that markets and firms are, to some degree, created or designed, it seems only natural to thereby connect the "language, principles, and concepts" used for "macro level questions about justice in market design" to "our answers to concrete, micro-level questions about what individuals ought to do" (Heath et al., 2010; also Donaldson, 1982).

In this approach, the basic ethics of the market is most often taken to be largely, if not entirely, determined by the larger efficiency-promoting political aims of the market

(Heath, 2014) or aims of the firm in reducing transaction costs (Singer, 2019). From this perspective, we can back out market-centered norms about ethics issues ranging from compensation (Heath, 2018; Moriarty, 2016, 2020b), to pollution, to coercion. The primary aims of the market may be simply assumed to be the aims to which extant markets and firms seem currently oriented to respond,[4] presupposing a free, capitalist economy (Brock, 1998; Heath, 2014; Wempe, 2005) and a particular liberal division of labor (cf. Mäkinen & Kourula, 2012). The aims may also be derived or discerned using other modes of justification. For instance, Donaldson (1982) presents an early form of what has become the "concession" view of the corporation, which holds that the corporation's artifactual nature and its political provenance—it being created by the state (Ciepley, 2013)— equips civil society with demanding moral claims on the corporations, and some normative power to direct their actions, perhaps most easily described in the language of a "social contract."[5]

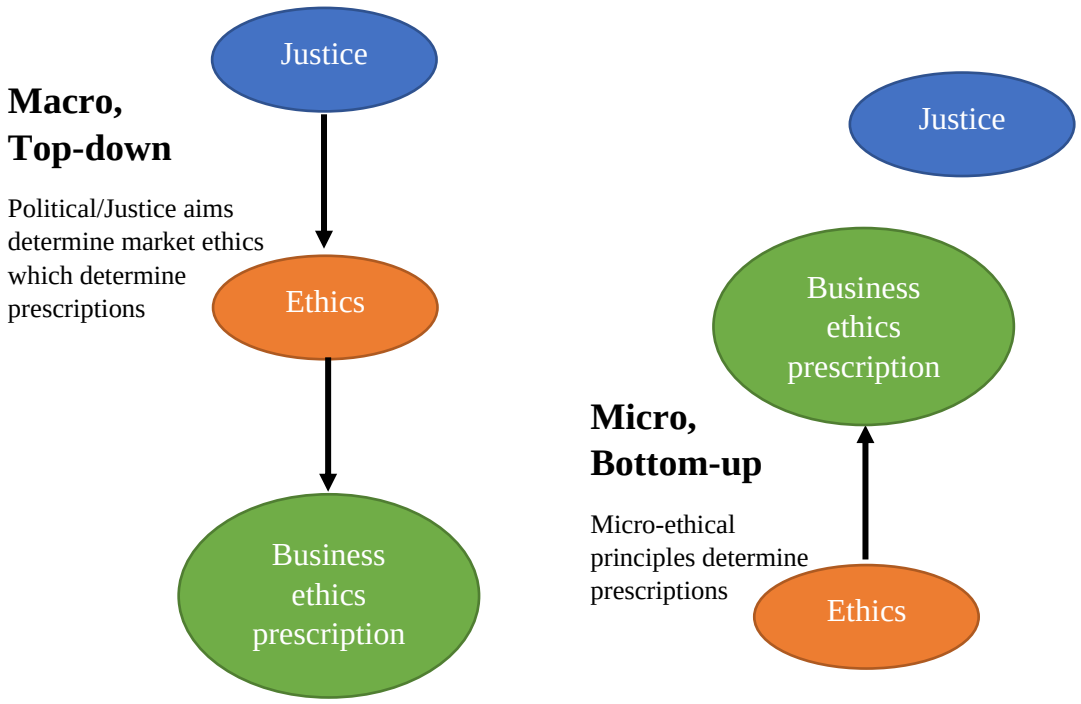
Many theories adopt both bottom-up and top-down elements, and so my focus on two extreme ideal types do not encompass all extant and potential theories. However, we should be careful not to understate the extent to which there is a fissure in the literature between those who approach questions exclusively through the bottom-up frameworks of moral philosophy and those who formulate individual commercial obligations almost

[4] This meta-justification has been referred to by some political theorists as part of a method called "immanent critique" (Heath, 2014; Singer, 2019).

[5] Insofar that a liberal democracy ought to structure the market spheres along with the firms that inhabit it toward some form of value creation (Donaldson & Walsh, 2015), then the content of this contract (in particular "why corporations *ought* to exist" (Donaldson, 1982: 29)), may not rely on *actual* agreement or concession, but on a hypothetical contract (Donaldson, 2017; Donaldson & Dunfee, 1999; Hsieh, 2015b). Thus, the purpose of the corporation in a liberal democracy may prove to be highly resistant to empirically contingent facts about actual citizens' beliefs.

exclusively from the top-down, political perspective. A crude visualization of top-down and bottom-up approaches is presented below.

FIGURE 1: TOP-DOWN AND BOTTOM-UP BUSINESS ETHICS



Choosing the Bottom-Up Approach

I spend the next section of this essay examining the ethics of secrecy specifically from the 'bottom-up' perspective, which is my own preferred perspective. In reflecting on the (dis)value of transparency, as well as the reasons we may have to advance or thwart secrecy, I argue that 'bottom-up' ethics is rather permissive with regard to secrecy. Secrecy is entirely permissible except in specific cases. Indeed, from the perspective of bottom-up ethics, we can think of the provision of information very much like a duty of aid in the paradigm case, where information is something that can help others in certain bad situations, but where firms are not presumptively or even generally obligated to provide it.

From the permissiveness of the bottom-up perspective, we can conclude that, *if there are demanding duties of disclosure or transparency, they are derived in some way from the top-down: i.e., from some obligation or value of justice whose justification is otherwise political in nature.* I conclude, arguing recent attacks on the meta-justification in top-down approaches focused on political aims of efficiency (Cohen & Peterson, 2019; Moriarty, 2020a) cast doubt on whether a demanding norm of transparency can be easily imputed. The takeaway from the current essay is that the radical case for transparency cannot be vindicated without relying on the nascent theory around the distinctively macro-social or political duties of business, the central frameworks of which have come under compelling criticism which casts doubt on their promise. In Essay 3, I implicitly engage in an internal critique of market-based arguments for transparency, arguing that norms of both efficiency and inclusivity suggest a significant role for secrecy.

It is not just the problems of meta-justification, however, that beleaguer the top-down approach. As I show in Essay 2, the case for secrecy is not always clear even once we assume that firms have some direct duties of justice, such as duties to promote equitable pay within their industries or firms. The case for transparency, I argue there, must overcome yet another hurdle: a difference in methodological *perspective*. One of the core proposals of the political-philosophical approach to business ethics is that self-regulation is commensurable with classical state-based regulation; thus the principles and logic underlying the specification of both self-regulation and state or civil regulation, it is argued, must be aligned (Heath, 2014; Heath et al., 2010; Norman, 2011). Such a commitment is not only espoused by grand political-philosophical theories of business ethics but is also evident in varying debates over secrecy itself. Essay 2, which examines the case of pay

secrecy, exposes in great detail the dependence of secrecy prescriptions on this commensurability claim, a claim of which we should be skeptical.

IV. The Ethics of Secrecy

Avoiding the Pitfalls and Contestedness of Corporate Autonomy

My argument in defense of corporate secrecy is best begun by pointing out what premises it does *not* adopt. The reader will notice I rarely or never make reference to a concept of corporate autonomy, or more broadly to any set of corporate interests (such as corporate privacy) that may be a positive source of moral claims against the interference or the imposition of demanding social obligations. This is intentional.

On the one hand, arguments for corporate secrecy premised upon the presence of corporate autonomy for secrecy succeed only on highly contested premises. This is not to say they are false premises, but rather to say that an account that would reach a similarly permissive conclusion without such premises would be much more compelling.

On the other hand, those who seek to debunk corporate claims for secrecy by *rejecting* corporate autonomy sometimes run into a logical fallacy. There is a significant effort on behalf of ethicists who seek to demonstrate corporation's wide-ranging responsibility as a moral agent to avoid at the same time granting them status as a moral patient, which may vest them claims for privacy, autonomy, etc. (for a review, see Caulfield & Laufer, 2019; cf. Sepinwall, 2015; Donaldson, 2017). The worry is that imposing obligations on corporations as agents at the same time vests them with rights typically available to natural persons (e.g., French, 1984). Thus, any attempt by an

interlocutor to rebuke certain ethical obligations is naturally met with a counterargument that the corporation lacks the interests or claims that would normally grant individuals immunity from the imposition of those obligations (e.g., Berkey, 2021; Diamantis, 2017; Werhane, 1985; cf. Silver, 2018). The potential *lack* of moral claims a corporation may make *on its own behalf* is itself a theoretically generative proposition, with many potential implications (Caulfield & Laufer, 2018).

In the case of secrecy, the dialectic around corporate obligations to disclose is usually defined by the competing 'trumps' that are privacy and transparency (Birkinshaw, 2006; Henriques, 2007: 52–55; Sagar, 2015). A popular argument for corporate transparency proceeds by simply denying the importance or existence of corporate privacy. Stevenson's (1979, 1980) scholarship is representative; he argues that corporations must be transparent precisely because they lack the kind of privacy interests we might think individuals retain. *Ceteris paribus*, where privacy would not be infringed by transparency of some information, corporations are duty-bound to be transparent about that information. And since corporations have little or no privacy interests (let us concede), corporations have a wide-ranging duty to be transparent.

Even in a world where corporations lack claims to privacy, however, it is not analytically necessary that corporations therefore may not keep things secret. Rights, like rights to privacy, are expressions of what claims an agent may have on the actions of others; rights describe what others must do or refrain from doing in relation to us. Separate, though, are the claims *others* have on an agent; *privileges* describe what we may permissibly do (or not do) in light of potential competing claims on our actions.

While often corporations may not have a *right* to keep certain information secret, it remains entirely possible they have a *privilege* to do so.

The coming apart of privileges of secrecy and rights to secrecy gains its real salience primarily in the case of *corporate* information. Both rights- and interests-based theories of individual privacy (see Tavani, 2007) can accommodate the notion that we should respect the secrecy of much of what a person merely wishes to keep secret, *ceteris paribus*. If my friend has a desire to keep the color of her winter coat secret, I should not peek in her coat closet because her desire in this case (however eccentric) confers a right to secrecy about her coat color.

But, even if corporations *do* have privacy interests in some form (Orts & Sepinwall, 2014), whether those interests are distinctive to the corporation or only derivative of their employees, such interests would not seem to extend to whatever information an agent of the corporation may want to keep secret. Corporate information is often a kind of impersonal, institutional information which cannot be made private merely by the wishes of those with access to it.[6] Thus, it is in many cases much more difficult to formulate a *right* to secrecy when it comes to corporate information. This is because it seems likely that often no one has the kinds of interests that might justify such a right, and no one has the normative power to originate new rights to secrecy by sheer will, as my friend does with regard to the color of her winter coat.

[6] The disembodied (or, more aptly, discorporate) nature of corporate information is reinforced by views of the corporation which see it as 'unowned' (Strudler, 2017), and thus not sharing any special connection with any particular (group of) individual(s).

Overall, critiques of the corporations' claims to privacy do not sufficiently quash the analytical possibility of a privilege of corporate secrecy, whereas arguments for corporate secrecy premised on some notion of corporate autonomy or privacy turn entirely on the truth of hotly contested premises. My account aspires to demonstrate the permissiveness of corporate secrecy without reliance on such premises.

That Stevenson's argument or others like it do not quash the possibility of a corporate privilege to secrecy, however, does not make them irrelevant. Although they are, at present, incomplete, they can easily be supplemented with an additional premise. This premise concerns what we might call secrecy's 'moral neutrality.' Stevenson's framework, which argues for a duty to disclose from the lack of corporate privacy, makes sense if secrecy is in some way presumptively wrong or bad, i.e., non-morally-neutral. On a view where secrecy is morally disfavored by default, dispensing with all of the relevant potential positive defenses of secrecy—including corporate privacy—indeed would establish a duty of disclosure. It is the meaning and terms of establishing the 'moral neutrality' of secrecy to which I turn next.

Secrecy and Moral Neutrality: What Would it Mean for Secrecy to be 'Morally Neutral'?

Theorists have long been critical of intractable secrecy and "organizational silence" as an inhibitor to moral and social progress (Morrison & Milliken, 2000; Williams & Perlow, 2003), involving social pressures which make us all, in our own ways, "conspirators" (Zerubavel, 2006) in the facilitation of corruption and immoral behavior (Greenberg & Edwards, 2009; Milliken, Morrison, & Hewlin, 2003; Morrison,

2014). Secrecy, along with the cultures of silence that fail to abate it, are said to collude to create "havens" for wrongdoing (Munro, 2016; Rhodes, Munro, Thanem, & Pullen, 2020), empowering managers to do as they wish at the expense of individual employee will (De Maria, 2006; Pfeffer, 1981) and the wills of other stakeholders (Van De Bunt, 2010). In other words, secrecy is part of what we might call an "opportunity structure" (e.g., Petersen, 2011; Petersen & Saporta, 2004) for wrongdoing.

The case against secrecy may seem obvious in view of its consistent association with wrongdoing. But, as I hope will become immediately clear, the tight association between secrecy and wrongdoing runs in only one direction; while wrongdoing often requires secrecy, secrecy does not frequently require wrongdoing. Or, in Simmel's (1906) words, "secrecy is not in immediate interdependence with evil, but evil with secrecy."

To provide just a few examples: the value of fun or delight may excuse lies to avoid spoiling a surprise birthday party (Bok, 1989; Strudler, 2016); self-defense justifies the withholding of facts that make us vulnerable to others, whether in business negotiations (Strudler, 2005) or normal interpersonal relationships (Stohr, 2014); decency and professionalism sometimes demand that we withhold inappropriate, uncivil, or immoral thoughts or feelings from others (Caulfield, 2019; Stohr, 2014); discretion is a virtue required in intimate or private matters (Simmel, 1906); mentorship and parental role obligations may require us to express optimism—even when we have in fact very little—about the prospects or performance of our mentees or children. Indeed, concealment and revelation, lying and confession, and nondisclosure and disclosure are

all banal features of everyday life (Bernstein, 1985; Bok, 1989; Goffman, 1959; Simmel, 1906).

It is therefore difficult to speak of the morality of secrecy and transparency in any generality given the diverse settings in which one or the other is permissible, required, forbidden, good, or bad. Previous attempts to articulate an ethics of secrecy have thereby been plagued by a kind of particularism—each activity or context, so different in social and moral dynamics, seems to require a different analysis (Scheppele, 1988: 14), leading the theorists to offer a somewhat disconnected smattering of suggestions.[7] Indeed, many theorists in the end explicitly endorse an "ambivalence" toward secrecy (Bok, 1989; Wexler, 1987); ethical dilemmas around secrecy are sometimes even framed as a "right vs. right" choice, rather than a choice between right and wrong.[8] On these framings, secrecy is something about which we can say very little evaluative, as a general matter.

While this may at first seem like a defeat for the cause of developing an ethics of secrecy, it may instead be a generative conclusion. Simmel holds that secrets are neutral sociological forms, able to be analyzed apart from the "moral valuations of its contents." So, we might be able to say generally that secrecy is *morally neutral*. Turilli and Floridi (2009) advance a similar line of argument in pointing out that the disclosure can be benign, having "ethically unrelated effects, if any effect at all." Some information, they argue, lacks any particular moral salience, and is thereby justifiably subject only to

[7] This was unfortunately the case in Bok's landmark monograph on the subject (see Gilbert, 1985; Stack, 1984).

[8] For the case, see https://www.cio.com/article/2446373/careers-staffing/making-the-best--right--decision.html (Jr, 1997; See *Leadership & Ethics—Joseph L. Badaracco Jr.*, 2015 (describing a case in which a manager faces a the dilemma of disclosing upcoming layoffs in light of the fact that an employee was about to take on significant financial obligations relying on his continued employment. He argues this is a "right vs. right" problem.))

economic calculus when firms deal with one another (citing Lamming et al., 2004). Costas and Grey (2014) also argue for the moral neutrality of secrecy: secrecy about patient medical records, they offer, would be *good*, but secrecy about medical malpractice would be *bad*. Transparency itself is therefore "value-neutral quality," one connectable to a range of different ideals about how individuals should interact (Schipper & Bojé, 2008) and one that can be evaluated only in the social and political contexts it is deployed (Birchall, 2016). For most of these theorists, transparency is therefore "not an ethical principle in itself but a…condition for enabling or impairing other ethical practices or principles"; the disclosure of information therefore requires evaluation "on a case-by-case basis" (Turilli & Floridi, 2009); issues must be examined "separately…to examine the moral arguments made for and against each one" (Bok, 1989).

One might argue, though, that everything in the realm of ethics needs to be evaluated on a case-by-case basis, at least in a trivial sense. For instance, we feel comfortable saying lying is wrong, even though we at the same time tend to consider some lies justified or otherwise benign. The fact that secrecy can be occasionally justified or otherwise benign does not establish its moral neutrality, insofar as we are committed to saying that lying is not also a morally neutral practice. In our evaluation of behavior, we must recognize that in many areas of moral inquiry we are able to reach general evaluative conclusions about certain classes of practices, despite exceptions. The claim that secrecy is morally neutral, therefore, is much more complex than at first blush. And establishing this claim also seems to require more than a short list of counterexamples.

Some have gone beyond counterexamples, instead basing their argument for neutrality on a methodological claim. Bok argues that to hold secrecy as "inherently

deceptive or as concealing primarily what is discreditable" would be to "deflect…moral questions" around secrecy (33). Organizational theorists make a similar claim: when secrecy is something we are interested in as a phenomenon, and clearly it has good and bad forms, we should endorse a moral neutrality about secrecy (Grey & Costas, 2016). In their landmark review of scholarship, Albu & Flyverbom (2019: 269) argue that we should avoid pronouncements as to "whether transparency is good or bad, since such binaries pre-empt the exploration of transparency as a dynamic, situated, and sometimes paradoxical phenomenon."

But, of course, one can reflectively adopt a non-neutral stance toward secrecy without shunning thoughtful inquiry on the exceptional circumstances in which that stance is contradicted, as we have in the case of lying. We have many sophisticated philosophical and sociological accounts of lying that do not find any need for some premise of 'moral neutrality.' More broadly, positivist research methods do not require value-neutrality; indeed, a group of scholars have argued that it is, in fact, *impossible* for empirical research to be value-neutral (Keeley, 1983; Tenbrunsel & Smith-Crowe, 2008; Wicks & Freeman, 1998). It is also becoming increasingly clear that the explicit recognition of values in management research promises to strengthen theory and research design (Kim & Donaldson, 2018; Scherer & Palazzo, 2007; Schreck, van Aaken, & Donaldson, 2013). There is therefore no clear methodological reason to avoid making general pronouncements about the ethics of secrecy, provided secrecy is suitably defined at the outset.

The bulk of organizational literature has been unrelentingly positive about transparency, and either implicitly or explicitly critical of secrecy. These dissenting theorists seem to be correct that we cannot *always assume transparency to be good* and *secrecy to be bad*, as much of the organizational literature does. It is a sad state of affairs in the literature as:

> 'more-transparency-than-thou' has become the secular equivalent of 'holier-than-thou' in modern debates over matters of organization and governance (Hood, 2006);[9]

and as:

> secrecy comes to be associated with all that is nefarious (inefficiency, corruption, malfeasance, conspiracy) and transparency with all that is noble (efficiency, accountability, honesty, trustworthiness) (Birchall, 2011b; see O'Connell, 1979).[10]

Insofar that advocates of moral neutrality mean to push back on this widespread endorsement of transparency—its fetishization or deification (Borradori, 2016; Hood, 2006; Pozen, 2020)—their efforts are noble. However, these theorists have been too quick to establish the supposed neutrality of secrecy by pointing to a few counterexamples, which serve only to *negate* the prevailing view rather than to establish a positive view of moral neutrality. These theorists establish that "not all forms of secrecy (including those practiced by states and corporations) are illegitimate and unethical" (Grey & Costas, 2016: 6); but the claim of moral neutrality largely remains both

[9] See also Birchall (2014): "transparency bestows cultural and moral capital on those who promote and implement it."

[10] The stigmatization of secrecy can be readily seen in the negative metaphorical deployment of the 'dark side' of certain practices in much management research (Linstead, Maréchal, & Griffin, 2014).

unjustified—as I have shown, the methodological reasons advanced in support of it seem to fail—and underspecified.

So, what does it mean to say secrecy is 'morally neutral,' if we are to say more than the obvious fact that it can sometimes be morally salutary? Bok offers a different phrasing of this moral neutrality that elucidates the core of the claim. Bok argues that whereas:

> "[lying is] *prima facie* wrong, with a negative presumption against it from the outset, secrecy need not be. Whereas every lie stands in needs of justification, all secrets do not."

We can roughly understand this in terms from W.D. Ross's pluralist specification of how various considerations come to bear on moral decisions (Ross, 2003). This view holds that most ethical normativity is reducible to *pro tanto* reasons that favor or disfavor an action. In the case of lying, we can say there is always a reason to disfavor it, such as listeners' autonomy (Shiffrin, 2016). To say that listener autonomy is a *pro tanto* reason is to say that it is a genuine reason of real weight, though possibly non-decisive (Kagan, 1991: 17). Listener autonomy, as a *pro tanto* reason, can lead us to conclude that lying is *prima facie* wrong—which is to say that lying, at first glance, is wrong in virtue of the default reasons that disfavor it. However, in some cases, countervailing reasons permit or demand that we lie.

This allows us to make sense of the claim that 'lying is wrong'—we do not mean it is *universally* wrong, but that it is *presumptively* wrong. Any case of permitted lying constitutes an exceptional case and demands justification by way of countervailing reasons. The same goes for promise-breaking: holding all else equal, promise-breaking

always carries with it some presumption against it (Arnold, Audi, & Zwolinski, 2010; Ross, 2003). The independent weight of reasons against lying or in favor of promise-keeping, however they are spelled out, are the basis of the most plausible accounts of deontological ethics (Crisp, 2016; Sidgwick, 1907).[11] One can therefore rightly say that specifying which actions demand justification and which do not is one of the core tasks of deontological ethical theory (Scanlon, 2000). Some of the most surprising results of deontological reasoning are those high-stakes cases in which justification is concluded to *not* be needed, that is, where an agent is required to find no special justification when choosing among a set of options of great moral consequence (Taurek, 1977; Wasserman & Strudler, 2003).

The question of secrecy's moral neutrality can therefore be understood as: is secrecy *pro tanto* wrong? Or equivalently: is disclosure *pro tanto* required?

Many would answer both of these questions in the affirmative. I will not. If I succeed in defending secrecy's moral neutrality, then I will succeed in establishing the possibility of a corporate privilege for secrecy. Once this task is complete, the ethical question that arises from a demand for transparency will no longer consist in "why should corporations be allowed to keep x information secret?" but rather in "why should others be entitled to x information?" Thus, establishing secrecy's moral neutrality is hugely

[11] Of course, not every system of deontological ethics will endorse the metaphor of "weighing" reasons that pluralistic intuitionism endorses. For instance, Kantian ethics is not generally understood as recognizing free-standing agent-neutral reasons or objective values that determine right action (Hill, 2000: 11–32). We are not here seeking to define the proper systematization of deontological ethics, but only establishing what it means to 'demand justification' as opposed to not demanding justification. This classification can be understood either in a realist metaethical sense—that there are actual reasons in favor or against an action which weigh in favor or against its rightness or wrongness—or merely in an epistemic sense from the perspective of a deliberator, as in the Kantian case, whereby one may develop a special suspicion of one class of actions once these actions are understood to typically violate the moral law in a kingdom of ends.

consequential for the moral calculus, insofar that the need for justification flips toward those who would demand information, in place of those who would conceal it.

A Defense of Corporate Secrecy's Moral Neutrality

Say I call Apple Corp's in-house architect, identify myself as a stakeholder (customer), and demand to be told about the number of lamps they have in their headquarters. The architect has that information on hand and could costlessly give it to me. Is she morally obligated to do so?

Intuitively, no. What if I ask her about the number of vending machines? Or the number of tiles on the floors? No. In such cases, my desire to know the information does not seem to provide the architect with moral reason to release the information.

Of course, these are somewhat bizarre requests, and there are requests for information that seem much more morally salient, such as about treatment of workers, environmental impact, or executive pay. But this fanciful example demonstrates something rather important. The example suggests that the architect is not obligated to release this information because she has no affirmative reasons to do so. The stakeholder's curiosity does not itself ground any reason to release. This implies that our moral calculus holds secrecy to not be *pro tanto* wrong. If secrecy were *pro tanto* wrong, reasons *against* secrecy would persist even in these particular cases. A view that considers secrecy *pro tanto* wrong holds that one should be transparent so long as one has no countervailing reasons against doing so. Such a view would imply that the architect in this case should release the information. Indeed, it would not only imply that she is

obligated to release this information, but also that she *was always* obligated to do so; that she should've done so already, given she had no countervailing reasons against doing so.

Contrast this with a case in which the architect had already promised to provide the lamp information. In that case, the architect would be obligated to provide the information. This is not because the information took on some new importance, but because breaking promises is *pro tanto* wrong; in the promise-case, the architect would be obligated to release the information.

These cases serve as an illustration of the point that secrecy is not *pro tanto* wrong. If it is the case that secrecy is not *pro tanto* wrong, then there will be instances in which stakeholders will lack claims against the corporation for the release of information (i.e., possess a 'no-claim'); in those cases, the corporation would possess a *privilege* of secrecy.

The *scope* of this privilege has yet to be established (discussed in Essay 2). But the *existence* of a corporate privilege of secrecy suggests something important about the relevant moral calculus. Insofar that secrecy is not presumptively wrong in the way I've described, then it is morally neutral.

I will now address several objections to this argument.

Dealing with the Dual Meaning of Secrecy

Since introducing the lamp case, I have treated secrecy as a monolithic concept, but we found earlier that secrecy can actually denote both the methods of *keeping* secrets and *being* secret. Here, I've largely focused on the extent to which the lamp information

may be withheld. It might be objected that I've papered over a crucial distinction between the *fact* of concealment and the *method* of concealment. Therefore, my argument may be incomplete insofar that I only address the former type of secrecy.

Here, we are trying to establish only the potential existence of a case in which secrecy is not required despite the absence of countervailing reasons. The moral question of the *method* of concealment is less salient in the Apple Case, because if I succeed in establishing that the *fact* of concealment is within the architect's prerogative, there is an obviously permissible method of concealment the architect could deploy to conceal the information—i.e., politely saying "no, I will not reveal that information."

We can imagine cases, however, in which there would be *no way* to conceal information without engaging in a morally questionable method of concealment. Consider the case where silence or a refusal to provide a response to a question in a negotiation would provide such a strong clue so as to essentially provide the information itself. In such cases, deception or lying may be necessary for concealment to be a tenable prospect.[12] We can imagine a more hypothetical case in which someone is running away with a notebook containing crucial information, and the only way she could be stopped from releasing the information is if she were shot. Or we could imagine a case in which, due to cultural context, any attempt to conceal information in response to a particular answer would be uncivil, insulting or otherwise frowned upon (e.g., would count as being

[12] I do not mean to say deception would certainly be unethical in such cases. It is only to say that, in such cases, we would require further argument to establish the propriety of the secrecy of the information insofar that we require some argument to justify the deception deployed. On some accounts, the fact that deception may be the only tool available to avoid the disclosure of information one is otherwise entitled to keep from the other party itself justified deception as a kind of self-defense (Strudler, 2005).

'dodgy' or 'cagey'). In such cases, considerations relating to *methods* of concealment become a limiting factor insofar that there may be no permissible method of concealment to exercise what would otherwise be a perfectly permissible privilege of secrecy.[13] Even if a party is not entitled to some information per se, they are entitled to certain standards of treatment (Evan & Freeman, 1988); one may therefore lack methods by which one can *morally* deny them that information.

These concerns, however, do not apply to the lamp case since there is no real question as to whether the architect has a permissible *method* of concealment available. Therefore, the lamp case is sustained as one which demonstrates that secrecy is not pro tanto wrong.

Just Another Counterexample?

One may object that I am doing what I have just criticized others for doing: if, as I suggested before, a list of counterexamples does not itself establish secrecy's moral neutrality, how could this single counterexample get the job done?

The reason is because many counterexamples in existing literature only succeeds in showing secrecy to be permissible in the context of countervailing reasons. For instance, it has been argued that secrecy is justified when transparency would result in great harm to stakeholders, as in the release of medical information (Costas & Grey, 2014: 5; Henriques, 2007: 162–163). The reason secrecy under such circumstances is

[13] Of course, agents who *could* have deployed a permissible method of concealment, but instead chose an impermissible one, will also be blameworthy for the way in which they exercised their privilege of secrecy.

acceptable is because of the negative welfare impacts non-secrecy would have. This example establishes the general principle that secrecy *can* be permissible (and even good) (Grey & Costas, 2016), at least depending on the circumstances. But such a principle does not imply that secrecy is not *pro tanto* wrong; many presumptively wrong behaviors (lying, manipulation, or killing) can be permissible (or even good), depending on the circumstances. Rather, the lamp counterexample is meant to demonstrate that, *even absent countervailing reasons*, secrecy is not wrong; in other words, that secrecy is not *pro tanto* wrong. That is what makes this counterexample and others like it of special argumentative value.

Denying the Absence of Countervailing Reasons

But one may therefore object on the grounds that I have not successfully isolated the countervailing reasons in this case. For one, even though I stipulated that the architect could *costlessly* release the information, it is hard to imagine what this could mean in a practical case. Every act of disclosure, we might think, requires the use of *some* amount of time or other resource, however miniscule.[14] It may be that that the amount of time the architect would expend in this case would itself count as a countervailing reason in the decision whether to release the lamp information to me.[15]

[14] Indeed, potential financial and operational costs are what motivates some progressives to critique transparency and freedom of information initiatives in political contexts, insofar as radical transparency policies threaten to inhibit the effective functioning of government for the public good (Lessig, 2009; Pozen, 2018).

[15] The architect may also think that responding to this request could invite a deluge of similar requests which would balloon costs further (call this the 'costly policy' form of the objection). Adopting a policy of total transparency as to this kind of ordinary information could prove burdensome in the long-run to an organization; even transparency policies which focus only on the most morally salient information haven proven to be costly to organizations, so costs will often be a compelling consideration in evaluating transparency policies (Henriques, 2007: 161–162). However, in any given case, it is not clear the architect

The easiest solution here is to tweak the case slightly. First, we could suppose that even though disclosure is not *costless*, it is instead *profitable*.[16] We can easily stipulate in this case that, while disclosure imposes some costs, the public will reward their radical transparency policies sufficiently to overcome this cost. Even under this modified case, where the disclosure is profitable rather than costless, intuitively there is still no obligation to release the information.[17]

Another solution is to suppose some technological advance that would minimize the actual cost to almost-zero. We could suppose the architect and I both have brain implants that would enable the architect to transmit information in 1/1000th of a millisecond. In this version of the case, however, I believe the intuition still holds.

I think the above modifications effectively address the objection. But one may want to hold one's ground and assert, for instance, that I have still failed to meet the standard I set for myself; I did not say "very very very small countervailing reasons" as in the case of the 1/1000th of a millisecond cost, nor did I say "countervailing reasons

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could hold themselves as committed to distributing costs across a hypothetically large number of requestors, insofar that actual costs are the morally relevant factor (see Smart, 1956). A policy might be reasonable where the architect sets some annual limit on the amount of time dedicated to such requests (akin to a law firm's pro bono budget), but we can easily assume this is the first case of the year. This 'costly policy' form of the objection, nonetheless, is addressed by the very same 'profitability' solution I propose.

[16] I adopt a similar argumentative strategy in a case discussing a doctor's compensation in Essay 2.

[17] Another solution, though I think less compelling, would be to describe a set of cases which differ on a couple of dimensions to tease out the relevant moral factors (Kamm, 2008). Instead of understanding the provision of information as costless, we might envision a variety of circumstances where we vary the level of cost, and attempt to discern whether the cost affects the strength of our intuitions or otherwise the strength of the obligation itself.

relating to profitability."[18] Instead, I purported it to be a case in which there are *no* countervailing reasons.

Consider, then, an argument in the alternative. If it is true, that rather minor costs relieve an organization of its obligation for transparency, then we can take two things to be true. First, in most real-world cases, an obligation of transparency will not attach for this kind of information, since in every real-world case of a demand for transparency there is always, however minor, some cost to being transparent. If such costs are indeed universal, then functionally, even if not formally, secrecy is not pro tanto wrong. Second, we might make a methodological point about expressing the absence or presence of moral reasons. If it is true that the most minor of costs relieves the architect of a duty of transparency, we should infer that perhaps there never existed a presumptive moral reason in favor of transparency at all.[19] In such a case, secrecy would still be formally morally neutral.

A Bias in Favor of Secrecy?

One may worry that I am not arguing for a moral neutrality, but a moral preference for secrecy. My account may seem remarkably friendly to those who wish to keep some information secret. I therefore may be seen to dethrone the current moral

[18] One unlikely but potential objection is that imposed costs in the form of labor are not commensurable with profit; i.e., at least analytically, it is possible there is a moral difference between *performing labor with some commensurate profit x* and *never having performed the labor at all*. On such a view, some alternative uses of our time (e.g., leisure) are not commodifiable into quantified opportunity costs which could be compensated with some sufficiently high level of profit.

[19] I adapt the structure of this argument from Taurek (1977), where he argues if a duty can be excused upon the introduction of conditions which are relatively morally insignificant, then the duty may not have existed in the first place.

asymmetry which favors transparency, only to replace it with a moral asymmetry which favors secrecy. But this is not what I do.

Rather, I endorse an eminently symmetric claim: my claim is that both disclosure and non-disclosure are morally neutral. One has a symmetric privilege to disclose or not disclose. Similarly, in the case where corporate secrecy consists in a mere privilege rather than a right, corporations have symmetric no-claims against those who would demand concealment and those who would demand disclosure. My account does not hold that secrecy presumptively deserves some kind of special protection, only that disclosure *and* secrecy are *privileges*. That a demand from a stakeholder for transparency is met with the question "why should the stakeholder be entitled to information x?" would not illustrate an asymmetry; this is because a mirror demand from a stakeholder *for secrecy* would generate the question "why should the stakeholder be entitled not to have information x released?"

What reason could the architect have for denying the information?

There may be concerns about the *rationality* of the action of someone who refuses to costlessly deny information if they do not do so out of malice or an effort to cover up malfeasance. Why would the architect want to refuse this information if she has nothing to hide? The more basic form of this objection can be found in Bentham's work as well as in Biblical literature:

> Suspicion always attaches to mystery. It thinks it sees a crime where it beholds an affectation of secresy; and it is rarely deceived. For why should we hide ourselves if we do not dread being seen? – Bentham (1996 [1843]), *Of Publicity*

> For all who do evil hate the light and do not come to the light, so that their deeds may not be exposed. But those who do what is true come to the light, so that it

> may be clearly seen that their deeds have been done in God. – John 3:20-21 NRSV

There are two features of this argument that are problematic. First, it is false in that it suggests there are no non-nefarious reasons to keep something secret, i.e., that there is no reason for the innocent to keep information hidden. The Bible itself provides a few possible reasons itself: a virtue of modesty may demand that one pray in private,[20] or a virtue of loyalty may obligate one keep certain secrets lest they commit a betrayal, as Judas did, who should have concealed Jesus's physical location or some of His claims.[21] We rehearsed earlier a number of secular non-nefarious reasons why someone might want to keep something secret, as in the case of a surprise birthday party (Strudler, 2016). To choose a more general case, profit can also count as one such reason. Profit is not an innately nefarious end (Brennan, 2012; Machan & Uyl, 1987); to withhold information on the basis of cost or in the interest of profit would not imply that one is guilty.

So, we have rejected the proposition that rationality preempts the possibility of non-nefarious secrecy. But there is a second feature of the rationality argument that is problematic; it presumes one needs a reason to *keep something secret*, rather than *no reason not to keep something secret*. We can act in virtue of reasons that counsel determinate choices; but we also face cases in which we have no objective or neutrally recognizable reason to choose one choice over another (this is elaborated on in Essay 2).

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[20] "And whenever you pray, do not be like the hypocrites; for they love to stand and pray in the synagogues and at the street corners, so that they may be seen by others. Truly I tell you, they have received their reward. But whenever you pray, go into your room and shut the door and pray to your Father who is in secret; and your Father who sees in secret will reward you" NRSV Matthew 6:4-6.

[21] There is some historical debate as to whether Judas informed just on Jesus's location to the authorities, or also His very claim to be the Messiah which may have been kept to his "inner circle" (Ehrman, 1999: 216).

Indeed, this is the essence of having a privilege, which is having a range of action in which one is free to make choices, not necessarily in view of the *claims we have against others,* but in view of the *lack of claims* (the *no-claims*) others have on us. In the lamp case, the architect need not specify some deliberate reason why she chose to withhold the information, only that she saw no reason *not* to withhold information.

This quality is not limited to decisions of minor moral consequence. Perhaps the most impactful illustration of this fact is Taurek's (1977) numbers thesis, in which he demonstrates that we have no reason to save a larger group of people from certain death over a smaller one. In fact, in such a case, he offers that he would simply flip a coin.

In the lamp case, the relevant question is whether the architect seems obligated to release the information, not whether she has reason to do so. A more sophisticated model of what reasons matter when determining obligations of disclosure, and the choices individuals have at their disposal, is developed in Essay 2.

V. The Value of Disclosure

One might concede that my case demonstrates secrecy is not *pro tanto* wrong, and even that I have successfully outlined an intelligible structure of privileges and reasons that model this fact, but worry that I have not offered much by providing a positive reason *why* this is the case. Here, I offer one based in reflections on the *value* of disclosure (as a mechanism of transparency). I begin by evaluating the most prominent existing framework that purports to systematize the relationship between transparency and values, and demonstrate how it complicates, and in doing so obscures, the

relationship between transparency and values. I ultimately argue for a simpler understanding of transparency as an 'instrumental' or 'secondary' value. I then consider an objection from procedural justice in transactions.

Turilli and Floridi's framework

Turilli and Floridi (2009) argue for two basic relationships between transparency and "ethical principles": some ethical principles *depend* upon the release of information (accountability, safety, welfare, informed consent) whereas other principles *regulate* information (privacy, anonymity, freedom of expression, copyright). Their use of the phrase 'ethical principles' seems idiosyncratic among other work in applied ethics, so allow me to rephrase in terms of 'values.' In their first category, they hold there is one set of values that require, as a pre-requisite, information transparency. For instance, on their account, there is no such thing as accountability *without* information transparency (citing Mallin, 2002); further, safety and welfare must often be served by the announcement of product defects in product recalls. So, accountability, safety, and welfare are among those values which require transparency.

The selection of these particular values, though, is somewhat peculiar if not arbitrary. It will seem much less arbitrary if we abstract these more specific values to the broader values typically invoked in applied ethics: safety and welfare can instead be put simply in terms of simply 'welfare' or utility, and informed consent in terms of autonomy. Once we arrive here, we have a much more comprehensive statement for their first category: transparency is required to advance the central basic values of morality, i.e. autonomy and welfare or utility.

But this proposal contradicts Turilli and Floridi's moral neutrality claim. They initially held that transparency can be enabling or impairing, and they established that transparency is not always enabling by pointing to cases in which transparency would be morally benign. But here they are establishing that transparency is prerequisite to advancing certain basic values. If this is the case, then in any case that moral values are at stake, transparency would *always*, to some degree, be an enabling condition. There would be no such cases in which a nil amount of transparency would be sufficient. This seems overly inclusive. It seems we should reject the idea that transparency is *always* pre-requisite to advance the basic values of morality, even if it sometimes is. In short, we should retain their eminently reasonable observation that transparency can be enabling *or* impairing where moral values are at stake.

The remaining 'ethical principle' they claim depends on information transparency is accountability. But accountability does not seem a value in itself, but rather a process through which other values (such as welfare or autonomy) are secured. We keep others accountable *for* something—for promoting employee health, safeguarding the environment, and respecting customer autonomy, for instance. Accountability is not a *value* to be promoted as an end, but rather a relationship or process that can secure more basic values. If it is the case that accountability is required to advance these basic moral values and that it requires transparency, then accountability is only a species of the various 'enabling' relationships transparency may share with basic moral values.

Alongside this first category of 'dependence,' their second category, 'regulation,' is illustrated by a claim that service user privacy and anonymity can only be protected by

disclosure of information to users about constraints on the use of their information. Users cannot have privacy, it may be thought, if they never know how the information they release to the world may or may not be used. Also, Turilli and Floridi argue, we often must know something about copyright status in order to know what we can do with information in some forms.

These examples seem to mesh two claims. *First* is a claim about a distinction we can draw between values that require transparency (the 'dependence' relationship), and values whose content *entails* some prescription about information itself. When we say we want to advance welfare, for instance, welfare entails nothing directly about information. However, values such as anonymity, privacy, and copyright, when taken as things to be promoted, entail certain moral conclusions about how information should be used.

Second is a claim that *information about some aspect of the regulatory environment*—whether certain information is copyrighted, how online platforms are empowered to use user personal information, etc.—is often necessary to protect certain values (like privacy, anonymity, and copyright). If no one could ever discern what was or wasn't copyrighted, copyright would not be meaningful. If no one ever understood the terms under which private information was being supplied, individuals could not protect their privacy. Therefore, there must be some public understanding of the boundaries of these concepts. One might argue that these concepts require transparency precisely because they aren't *a priori* specified. Just as the moral boundaries of what is or isn't property is constructively shaped by the law (Ripstein, 2010), what does or does not count as copyrighted or what users are entitled to in terms of user privacy will depend on

law and the regulatory environment. In order to navigate the world, then, individuals will need 'transparency,' in some sense, about what these concepts mean and how they apply in their daily lives.

So far, therefore, we draw three claims from Turilli and Floridi: (1) that, conceptually, basic values will sometimes require some degree of transparency, (2) that some subset of values (e.g., anonymity, privacy, and copyright) directly entail normative conclusions about transparency and secrecy, and (3) that some public information or understanding about the regulatory environment is necessary to advance the subset of values included in (2).

However, we modify (3) to say that information about or understanding of the regulatory environment is often necessary not just to advance that *subset* of values that directly entail normative conclusions about transparency and secrecy, but also to promote what I have called the *basic* values like welfare, utility, and autonomy. Indeed, it is likely that the former subset of values—anonymity, privacy, and copyright—are valuable only in virtue of the fact that they advance one of the *basic* values: autonomy, welfare, or utility.

We can see, then, that Turilli and Floridi's conceptual mapping is less than precise. We can draw three conclusions from their proposed framework. First, some values, such as welfare or autonomy, are served by transparency; also, sometimes these same values are not served by transparency (Turilli and Floridi's neutrality claim). Second, information about our surroundings can be necessary to protect ourselves or otherwise advance these basic values in some way. Finally, some ethical concepts operate

on the distribution of information itself, describing or prescribing certain features of the informational environment (or the 'infosphere' (Floridi, 2013)). These propositions, while seemingly true, are disappointing, insofar that they are obvious and generic, and therefore not especially insightful. Turilli and Floridi's complex account, while illustrating the importance of information to values *per se*, fails us to offer us anything uniquely helpful for characterizing this relationship.

The most helpful perspective going forward favors the simplicity of merely specifying *transparency as having an instrumental value* (Heald, 2006b). Here, I do not use 'instrumental' in the sense of 'economic instrumentalism' (e.g., Garriga & Melé, 2004; Gond, Palazzo, & Basu, 2009), but rather in the sense of an *instrument to an end*. To say transparency is an instrumental value is also not to endorse a teleological or consequentialist morality, whereby actions are evaluated only by some monistic value. Rather, transparency is a tool that can be used to, yes, promote the good, but also satisfy our obligations. Thus, it may *enable* us to be moral (Turilli & Floridi, 2009) and be said to have only secondary rather than primary value (Pozen, 2020: 327).

In cases where disclosure may not achieve an end of any value, or an end which it is obligatory for an agent to achieve, then there is no moral reason to disclose, and therefore no moral reason to disfavor secrecy (this insight is also elaborated on and applied in Essay 2).

Fairness and Disclosure: A Tight Bond?

I have argued that transparency policies should be evaluated only as a tool toward some end. In Essay 2, as an application of this perspective, I argue that if we want to

promote pay fairness, we should evaluate disclosure or secrecy only in relation to whether or not it actually promotes these ends, and in relation to those substitute mechanisms that may be available to promote the same ends.

But note that the pattern of a fair end-state is not always completely specifiable *a priori*. Sometimes distributional patterns are considered fair precisely because they were arrived at through some procedure, meeting certain criteria. We may call this *pure procedural fairness* (Rawls 2009: 75). To illustrate the concept, Rawls (2009) uses the example of gambling: provided certain conditions are met (e.g., no cheating), gambling will result in a fair distribution (whatever the pattern of winnings/losses) precisely because it was arrived at through a fair procedure of betting. We can imagine an analog in business ethics: a firm in which, with the full consent of all involved, pay is determined by a random number generator. Given that this random number generator is consistently applied across everyone, feasibly, we could be assured that the outcome is *fair* whatever the resulting distribution is.[22] What matters, for pure procedural fairness, is not that the outcome matches some pre-specified, desired distribution, but that the outcome was reached under a fair procedure under the correct conditions.

Accounts of fairness in market transactions often adopt a pure procedural orientation; these accounts do not specify precise distribution of costs and surpluses

[22] In such a case, one might object to certain outcomes on other grounds—for instance, if the number generator ever results in a pay of $0, one might object that it violates some *minimum* standards of pay, rooted in human dignity (Arnold & Bowie, 2003; Meyers, 2004). In other words, we may have good reason to preempt even those transactions that are entered into by fully consenting adults (Moriarty, 2018: 701–702; cf. Nozick, 2013). But these objections are not on the grounds of *fairness*. These arrangements would be *fair* even if they would be otherwise problematic or unjust.

across the transacting parties, but that the transaction must be *voluntary* and negotiated between suitably *informed* parties (Moriarty, 2020b). On this basis, the following objection may be posed to my account: insofar that a transaction's fairness is determined by procedure, and the proper procedure requires parties are "informed" in some way, then disclosure may be required, as a matter of procedure. On such an account, disclosure is not a *substitutable means to an end*, but a distinctive, fairness-conferring condition in the process of engaging in transactions. Thus, disclosure could be said to be *constructive* of ethical transactions. I review this argument as it has been advanced by Jeffrey Moriarty. I argue that, while such an objection likely yields significant implications in the case of information about products or services, when it comes to 'corporate information' as a function of corporate transparency, Moriarty's argument, if successful, applies only to a narrow, specific type of secrecy.

The Argument for Disclosure from Procedural Fairness

The otherwise plausible requirement that bargaining parties be sufficiently informed and consenting gets thorny when we begin to consider what "being informed" constitutes. Across a series of articles, Jeffrey Moriarty has argued that many of our 'fairness' concerns in transactions involving labor, products and services can in fact be dissolved into a problem of insufficient disclosure (Moriarty, 2014, 2016, 2021). His work therefore provides a natural departure point for understanding whether and why corporate transparency may be required by procedural fairness.

Online Personal Price Discrimination

Online person price discrimination—the practice of offering different customers online different prices based on various consumer attributes (e.g., location, buying history)— is sometimes seen as unfair and other times entirely accepted. When companies engage in price discrimination that is obvious, e.g., when a movie theatre offers senior discounts, we typically take no issue. But when companies engage "in price discrimination in context[s] in which it [i]s unexpected," especially in online contexts, Moriarty argues that it may be wrongfully deceptive (Moriarty, 2016). It is manipulative, Moriarty argues, in that it does not allow for the customer to decide autonomously to consider other options in light of price discrimination practices (Moriarty, 2016, 2021). Companies, when engaging in these practices, "target shoppers in a way that shoppers do not expect, and do not prepare for" (Moriarty, 2021).

For Moriarty (2021), the problem is not that the retailer captures more surplus than the consumer (cf. Steinberg, 2020),[23] but the way in which the surplus was pursued or gained; "[w]hat matters is not the result but the process. In the competition for the surplus generated by a transaction, retailers and consumers must be on equal footing." Fair competition requires that both parties have the opportunity to "take steps to protect" themselves from one another (Moriarty, 2021). The *only* way for price discrimination to be compatible with fair competition, in cases in which people are reasonably ignorant of the practice, is some form of disclosure:

> online personalized pricing would not be problematic if retailers disclosed that they were using it—or alternatively, once this practice becomes common knowledge[…] If online retailers are unwilling to disclose that they are

[23] Moriarty argues that we have little objection to a normal transaction in which one buys, e.g., a stapler, at exactly one's reservation price without gaining consumer surplus and the supplier gains a producer surplus.

> personalizing prices, then the only way for them to steer clear of moral wrongdoing is to stop doing so (Moriarty, 2021).

In short, whereas price discrimination does not typically bother us because "[m]ost forms of price discrimination are transparent" (Moriarty, 2021), an ethical problem arises when a particular practice of price discrimination is not.

Non-Discriminatory Pay Disparities

It is not just that vendors may charge customers different prices, but they may pay employees different wages or salaries. Even pay disparities that are not discriminatory, Moriarty (2014, 2016) argues, may be wrongful insofar that they furtively run against a reasonable expectation that others doing similar work are being paid similarly to peers. In short, pay disparities can be wrongfully *deceptive*, even when they are not per se discriminatory; they are deceptive, in particular, when they are not disclosed in light of employees' reasonable ignorance of them. A highly "transactional" firm which is outwardly impersonal may be exempt from disclosure requirements, Moriarty offers, since employees cannot have a reasonable expectation that such a firm would impose norms of equality across job levels. But more "relational" firms, where there is an ethos of commitment and trust, can be said to wrongfully take advantage of employees' expectation of similar pay when they pay disparately (Moriarty, 2016).

If True, A Narrow Exception

Although I am tempted to dispute the ethical principles Moriarty defends—in particular, what counts as "reasonable" ignorance and whether dismissing a mere expectation can count as "deception"— there is not room to do justice to them here. Instead, I point out that the critique—even when successful—applies only to one narrow

type of secrecy, and, further, that the disclosure requirements entailed by Moriarty's concerns are not as demanding as he claims.

Moriarty's concern seems to relate to what Scheppele (1988) calls 'deep secrets.' Deep secrets are those whose existence are not even known:

> When the target suspects that there might be a secret, we find shallow secrets. When the target is completely in the dark, never imagining that relevant information might be had, we find deep secrets (Scheppele, 1988: 21)

Scheppele's ultimate view, in Strudler's (1997: 365) telling, is that:

> a decent system of law will prohibit deep secrets in negotiation but will ordinarily allow shallow secrets, because deep secrets undermine equality in a bargaining relationship whereas shallow secrets do not.

So Scheppele seems to present a mirror account of Moriarty, though more generally oriented. Fair or 'equal' bargaining requires that both parties at least *know of* that which may be concealed, even if they do not know the underlying information. In the case of online price discrimination, bargainers must be informed that the vendors may offer different prices to different customers, even if the bargainers are not entitled to know whether they are being offered a price on the high end or low end of the seller's range. In the case of pay discrimination, employees must be informed that they may not be paid equally to their peers, even if they are not entitled to know the exact pay of their peers.

But notice that the disclosure requirements implied by this critique are much narrower than Moriarty claims. Moriarty argues firms must disclose that they *are* engaged in price discrimination. But, to answer these critiques, a firm need not disclose positively what they are doing. A firm need not say whether it is or is not engaged in price discrimination, for instance. Instead, it must only disabuse employees or customers

of their potentially (though not necessarily) false expectations. In other words, it need only negate their expectations—offering that the firm *may* or *may not* be engaged in X, Y, or Z—not provide positive information as to what the firm is actually doing.

The demand this puts on firms is minor. Firms may choose to include in every checkout some disclaimer about price discrimination (even if they are not engaged in price discrimination), or in every hiring process some disclaimer about differential pay. In the latter case, one might even be able to make a case that the phrase often found in job ads, "salary levels are set at competitive levels," would itself be sufficient.

We could also imagine firms outsourcing these obligations to customer or employee education organizations or some Chamber of Commerce. Marketing campaigns informing consumers that they should not assume online retailers are not engaged in pay discrimination, and some others informing employees that they should not assume that employers pay everyone in the same job equally, might do the trick.

In other words, even if we concede that novel transactional practices create some duty of disclosure as to their existence, Moriarty's claims do not bolster any robust duties to disclose information about corporate operations, such as pricing and pay practices.

Product Information vs. Corporate Information

We have put Moriarty's claims about corporate pricing and pay practices into perspective. But there do remain difficult questions about what kinds of information sellers or buyers must disclose about *underlying products or services*. To provide just a couple of examples: a real estate transaction where one party holds some information that affects the land's value (Strudler, 1997, 2005), or a manufactured product in which the

seller has information about the product's durability (DiMatteo & Wrbka, 2018). Clearly, I have not dealt with such issues in this Essay.

We may still point out that, even in these cases, the disclosure of expert testimony may serve as a suitable solution. But, otherwise, we should cabin 'product information' for a distinct analysis. My primary area of interest has been with regard to transparency *about* stakeholders, *between* stakeholders. In particular, I have discussed the "ethics of corporate secrecy," since it is against corporations which claims of "transparency" are most often levied. It is to this kind of institutional transparency which my analysis most directly applies.

This distinction may also serve to justify why companies have so many more disclosure obligations about corporate information toward shareholders in contrast to stakeholders. This disparity is sometimes used to suggest that some illicit prioritization of shareholders is baked into disclosure regulation (Greenfield, 2008: 127–129; Singer, 2019: 181–182). But if we understand corporate financial information as essentially information about shares *qua* products, then, on the distinction we've drawn above, we can see why shareholders may have a greater claim to corporate institutional information than other stakeholders. It is not because shareholders are more important than other stakeholders, but that the kind of 'product information' to which everyone may be entitled is, in a shareholder's case, financial information about the corporation itself.

VI. Conclusion: Moral Privilege as a Blindspot in Business Ethics

The discussion around corporations' moral status is largely consumed by the discussion of duties and rights (for a review, see Silver, 2018). Duties and rights are certainly important, but they are not comprehensive of the scale of moral relations corporations share with society. Part of the task of business ethicists must be to also mark out those cases in which a corporation may or may not lack a right,[24] but they *do* lack a duty; where they lack a duty, corporations have privileges of a certain scope.

The circumvention of the notion of privilege can be seen to follow from the deployment of frameworks that have largely been used to determine corporate obligations from the top-down. It is not just that corporations may maximize profit, but that they are *obligated to*; or, it is not that corporations may do a variety of things, but that they have some *purpose* which they must fulfill to its greatest extent (cf. Slote, 1989). Such approaches exclude the very concept of moral privilege from our purview, because corporations are seen as entities endowed with totalizing teleologies, dedicated to some end or set of ends (in terms of social value, social welfare, utility, efficiency, what have you) that not only excuses, but *prohibits*, them from the pursuing a host of otherwise valuable tasks (e.g., Mejia, 2019; Rodin, 2005). It has only been recently suggested that these kinds of visions deny the complexity of making trade-offs among values in real

[24] Some most innovative scholarship has sought to direct our attention away from the duties or rights of corporations and toward corporate no-claims against interference. In this line of scholarship, it is suggested that civil society or the state has the privilege of using various formal and informal mechanisms to regulate corporations (prosecute them for crimes, hold them to account in civil law, etc.) despite their ontological status; what matters on these approaches is not whether corporations are moral agents or whether they can possess rights, but rather the fact that they possess no-claims against our interference with them (Diamantis, 2017; Sepinwall, 2015; Walt & Laufer, 1990; cf. Clark, 1939). So while thinking has begun to shift toward thinking about what no-claims corporations have, whatever rights they may (not) possess, there has yet to be a shift toward thinking about corporate privileges.

business activity (Mitchell, Weaver, Agle, Bailey, & Carlson, 2016) as well as the plural, rather than monistic, roles of business in society (Smith, 2019b).

Indeed, it is not clear how the most popular top-down approach, the Market Failures Approach, can grapple with critiques that accuse it of deploying what is essentially a form of constrained utilitarianism, in its promotion of efficient exchange (Cohen & Peterson, 2019), or that it relies on overly idealized assumptions about the operation of markets (Moriarty, 2020a). One, indeed, might be justified in being skeptical of top-down approaches in general; those attempting to formulate some "unified" moral theory for commerce or business (Heath et al., 2010) may inevitably be tilting at windmills when they demand some specification of a singular purpose, good, or value from which all commercial norms can and should be derived. It may therefore be no surprise that the market failures approach has struggled to distinguish itself from utilitarianism, given its explicit identification of the maximization of Pareto efficient transactions as the *exclusive* aim of business ethics. It seems to commit itself to a rather harsh teleology.

The bottom-up perspective provides some key moral insights into an area of business ethics that has largely escaped close consideration. As we direct our own personal lives toward meaning, we not only navigate our own moral duties, as well as take advantage of certain prerogatives endowed to us as rights in virtue of our personal autonomy, but we also recognize when others' desires or wishes do not call on us to fulfill them. Sometimes our prioritization of the self will be grounded in some kind of personal right to autonomy; but other times our latitude to ignore certain desires or

interests of others stems merely from the fact that they possess no-claims against us, the correlative of a moral privilege. We simply cannot describe our relationship with other people and broader society without the concept of moral privilege. If the concept of a privilege has such obvious relevance to our personal lives, it is but a few conceptual steps to infer they may be highly relevant in the commercial sphere for businesses, managers, and other market actors. It may turn out that many of the 'freedoms' libertarian economists, management scholars, and ethicists have formulated in terms of 'rights' are indeed freedoms in the sense of 'privileges.'

In this essay, I've endeavored to establish the *existence* of such privileges in this sphere, specifically a privilege relating to secrecy. But this has been to say very little about corporate privileges' *scope*. A rugged Randian objectivist may recognize many more privileges and privileges of greater scope than a communitarian. The second essay begins to describe an approach to thinking about *the scope* of businesses' privilege to secrecy. We should not discount the significance, however, of having justified the mere existence of corporate privileges to secrecy. I have claimed that this justification establishes that secrecy is not pro tanto wrong and therefore that secrecy does not always stand in need of justification. It would be a major step in discourse and theory if we disabused ourselves of our innate skepticism of corporate secrecy, and instead saw it as a privilege that may exist regardless of the rights or entitlements corporations may (not) possess.

ESSAY 2 PAY SECRECY, DISCRIMINATION, AND AUTONOMY[25]

Should pay be secret? As a question facing most private firms, domestic and abroad, it is remarkably ambiguous. The question of pay secrecy can be disaggregated into at least two, distinct questions: (1) should we legally require firms to disclose pay? and (2) are firms obligated to voluntarily disclose pay in the absence of a legal requirement?

Against the zeitgeist (Dennett and Roy, 2015; Florini, 2000; Trotter et al., 2017; Risher, 2014) and vast majority of recent commentary (Burkus, 2016; Estlund, 2014; Law, 2018; Lawler, 2014; Moriarty, 2018), this essay argues for a qualified negative answer to the latter question. This essay remains agnostic as to whether we should have a public policy which mandates that all firms disclose pay, but nonetheless holds that, in the absence of such a policy, firms are not generally obligated to disclose pay in virtue of employees' rights or interests.

While conclusions about policy prescriptions and individual morality often track each other, I contend that the distinction remains highly consequential for our normative prescriptions in the pay secrecy context. If managers are asking themselves whether they may keep pay secret in view of employee interests or rights, their answer, I contend, may be in the affirmative. I argue that pay secrecy is permissible in view of two central reasons offered against it: the prevention of wrongful discrimination and the

[25] This is an edited version of a paper I published in the *Journal of Business Ethics* (Caulfield, 2021).

enhancement of employee autonomy (Moriarty, 2018; Estlund, 2014). These represent the best, most intuitive reasons to think employers have a duty to their employees to disclose pay, and I contend that they either fail, or instead may support only a public policy mandating disclosure. Since it is difficult to prove a negative claim, this essay adopts the strategy of rebutting the two most cogent reasons to think that employers have a directed duty to employees to disclose pay.

My discussion will reveal a conception of transparency as a regulative (rather than moral) ideal—transparency in many instances is attractive not because it is a requirement of justice or a value in its own right, but because it is a useful mode to coerce firms who are not intrinsically motivated by moral considerations.[26] Transparency as a *policy* tool is perhaps best deployed against firms that fail or refuse to fulfill their moral obligations. This runs directly against the theoretical commitments of 'top-down' theorists reviewed in Essay 1, in particular their position that self-regulation will share similar principles and justifications with classical forms of regulation (Norman, 2011).

This discussion will also demonstrate one method for delimiting the 'boundaries' or scope of corporate privileges of secrecy. In this essay, I use the distinction between agent-neutral and agent-relative reasons to help draw these lines.

[26] Others have made some similar observations, though steeped in the application of particular frameworks rooted in continental philosophy or Frankfurt School critical theory (Flyverbom et al. 2015). For instance, Roberts (2009, p. 964) observes that, "[t]he problem but power of transparency lies in its use as an instrument of hierarchy, large-scale organisation, and control at a distance." Transparency is said to lie at the intersection of power and the panoptic worldview (Foucault 1980, 1995), relying on "the twin possibilities of observation and control" (Zuboff 1989, p. 321).

Transparency is best understood as a 'bad man' policy,[27] meant to apply primarily to those firms who do not fulfill their obligations. Those firms that are properly responsive to moral reasons, however, will not as easily find moral reasons that conclusively point toward transparency. In the case of pay transparency, this is in part because there are alternative ways for firms to satisfy their obligations to police wrongful pay discrimination and to advance employee autonomy. If we examine pay secrecy from the moral deliberative point of view, we find very few reasons to think firms are obligated to disclose pay. The disclosure of pay is sometimes just one optional avenue toward fulfilling other binding firm moral obligations.

Importantly, this argument is not meant to be the last word on the permissibility of pay secrecy. It is necessarily incomplete, since dealing with just two of the cogent reasons offered in favor of pay disclosure requires extensive argumentation. While I will stress these limitations in the conclusion, my argument will be a significant step forward in the debate surrounding pay secrecy if it successfully demonstrates that just these two reasons cannot ground a general obligation to disclose pay. It will also be theoretically generative in suggesting new insights that should guide our thinking about the ethics of disclosure, transparency, and secrecy more generally.

II. What Is Pay Secrecy, and Is Pay Even Secret?

[27] This is a reference to Oliver Wendell Holmes' 'bad man' theory of the law, which held that the law was best understood from the perspective of the 'bad man' who would calculate which rules to follow and which to break. In this case, transparency's moral value is primarily seen as *responding* to the bad man in society.

Pay secrecy can take on a range of definitions (Marasi and Bennett, 2016). Sometimes it is defined in terms of workplace policies that prohibit employees from discussing their pay (e.g., Dreisbach, 2014; Nosenzo, 2013; Rosenfeld, 2017). There are plausibly interesting ethical issues considering workplace regulation of employees' communication, in particular regarding their pay, and also the endorsement of social norms that discourage pay talk in the workplace (Edwards, 2005; Lyons, 2012). But these are not at issue here. Rather, I am interested in pay secrecy as some measure of top-down organizational secrecy regarding employee pay information.[28] We might start with pay secrecy as the intentional concealment of pay information from employees ('intra-firm pay secrecy'), to stakeholders more broadly, or to the public. Pay information may encompass not just salaries or wages, but also some permutation of matched name, race, gender, or position/job category information.

Just as organizational secrecy more generally can include different degrees of opacity, transparency, and translucency (e.g., Lamming et al., 2001), pay secrecy is best understood as referring to a "continuum" of disclosure policies, wherein firms can release a range of different amounts of information about pay (Colella et al., 2007; Marasi and Bennett, 2016). For instance, firms could reveal salaries attached to positions, races, and genders but not names, or reveal some other permutation of the different factors in which we might be interested. For clarity's sake, throughout the initial outline of my argument, I focus on the more extreme formulation which treats pay secrecy as total non-disclosure to

[28] Secrecy is fundamentally "a property of information" (Mahon 2018, pp. 173–4; Scheppele 1988, p. 12), not a property of things. Hence, my definition of pay secrecy does not reference pay *per se*, but pay information.

both the public and within the firm. But I will also hope to show that my argument applies equally, and perhaps even more strongly, in cases of more modest proposals for pay disclosure (e.g., disclosing only summary statistics of pay and gender at a firm).

Much of the argument is developed with a focus on American and other contexts where there exist basically zero policy mandates for the typical private firm to disclose pay.[29] The argument also, however, applies in other contexts where some transparency measures are mandated, but where firms face the dilemma of whether they should release even more information than required. As the result of 2014 European Commission recommendations, for instance, some EU Member States have adopted certain pay transparency policies, such as requiring employers of certain sizes to issue pay reports detailing average gender pay levels by position or category of employment (Veldman, 2017; Eurofound, 2018). None of these policies, however, mandate the kind of comprehensive disclosure contemplated here. Therefore, even firms required by law to disclose some pay information face the decision of whether they should disclose even more. I argue they are not so obligated in virtue of employees' rights or interests.

Before moving into the substantive argument concerning pay secrecy, let us briefly consider one question that may arise in the reader's mind: is pay secret at all? The answer to this question depends on the firm's social context and its applicable law. In the United States, the National Labor Relations Act grants a right to certain classes of

[29] The reader may be President Obama's 2014 Executive Order 11246, which was widely heralded to be a significant step toward ending pay secrecy (Eliperin, 2014). The Executive Order resulted in rules barring federal contractors from retaliating against employees that discuss pay (Calvasina et al., 2015), substantially providing rights to individuals not already covered under the NLRA's protections, such as managers, supervisors, and other workers in specific industries (Department of Labor, n.d.). This is not the kind of pay secrecy this article focuses on, however, which is the top-down intentional concealment of pay information.

employees to discuss their pay with other employees, even when explicitly prohibited by a non-disclosure agreement. Many employees therefore have the right to share their pay information with other employees—how could we say that pay is in any sense secret? Many have, I think correctly, contended that the social norm against sharing information about pay means that giving workers the legal right to discuss pay does not mean pay will effectively no longer be secret (Danziger and Katz, 1997; Bierman and Gely, 2004; Cullen and Perez-Truglia, 2018).

In response, some may be tempted point to recent mildly successful efforts by employees to gather pay information independently. For instance, a former employee of Google created a spreadsheet in 2015 to aggregate pay information, and a full 1,200 US-based workers volunteered their information over the next two years (approximately 2% of Google's global workforce) (Wakabayashi, 2017). Even this effort, though, yielded incomplete information, with only a portion of Google's 'job levels' represented, some job levels underreporting, and looming worries of potential misreporting (Wakabayashi, 2017). Even the workforce of Google, which is arguably one of the most technologically sophisticated workforces in the world, was unable to fully overcome the boundaries of silence surrounding individuals' pay. Silence and secrecy are often seen as coconspirators as silence reinforces secrecy (De Maria, 2006; Morrison and Milliken, 2000). Sissela Bok (1989: 7) points out that that silence, conveyed by the Greek word *arretos,* is:

> the first defense of secrets…At first, [*arretos*] meant the unspoken; later it came to mean also the unspeakable, the ineffable, and the prohibited, sometimes also the abominable and the shameful, and then the secret…

If anything fits this description in the modern American workplace, it is pay.[30]

III. A Confused Conversation: Regulation or Obligation?

It is well-known in ethics that different reasons can bear on the question of whether a state should coerce agents to X or punish them for not X-ing, (the 'policy-question') and on whether agents should or morally may X (the 'ought-question'). For example, if I promise my friend to meet him for lunch, I ought to meet him for lunch. But, if I feel lazy, stay at home, and standup my friend, we would think it problematic for the government to force me to go to lunch with my friend or to fine me for not doing so. One could make a similar argument in the case of adultery. In cases such as these, nonetheless impermissible behavior should not be regulated by the state.[31] In other cases, we might think the state should prohibit what would otherwise be morally permissible behavior (e.g., not being a member of the relevant state Bar Association, but giving nonetheless responsible and competent legal advice). This is just to say that, while the ought-question can certainly inform the policy-question and vice versa, there is no necessary relationship between the two. This distinction will be central to my contention that firms are not morally required to disclose pay in view of certain considerations, and will ultimately point toward some interesting general conclusions about the ethics of secrecy more generally.

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[30] I cannot speak comprehensively to the cultures surrounding pay in non-American contexts. But it would seem that social norms encouraging the discussion of pay would be the exception to the rule.

[31] I should note that, as Robert Hughes (2013a, 2013b) points out, it does seem conceptually possible for government to enact non-coercive laws—that coercion is not necessary to law-making. But even a non-coercive law regulating lunches with friends would seem unjustified.

My argument proceeds from the moral perspective, which here is theorized from the first-personal point of view—rather than thinking about what we would tell an agent she should do (who may be defectively nonresponsive to moral reasons) or what we would incentivize or coerce an agent to do, the content of a moral obligation is best seen from the perspective of the reasonable, sincere person, which is typically best thought of as the self (Korsgaard, 1996: 16–17). In asking what a reasonable, sincere firm, from its perspective, should think about the moral reasons which apply to it and its actions, I can equivalently be seen to ask what we ourselves, were we in a position to make major decisions in certain firms, should do as reasonable, sincere actors.

Some portions of the argument suggest that certain considerations give firms no reason whatsoever to disclose pay, and thus operate on the ecumenical premise that we must have reasons in favor of some course of action for that course of action to be obligatory. Other portions argue in the alternative in order to demonstrate that even when we are tempted to say there are reasons in favor of disclosure, they do not rise to the level of obligation.

The reason I adopt these strategies is to avoid as much as possible invoking any moralized notion of 'privacy.' As discussed in Essay 1, corporate privacy's existence and scope is hotly contested (Orts and Sepinwall, 2014; Pompa, 1992; Stevenson, 1980), and the potential conflict between employee privacy and pay disclosure has muddied the waters in the pay secrecy debate (e.g., Estlund, 2014). It is too easy and tempting for managers to claim a wide-ranging right to secrecy on the basis of the privacy of the 'private' companies

they run (Calland, 2007; Stevenson, 1980). I aspire to craft an account that can demonstrate pay secrecy's permissibility with minimal reference to privacy.

One objection, though, to the cleaving of law and obligation in the ways contemplated here might come from the increasingly popular argument that firms should regulate themselves even when the law fails to or cannot do so (Heath, 2014; Norman, 2011; A. Singer, 2018b). This argument disputes the more naïve view that business ethics is and must be defined exclusively in terms of legal regulations (Fieser, 1996). The reality is that specific legal regulations can be illegitimate or contrary to ethics (Hasnas, 2006; Young, 2019), and that businesses should exercise self-restraint even when the state fails to regulate conduct, whether because of institutional limitations or lack of will.

As a negation of the naïve view, this argument is clearly correct. But one contestable issue is whether the ideal regulatory regime for business (Heath, 2014)—what we think the state should or could ideally do—is the right guide to how to self-regulate in the non-ideal (Moriarty, 2020). This is particularly true, I will show, when certain ideal state measures would be fashioned primarily to respond to unethical firms (e.g., disclosure regimes designed to reveal wrongdoing). While such wrongdoing might favor action at the state level, they do not, I will argue, apply to firms that are themselves already ethical or that have equivalent non-public accountability mechanisms.

I hope to show that firms, *ceteris paribus*, either have no moral reasons to disclose pay or at least no reasons of nearly sufficient strength to think that they are obligated to disclose pay. Thus, I do not argue merely that, *on balance*, considering the reasons in favor of pay secrecy and those against it, that firms need not disclose pay. Rather, setting the bar

higher for the argument to succeed, I only consider the first part of the equation—the potential reasons in favor—and argue that they are largely illusory or at least extremely weak.

The under-appreciation of the distinction between normative arguments for policy and for voluntary action in the pay secrecy context could be partly attributed to its place in public discourse, and general exclusion from (normative) academic literature. Sissela Bok (1989: xvi-xvii) once observed that "debates over secrecy and openness," when they are conducted in public, are often "strictly for purposes of advocacy. As a result, the underlying issues of concealment and revelation…are too often ignored, and moral problems get short shrift." Such is the state, it seems, of the debate around pay secrecy.

IV. Reason One: Mitigating Wrongful Pay Discrimination

Likely the most salient and cogent concern offered against pay secrecy is the policing and prevention of wrongful pay discrimination. Although secrecy can be used for virtuous ends (Anand and Rosen, 2008; Laufer, 2010), it can also be seen as a catalyst for the perpetuation of injustice and wrongdoing. We have a good deal of evidence which suggests that pay discrimination is a pervasive and pernicious force in society (Frye and Holmes, 2017; Kulow, 2013: 404–406). While this may or may not weigh in favor of a public policy mandating pay disclosure (Estlund, 2014; Kulow, 2013), we also might be tempted to think that pay secrecy is generally *immoral* since it allows organizations and those in power to wrong their employees (Pompa, 1992: 150) and contribute to enduring socio-economic inequalities. It does this by shielding managers from critique (Pfeffer,

1981, pp. 200–201; Pompa, 1992), allowing them to discriminate behind closed doors (Grey and Costas 2016, p. 61)— information scarcity, one might say, is a breeding ground for discrimination (Lightfoot and Wisniewski 2014, p. 221; Petersen and Saporta 2004). But, accepting this as a basis for a moral obligation on the part of firms to disclose, I shall contend, would be to move too fast. Indeed, judged from the perspective of preventing or policing discrimination, pay secrecy is not immoral.

Non-Discriminatory Pay

Before advancing this claim, it is worth clarifying first what, exactly, I mean by discrimination or pay discrimination. Defining, broadly, what pay discrimination constitutes is not as easy as one might think. Hereon, I use 'discrimination' or 'pay discrimination' evaluatively to delimit cases of *wrongful* discrimination or pay discrimination.

First, cases of pay discrimination are properly seen only as instances of larger categories of discrimination such as gender- or race-based discrimination.[32] If two employees identical in group membership were paid differently, we would not generally consider it a case of pay discrimination (Moriarty, 2016). Thus, whether something counts as pay discrimination will depend on whether it counts as gender, race, or some other kind of discrimination. Our definition of pay discrimination will therefore depend significantly on our definition of the larger categories of discrimination. Many theories of these categories of discrimination can be grouped into those which focus only on disparate treatment discrimination (e.g., intentionally giving preference to white men) and those that

[32] I thank an anonymous referee from *Journal of Business Ethics* for drawing this helpful distinction.

focus on both disparate treatment and disparate impact discrimination (e.g., giving preference to certain backgrounds or characteristics that have the unintended effect of disproportionately disadvantaging a group). In my analysis, I will refer to these types of discrimination collectively since my argument will apply equally. One common, broad definition of discrimination is that it involves the disparate and disadvantageous treatment of someone based on their actual or perceived membership of some socially salient group (Altman, 2016; Lippert-Rasmussen, 2013). Pay discrimination, therefore, involves paying employees in a disparate or disadvantageous way based on their actual or perceived membership of some socially salient group.

Second, the instances of pay discrimination referred to in this essay often fall into the category of intra-firm pay disparities. I mimic the discussions around pay discrimination in legal, philosophical, and management scholarships, which largely focus on the problem of differential pay for members of a socially salient group *within* a firm or group of firms. However, one significant, more macro concern is segregation across professions or job categories. Pushing women, for instance, into lower-paying jobs, such as primary school teaching, can result in a disparate income distribution (England, 2017; Rhoads, 1994; Sorensen, 2019). While the different economic, sociological, and institutional factors that contribute to these trends remain hotly debated (Blau and Kahn, 2000; Porter and Vartanian, 2011), the fact remains that this gender segregation structurally occurs and that ethicists and economists alike have neglected such structural issues for too long (Sayers, 2012; Young, 2010: 59).[33]

[33] I thank Amy Sepinwall for illustrating the importance of this concern to me.

One reason to think my intra-firm focus is not wholly inadequate, however, is that very few assert that this segregation is due to informational disparities *across professions*; while there is a good case for the fact that informational disparities will empirically tend to exacerbate pay inequalities within firms or job categories (Eisenberg, 2011), it is not typically asserted that, for instance, women are underpaid because they are unaware of the disparity between the accountant and the primary school teacher. While unjust forces and immoral actors perpetrate job segregation, we have little reason to think that pay secrecy is a primary force among them.

Another reason to think my focus on intra-firm discrimination not inadequate is because a focus on intra-firm *pay discrimination* need not entail a focus only on intra-firm *pay disparities*. Since this essay focus is on the duties individual firms owe to their employees in virtue of their rights or interests, what it means to "not engage in pay discrimination" can easily include not just avoiding intra-firm discriminatory pay disparities, but also a mandate to refuse to capitalize on job segregation. Take one example: some have argued that child-care employees (who have been disproportionately women) and animal-care employees (who have been disproportionately men) are paid differentially in part due to gender discrimination (Rhoads, 1994). Definitionally, for our purposes, to say that the child-care firm should not engage in pay discrimination may imply not only that it should not allow for unjust intra-firm pay disparities, but also that it should remedy or prevent intra-firm pay depression that may result from job segregation (Patten, 1988; Paul, 2019).[34] Paying depressed wages because of gender, race, or some other group

[34] Here, ought implies can. While companies certainly have some discretion in setting compensation (Moriarty 2012), the market economy does impose some constraints (Maitland 1985).

membership would therefore qualify for our working definition of pay discrimination, which is paying employees in a disparate or disadvantageous way based on actual or perceived membership of some socially salient group. Firms cannot simply make blind reference to industry standards of pay as even pay distributions determined largely by the external market forces can rely on or perpetuate discrimination (Sunstein, 1991).

Finally, each of our particular definitions of pay discrimination will depend in part on our larger conceptions of fairness or justice in wage. Pay disparities between men and women, for instance, stand in need of justification, but there is a question as to what would count as a justification. The fact that a man tenured professor in a department is paid more than a woman Ph.D. student in that department does not, on its face, entail gender-based discrimination. Beyond the more obvious cases, what fairness in pay may require merits some brief exploration, especially because an implicit claim of mine in the ensuing discussion will be that it is possible to simultaneously pay fairly and secretly.

Fair Pay

Empirical literatures operate firmly in a positivist mode, using employees' actual perceptions or psychological tendencies to delimit what is 'unfair' or 'unjust' (Cropanzano et al., 2007; Bloom, 2004)—in the area of compensation, Adams's (1963) equity theory is a prominent example. There are, however, a number of popular potential candidates for fairness in pay from the more distinctly moral point of view. Many of these can be boiled down to three general conceptions of wages—as rewards for work, as incentives for work,

or as prices for labor (Moriarty, 2020).[35] Reward conceptions are backward-looking and reference what an employee deserves; incentive conceptions are forward-looking and construe wages' function in terms of getting people to do things in cost-effective ways; and price conceptions see wages in the context of a labor market whose purpose is to generate prices that signal valuable information (Moriarty, 2020).

Most relevant here are the reward and incentive conceptions of wage because this essay is interested in employer pay disclosure obligations relative to employees' rights or interests. These conceptions operate on moral considerations distinctive to particular employees rather than to larger society—what does employee X deserve or what would incentivize employee Y? Furthermore, the reward and incentive conceptions seem to characterize how employees and employers tend to conceive of wages, respectively (Moriarty, 2020).

For our purposes, it is only important to note that neither of these views necessarily entail pay disclosure.[36] Seeing a wage as a mere incentive is a largely amoral outlook—it is only a view of the economic utility of wages and itself entails few moral conclusions.[37]

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[35] See, also, Waluchow (1988) for a rich smattering of candidates for a standard for fair pay, including: how the existing market would pay; what a theoretical fair market would pay; what a person deserves; how much the work contributes to the success of the firm; how much the work benefits society; the going rate in the same industry for people who do the same work; and adherence to the employer's pre-existing explicit or implicit wage policy.

[36] There stands a question, however, of what conceptions of fairness my account may exclude. For one, it seems to exclude recently popular legitimation approaches to management ethics (Scherer and Palazzo 2007; Schrempf-Stirling et al. 2016); if compensation much be legitimated through some kind of public discourse (Joutsenvirta 2013), secrecy would seem to preclude such legitimation.

[37] Moriarty (2020: 124) argues that the incentive view takes on a "normative logic of effectiveness." However, this logic only attaches by way of being associated with a demanding view of the corporate objective with a mandate to generate shareholder wealth. While I think Moriarty is right to associate the incentive view with theorists who adopt this kind of shareholder-centric paradigm, there is no necessary analytical relationship between the two. We have good reason to think corporations have significant moral discretion to direct resources to different ends (Strudler 2017), whether wages are primarily incentives or not.

With regard to the reward view, disclosure does not seem necessary to paying someone what they deserve. Although secrecy can be thought to enable pay inversions which distort the reward functions of pay (Glassman and Mcafee, 2005), firms are free to adjust their pay distributions periodically to ensure they provide what would be considered fair pay under the reward conception.[38] My analysis below therefore does not conflict with these popular views of wage justice. This will become clearer as the argument for why the policing or prevention of discrimination does not generate pay disclosure mirrors the argument for why fairness does not require pay disclosure.

The Non-Discriminating Firm

Here, I begin the central argument that discrimination does not, itself, provide sufficient reason to a firm to ground a duty to disclose pay. The first step in my argument involves pointing out that just because *some* firms engage in invidious pay discrimination does not straightforwardly entail that *all* firms have reason to disclose pay. To illustrate, consider this case:

> Joseph lives in a relatively remote part of a populous town—the only way for him to get around is via his car, which has a built-in, incorruptible GPS system that keeps a log of all of his movements. Pablo, his neighbor, recently learned that a body was found twenty miles away from his house and that investigators are certain the victim was murdered. Assume also that Joseph is not a suspect in the investigation. The following conversation ensues—
>
> > *Pablo*: "Joseph, I have posted my GPS information publicly, and I think you are obligated to do so as well."
> >
> > *Joseph*: "Why should I?"
> >
> > *P*: "Well, to prevent the murderer from getting away."

[38] I thank an anonymous referee for pointing this out.

> *J*: "But I'm not the murderer—how would my releasing my GPS information help with that?"

Under these conditions, it seems that not only does Joseph have no obligation to disclose his GPS information, he has *no moral reason to do so whatsoever*. It is not just that Joseph's privacy interests, for instance, trump other *pro tanto* reasons to disclose—rather, he has no *pro tanto* reasons to disclose at all.

And just as the well-meaning Joseph has no reason to disclose his GPS information, it seems clear that even companies that wish to make good faith efforts to combat discrimination do not have moral reason, or at least do not have reason *in virtue* of a concern regarding pay discrimination, to disclose pay *if they are not engaged in discrimination*. To say that they do would imply, for instance, that Joseph not only has reason to release his GPS information, but also reason to go to the police precinct and request to be interrogated as a suspect. Since Joseph knows he is not the perpetrator, he has no reason to make such efforts. The same goes for the non-discriminating firm. The main contention of this section of the essay can be summarized in this way: A firm that is not discriminating as a matter of fact cannot be said to have a reason to disclose pay in virtue of an effort to combat discrimination.

This seems true *ceteris paribus.* There is one potential normative reason that may arise if we alter the ceteris paribus conditions a bit in the Joseph example, namely the fact that he is not a suspect in the investigation. If he were a suspect, he then might have some, exceptionally weak moral reason to disclose so as to not divert police's attention or resources. In the same way, a firm that is suspected of pay discrimination by authorities may then have *some* moral reason to disclose. But such conditions, it seems, could not

generate an obligation to disclose *to the public or to employees*. Even if these conditions would generate a requirement to disclose to authorities, it would not generate the disclosure contemplated here. The burden of proof is on those who would argue that the presence of suspicion itself could generate an obligation—in our example, that Joseph must disclose his GPS information merely if the police consider him a suspect. And they would need to further establish that such an obligation would necessarily take the form of the kinds of public pay disclosure contemplated here.

The Discriminating Firm

Some might reply to the foregoing that many companies *do* discriminate against employees, and so when we say "firms ought to disclose pay," we are really talking about firms that are already engaged in such malfeasance. The modified claim that "firms that are engaged in wrongful discrimination should disclose pay" seems much more compelling. But I argue that this claim is not correct, at least without a qualification that severely limits its scope and applicability. Indeed, most firms engaged in discrimination do not have reason to disclose pay.[39] To suggest where my argument will lead, consider a different case:

> Joseph* abducted someone and made him his captive. His neighbor, Pablo, discovers this and confronts him—
>
> *P*: "Joseph*, you need to release your GPS information now!"
>
> J*: "Uh, why do you say that?"

[39] Since I am only considering in this particular section whether the prevention and policing of discrimination constitutes a reason to disclose pay, when I say something like "the firm does not have reason to disclose pay," I generally mean, in this section, "the firm does not have reason to disclose pay in virtue of the imperative to prevent and police discrimination."

> *P:* "Because you are doing something wrong, and the GPS information *might* lead someone to stop you."
>
> J**:* "I'm confused. Isn't the right thing to do to release my captive and confess?"
>
> *P:* "Oh yes, but, you ought to release possibly incriminating information rather than do nothing."
>
> J**:* "But doing nothing isn't my only option…"

Here, something about Pablo's demands strikes us as odd or defective. Pablo claims that Joseph has an obligation to do something, assuming he would not do the very things any person responsive to moral reasons would do. It seems like Pablo initially makes an *incorrect* claim about what Joseph should do.

One might think the same about those who contend that companies that are engaged in wrongful discrimination have reason to disclose pay. A CEO, faced with facts that her company is engaged in wrongful discrimination, should, at the very least, use every resource available to *stop the discrimination to the extent possible*,[40] and perhaps publish a press release admitting to or apologizing for past discrimination. But to claim that this CEO should, as a matter of morality, disclose its employees' pay seems to misstate what the CEO ought to do. Let us distinguish the following claims, all given that a firm is engaged in wrongful discrimination:

(a) The firm ought to disclose pay.
(b) The firm ought to disclose pay ***rather than*** do nothing.
(c) The firm ought to confess and stop discriminating ***rather than*** disclose pay.
(d) The firm ought to confess and stop discriminating.

[40] Hereafter, when I say "cease discrimination" or "stop discrimination," I mean with the qualification of "to the extent possible." I will discuss herein issues relating to the extent to which companies may be limited in preventing or policing discrimination.

It seems that (b) and (c) are correct. How these relate to our *full-stop* obligations, as expressed in (a) and (d), is less obvious. Accounting for these requires that we accept a view referred to as 'contrastivism about reasons.' This view holds "that considerations are always reasons for one thing rather than another, or for one thing out of a range of alternatives, instead of reasons for things *simpliciter*" (Snedegar, 2014). When we make moral claims about obligations, we are making claims about what one should do given all of the relevant alternatives. However, we can semantically limit these alternatives by making '*rather than'* claims. These claims can be true because they identify what one would have reason to do given a hypothetical set of alternatives.

Accepting the truth of (b) and (c) helps us to understand the deficiency in making claim (a) in this context. Claim (a) is only true when confession and ceasing discrimination are not members of the relevant alternatives. The claim only succeeds, in other words, when the superior alternatives are not 'in the cards.' Thus, we can only claim that even discriminating companies should disclose pay only in the case that, for some reason, they cannot mitigate their discrimination or confess.[41] Except in special circumstances, it is not true that discriminating firms should disclose pay—rather, they should stop discriminating, and perhaps confess to their past discrimination.

Let us examine one more case that will most clearly illustrate the deficiency of making claim (a):

> *Killing*— Bertrand must choose between killing 100 people, only 4 of the 100 people, or no one at all.

[41] We might imagine circumstances in which this is the case. For example, a well-meaning CEO may lack the political power to institute new, costly discrimination prevention measures, but have the clout to enact a policy of pay disclosure. But there is no reason to think that this is the paradigm case.

Clearly, what Bertrand should do, *ceteris paribus*, is kill no one. But note how Pablo might analogously appeal to Bertrand in this scenario as he did to Joseph* above:

P: "*B*, you should kill 4 people."

B: "Uh, why do you say that?"

P: "Because you really should not kill 100 people."

B: "I'm confused. Isn't the right thing to do to kill no people at all?"

Pablo's claim about what Bertrand should do is wrong simply because he artificially limits Bertrand's alternatives, and thereby asserts senseless claims about how *B* should respond to moral reasons. What Pablo is really saying in his initial overture to Bertrand is that he should kill 4 people *rather than* 100 people. But there is a third morally preferable option, which is killing no one. Betrand should kill no one, and in a similar way, what firms should do is stop discriminating and perhaps confess or apologize.

The Advocates' Reply

While the cases above have tried to motivate the implausibility of plainly claiming that discriminating firms ought to disclose pay, there might be another sense in which it is not absurd. The proponent of pay disclosure might think assigning an 'ought' to a morally inferior action makes sense semantically in certain cases. These are cases in which the interlocutor knows or suspects that the individual faced with the choice in question will not respond to certain overriding reasons, but will to other reasons (Cory, 2001: 63–71) or a specially crafted rhetorical framing of these reasons (Duska, 2014).

It might be thought that while instituting discrimination protections or confessing to certain wrongdoing is highly costly for the firm, disclosing pay is plausibly profitable (Belogolovsky and Bamberger, 2014; Burkus, 2016: 71–85; Colella et al., 2007; Risher, 2014). Thus, proponents of pay secrecy are merely making ought-statements to firms

assuming that they will only or primarily be responsive to profit-related reasons, whether in virtue of their self-interest or in virtue of some fiduciary duty to which they feel beholden (see Smith, 1997). This is precisely the tenor organizational theorist Edward Lawler (2012) has adopted in his public op-eds advocating for pay disclosure:

> Perhaps the best way to summarize pay secrecy is to say that it has become an old-fashioned, obsolete management practice that has a much larger downside than upside. It is time for organizations to enter the world of pay transparency.

This is all well and good, but here we must keep in mind Bok's (1989) edict that mixing advocacy with theory can give moral problems short shrift. When prescriptions are premised on a supposition that agents will defectively not respond to the correct moral reasons, we wade into the territory of advocacy and leave that of moral inquiry. When we tell companies they should disclose pay because it is profitable and we do not expect them to institute discrimination protection, we merely *advocate* that they disclose pay. In neither case are we attempting to pick out and articulate any sort of moral requirement. We cannot let advocacy around issues of secrecy give moral problems short shrift. So while it may make sense for proponents to *advocate* that firms disclose pay in virtue of discrimination worries, it does not follow that firms, as a matter of morality, ultimately must.

The Moderates' Reply

A moderate might concede that firms are not obligated to release so much information about pay, but still argue that firms are obligated to release *some* information about pay to police discrimination. One popular proposal is that companies release summary statistics about pay in organizations. For instance, Arjuna Capital, a private equity company, has become known for exerting pressure on major companies like Google,

eBay, Facebook, Intel, and Microsoft to release descriptive statistics relating to gender pay equity (Dishman, 2017).

Such 'intermediate positions' would perhaps dodge my arguments for the permissibility of pay secrecy *if* my arguments involved weighing the public's or employees' interests in the detection of discriminatory behavior against the firm's or employees' privacy interests. The goal of these intermediate positions is to ameliorate countervailing privacy claims firms may have, following the classically recognized tradeoff between privacy and transparency *qua* accountability (Allen, 2002; Birkinshaw, 2006; Sagar, 2015). Such intermediate positions represent a compromise between discrimination detection and these supposed privacy interests. But, I have deliberately not implicated privacy in my arguments. Rather, I argue that, totally independent of privacy concerns, even firms that are engaged in discriminatory behavior do not have an obligation to disclose pay. If my argument in this form succeeds with the more extreme definitions of pay disclosure, it will succeed in the intermediate forms of disclosure as well. This is because if firms do not even have sufficient reason to disclose the most detailed information possible in the interest of battling discriminatory behavior, they do not have sufficient reason *a fortiori* to disclose anything less informative.

The Epistemic Reply

Fans of pay disclosure may concede that my above analysis regarding firm obligations is correct, but only given that firms *know* or have justified, true beliefs about whether or not they are discriminating. Sometimes, if not often, firms discriminate unintentionally (Goldman et al., 2006; Wynn and Correll, 2018). Some have suggested that

a growing proportion of discriminatory behavior is implicit and unintended (Bartlett, 2009). The reply motivated by these accounts, where there are epistemic barriers for firms to tell whether they are discriminating, is that pay disclosure is a valuable epistemic tool to discovering discrimination (Castilla, 2008: 1515). This is to say that the organization can only fulfill its epistemic duties in detecting discrimination by disclosing pay.

First, we should recognize that, in order for this line of argument to yield a conclusion that pay disclosure is obligatory, the claim here must be that pay disclosure is *epistemically necessary* for detecting or preventing discrimination in the workplace. We cannot merely point to pay disclosure as a valuable, substitutable tool to ground an obligation. If we did merely establish its value rather than its necessity, then firms would have the freedom to choose other options to meet its epistemic duties and permissibly keep pay secret. Pay disclosure must be a necessary tool to achieve our end for pay secrecy to be paradigmatically wrong.

Some skeptics of the claim that disclosure is a necessary epistemic tool might claim that we already know how to combat pay discrimination (Moriarty 2018: 692; Bielby, 2000: 120-124). It does not seem plausible that the employer can, however, "effectively guarantee" (Moriarty 2018: 692) that there will be no discrimination, or that our only issue is a lack will to take the steps we already know necessary (Bielby, 2000: 120-124). It is axiomatic that perfect monitoring of employees (including hiring managers) is impossible (Alchian and Demsetz, 1972). My claim here is that, to think pay disclosure is epistemically necessary, we must think that disclosure grants firms access to diagnostic expertise firms cannot otherwise access. There are certain individuals or organizations uniquely suited to

detecting discrimination—those best suited, in other words, to maximize our true beliefs about the existence of discrimination and minimize our false beliefs about it (D. J. Singer, 2018). We need only show that disclosure does not help us combat discrimination *much better* than we could without disclosing pay.

One strong consideration that should weigh against pay disclosure being necessary is that none of the major resources best suited to detecting discrimination are accessible *only* via disclosing pay. Outside private consultancies are available, the Department of Labor can be consulted, expertise can be developed within the organization, and third-party NGO's can be consulted, all without making pay public to employees or to the world. These options often require firms to give other organizations private pay data (likely accompanied by non-disclosure agreements) but need not involve public pay disclosure. It is not just that sometime these will be as good options, but that they will often be better options. And this is not a case of the derided paradigm belief that "management knows best" (Morrison and Milliken, 2000); rather, experts know best. Expert analysis and testimony are sometimes the *only* sufficiently reliable source of evidence to make certain esoteric determinations (a point to which I will shortly return).

One might object to this line of argument, contending that pay secrecy neglects one of the most important sources of information—the employees themselves. It might be thought that employees are uniquely situated to evaluate potential discrimination in pay because of their distinctive insights regarding a firm's labor force and workplace—employees are "'closer to the ground'….[and] in a better position than a high-level

manager to detect suspicious wage disparities…" (Canales, 2017: 988; Ramachandran, 2011: 1065).

One response to this argument is that the detection of discrimination requires the use of highly scientific, complex tools, and given that most employees in a workplace are not well-positioned to use such tools, we should have a healthy skepticism that employees constitute a uniquely valuable source of information about discriminatory practices in organizations. Business ethicists and management theorists have largely lamented the panacea status ascribed to transparency, citing the numerous obstacles we face even when there is total transparency (Dufresne and Offstein, 2008; Eisenberg and Witten, 1987; Etzioni, 2010; Fung et al., 2007; Wexler, 1987). Since individual employees' perceptions of fairness do not necessarily track the *actual fairness* of pay relationships, it is at least possible that employees could actually taint our epistemic effort by promoting false beliefs about the presence of discrimination.

A second response compares the number of details an organization could be expected to or should release to the public or to employees against the details an organization could release to a limited number of third parties. We should be skeptical that simple name, gender, and compensation information is sufficient to determine the presence of discrimination with great confidence. To return to the Google[42] case:

> Google said the spreadsheet's information does not take into account a number of factors, like where employees are based, whether they are in higher-paying technical positions, and job performance…Google's Vice President of People Operations said the gender disparity reflected in the internal spreadsheet is 'not a representative sample' for other, more

[42] It should be noted that the particular case of Google might merit a different analysis, given assertions by the Department of Labor of "extreme gender pay inequity" (Shu, 2017). I use it here to advance an intuitive point, not to render a final judgment in this specific case.

> complex reasons. For example, a person in a nontechnical role may be at the same job level as an engineer, but will be paid significantly less because ‘there is a premium paid in all markets for highly technical talent’ (Wakabayashi, 2017).

Detecting discrimination will best be served by the examination of as much data as possible, such as productivity information, proprietary hiring practices, and idiosyncratic information about certain outlier employees. When contracting with consultants, dealing with in-house expertise, or consulting other third-parties, it is possible to share this information while respecting the privacy of individuals and while protecting valuable organizational practices (‘trade secrets’). But such interests may be infringed if we were to release the thoroughly detailed information best suited for detection of discrimination. While one can think that the sharing of salary and name information do not impinge on important trade secret interests or individual privacy, surely some level of granularity of information, if released, would. Whatever contours of the normative or pragmatic limitations employers may have in sharing certain kinds of information, the limitations seem to be severely fewer in the case of a singular disclosure (e.g., to a private consultancy) than in the case of public disclosure. For this reason and that above, it is not clear that employees provide any significant epistemic benefit to rooting out discrimination, and certainly not a level of benefit which would generate an obligation on behalf of the firm to disclose pay in virtue of employees’ putative epistemic authority.

Finally, a right to transparency can take on at least two different forms—it may be an mere informational right or it may be a right to communicative action (supporting a ‘right to know’) (O’Neill, 2006, 2009). The former kind would simply demand the availability or openness of information—the posting of a dataset online, perhaps. So-called

'rights to knowledge' invoke norms of *communication* as well, most notably norms of comprehension and digestibility (cf. Schauer, 1983). The moral salience of information is chiefly found in its ability to create knowledge, "for what use is information to people unless they actually acquire knowledge from it?" (van den Hoven and Rooksby, 2008: 380).

If the claims for pay disclosure are premised upon an employee's right against discrimination, and knowledge of pay disparities is thought to be necessary to protect that right, then it cannot be the case that pay disclosure represents an obligation merely to release information that may or may not be comprehensible enough to analyze, to individuals who may or may not be well-situated to analyze it. Firms would need to invoke communicative norms, communicating the information in ways aimed ultimately toward knowledge. Importantly, if knowledge is the proper end of the firm's obligation, then it is not just that expert testimony would be *better* than public pay disclosure at fulfilling the obligation; rather it may be the *only* way of fulfilling the obligation in that knowledge in these cases can really only be garnered given expertise. Firms' communication of pay information to employees or to the public leaves open the possibility that it never even passes an expert's desk. Under this final line of reasoning, mere public pay disclosure would properly be seen as a dereliction of moral duty.

The Prevention Reply

One reply could be that, while the detection of discrimination does not provide firms with reason to disclose pay, the prevention of discrimination does (Ramachandran, 2011). We might see discrimination as a species of the principal-agent problem, and

transparency as a solution to it (Oliver, 2004; Stiglitz, 2002; Albu and Flyverbom, 2016: 275–276). As various liability-shirking incentives move wrongdoing from the C-suite to middle management (Nelson, 2018), there are agency costs in the sense that firms must exert organizational resources to prevent and oversee managers' potentially discriminatory actions (Jensen and Meckling, 1976). Well-meaning executives might, then, be concerned about how they may encourage managers to not discriminate (Lawler, 2014).

As Castilla (2015) points out, the notion that accountability qua organizational transparency fosters "fairer" pay decisions is consistent with behavioral literature on individual-level accountability, which demonstrates reduced proclivities for discrimination among managers in situations with increased accountability (citing Lerner and Tetlock, 1999; Tetlock, 1983a, 1983b). Especially given ballooning compliance expenditures across the private sector (Laufer, 2018), pay disclosure feasibly, in some cases, is a cost-efficient way to incentivize managers to not discriminate, since a firm could effectively 'outsource' their discrimination policing to outside third parties at minimal cost.

I do not dispute that pay disclosure can be useful (Belogolovsky and Bamberger, 2014; Scheller and Harrison, 2018), and I also do not dispute that, under some conditions, pay disclosure can be instrumental in ameliorating unjust pay disparities (Castilla, 2015). The question is not whether disclosure, from the standpoint of performance, is the generally preferable thing to do. The question is whether it is obligatory. And to claim that it is without settling on the level of vigilance for discrimination required, we would

need to claim that there are not alternative incentive structures which could *similarly* incentivize managers (or exclude managers from the pay setting process altogether).

Even in those cases in which pay disclosure would be cost-effective, however, there is no reason to suppose the myriad number of alternative monitoring or incentive structures (including internal and third-party oversight) are generally relatively deficient.

Indeed, the attractiveness of public transparency regimes of accountability are not as attractive once we realize that one can look good without being good (Alzola, 2019). The well-documented abilities of firms and their agents to strategically conjure "illusions of transparency" (Gumpert and Drucker, 2007) and manage "impressions" or "visibilities" to conceal wrongdoing or certain facts from the public (Flyverbom, 2020; Provis, 2010; Laufer, 2007) raise doubts that a public transparency accountability mechanism would be the most ethically preferred (Dando and Swift, 2003). In the case of executive pay, for instance, scholars have documented the trend of "camouflaging" total pay in the face of transparency requirements, which includes shifting compensation to post-retirement benefits that aren't subject to reporting requirements (Bebchuk and Fried, 2004).[43]

In view of the fact that public transparency is subject to such gaming (Schnackenberg and Tomlinson 2016), firms should not feel beholden to implement public pay transparency in the face of a range of plausibly effective alternatives that aim

[43] I thank an anonymous reviewer for raising this kind of concern.

to mitigate such gaming, such as by deploying expertise and supplying experts with more unfettered, direct access to information.

Why Does Disclosure Need to be Necessary?

I have claimed that, to say pay disclosure is obligatory in a meaningful sense, we need to show it is necessary to fulfill our obligations—epistemic or otherwise. I have already briefly attempted to justify this claim. Here, I want to further clarify why I have used such a stringent standard to evaluate whether pay disclosure is obligatory, and what implications this standard has on the scope and applicability of my argument.

In this essay, I endeavor to remain agnostic as to the extent to which firms are obligated to combat and prevent discrimination—while it is clear that they do have some duties, it is at least not obvious how demanding they are. In an effort to be ecumenical, and since my account does not require answers to the questions of the demandingness and scope of epistemic duties on the part of firms, I do not offer any.

Rather, my contention is that to whatever extent firms are obligated to combat or prevent discrimination, they can feasibly fulfill these obligations via other means. This establishes at least that pay disclosure is not obligatory on the basis of potential discrimination, full-stop. But my account does not entail that every company which currently has a policy of pay secrecy is a faultless company. Many companies surely do not fulfill their duties to combat or prevent discrimination. This alone gives may well give us reason to think there ought to be public policies policing discrimination in firms, through mandated pay disclosure or some other mechanism. But the possibility of discrimination offers us no reason to think an organization cannot be virtuous or cannot fulfill its moral

responsibilities while maintaining a regime of pay secrecy. This is to say organizations are not blameworthy if they have secret pay—rather, they are blameworthy if they fail to fulfill their duties to combat discrimination. Pay disclosure may be one available tool to fulfill such duties, but surely it is not the only one and therefore not an obligatory one.

If certain levels of prevention or mitigation of pay discrimination are the obligatory ends underlying our normative analysis, and there are several methods firms may choose, jointly or exclusively, to achieve these ends, then firms' obligations can only be stated disjunctively. Firms are obligated to do one or some combination of the several options, but they are not obligated to do any single one. To have an obligation to *X*, as I use it, is to have a special, overriding reason to *X*; to neglect that reason is to do wrong, and thus to be blameworthy. From the analysis above, we see it is not analytically true that firms that fail to disclose pay do wrong and are thus blameworthy. It is only true that firms that fail to prevent or mitigate discrimination (to some standard) do wrong, and thus true that firms that fail to take advantage of options in pursuing these goals are doing wrong.

We cannot say, at least on the normative bases so far surveyed, that they do wrong if they do not take the *pay disclosure* route toward these goals. Rights-based claims, even around informational rights or 'rights to know', require "especially strong justifications," as they go beyond "alleging an interest, or sound policy"; rights are trumps over other courses of action, and override the other policy or profit considerations firms might otherwise rely on (Schauer, 1983: 74; also Elia, 2009). The language of rights and correlative obligation is reserved for that which we must do.

V. Reason Two: Autonomy

The second reason we may have a directed duty to employees to disclose pay is the general fact that information facilitates the achievement of goals and the pursuit of life plans (van den Hoven and Rooksby, 2008). In the pay disclosure context, "[i]nformation about pay can be relevant to the achievement of a variety of goals, and hence facilitates autonomous living"; in particular, "[k]nowing how much people get paid for performing certain sorts of jobs will help [someone] to decide which jobs to pursue" (Moriarty, 2018: 692-93). Since money is key to achieving many goals in life, knowing how much money certain jobs offer can help an agent plan her life. Information at various levels is helpful—job-specific (e.g., all welders), geography-specific (e.g., all welders in X city), and even company-specific (e.g., all welders at Y firm) (Moriarty, 2018). Disclosure may not only help agents achieve goals through pay, but also achieve goals specifically regarding their pay and its place in a distribution; "they may desire to make as much as some of their co-workers, and more than others. They may desire to be paid a wage they regard as fair…" (Moriarty, 2018: 693; also Lawler, 1972). Journalists in the popular media have made similar autonomy-grounded arguments (Doll, 2012). Overall, it seems that individuals have desires that take pay either to be a crucial *means* or an *end in itself*, and information about pay can help facilitate their satisfaction.

Of course, because of services such as Glassdoor.com, PayScale.com, Salary.com, and various non-profit career advising agencies, it is relatively easy to get a general idea of what certain types of jobs make, even at specific companies and in specific areas (Shellenbarger, 2016). It is clear why the autonomy argument garners so much less

salience in the debate surrounding pay secrecy, as the wealth of pay information already available alone gives us good reason to reject the autonomy argument.

But these resources are not perfect, and employees might have very specific goals that simply cannot be enabled by anything less than granular salary information about specific individuals of specific identities. So let us assume, for the sake of argument, that pay disclosure would yield some sincerely valuable information that would impact many individuals' planning processes in a noteworthy way.

I do not seek to deny here that having information relevant to one's decisions and one's life is often a good thing, morally speaking. But I do want to question whether the information at stake in this case contributes to the type of moral value that would ground an obligation on the part of firms to disclose pay.

Disclosure in Pay Negotiation

While the issue of pay secrecy has been neglected in business ethics, one issue concerning pay-related disclosures has not—the ethics of pay negotiation. Classically, at stake in this discussion is whether one may bluff, deceive, or lie in pay negotiations, usually with regard to one's reservation price (Carson et al., 1982; Dees and Cramton, 1995; Strudler, 1995). It is instructive that the perennial issue in this debate is *whether one may lie/deceive/bluff*. There is no theorist to my knowledge who has ever seriously considered the question of whether we typically have positive duties to disclose our reservation price,[44] and this is likely for good reason. Certainly, it would be in the

[44] One exception is Moriarty (2009), who argues that executives with fiduciary duties to a firm may have a moral duty to accept only (a version of) their reservation price.

employees' interests—it would have a great positive effect on their autonomy— if employers were to reveal their true reservation prices in each wage negotiation. But this does not mean employers are obligated to do so. We can consistently claim that an employer would greatly benefit an employee's autonomy in disclosing her reservation price in a pay negotiation and say that it is almost certain that an employer has no affirmative duty to do so.[45] The analogy to be made to the case of pay disclosure is clear—the fact that disclosures may enhance employee autonomy does not itself, without further justification, ground an obligation to disclose.

There is a deeper complexity, however, to the analogy. One might think that the reason it seems so absurd to assert that an employer ought to disclose her reservation price is because to do so would be highly costly to her. What would normally be duties of beneficence typically dissipate when they would require action at great personal cost. If I have an ever-flowing spring, I ought to allow a malnourished passerby a drink, but I am not required to sacrifice my life so that she may eat my corpse. While an employer's disclosure of her reservation price would increase the employee's autonomy, it may come at great cost to the employer. A kind of "self-defense" rationale for firms in such situations may operate so as not just to justify secrecy, but to justify outright deception

[45] One risk of framing our discussion in terms of dyadic wage negotiations is conveying an overly simplistic model of labor markets and pay negotiations. Wage determination processes are much more complex than that, involving a variety of labor market participants and institutions, most notably labor unions and occupational licensing authorities (Gittleman and Kleiner 2016). The structure and power of these institutions stand to affect trends in pay discrimination in significant ways—it has been argued, for instance, that labor unions provide disproportionate benefits to women (Porter 2013). In this article's context, how we describe the duties in particular wage-setting environments may vary with the number of parties involved and their respective roles. My hope is that all of the conclusions I reach when discussing duties of employers and employees here, though, are consistent with or easily transmutable to contexts in which several parties are involved in wage determination. My ultimate conclusion that pay secrecy is not obligatory in virtue of employee rights or interests can be redescribed to include overall labor union interests as well.

(Strudler, 2005). The prospective cost to the firm, and the lack of rightful basis on the part of the employee to ask for that information, may be motivating our intuition that disclosure is not obligatory.

We might then be tempted to simply ask ourselves the question of whether the employer is bound to disclose pay to employees given the costs it would impose on the employer and perhaps given other conflicting potential moral claims in favor of pay secrecy (e.g., privacy). This is a difficult question to grapple with, in particular since whether or not disclosure is costly to the employer (and how costly it is) depends on contextual and mediating factors (Colella et al., 2007), and it seems we would need to resolve the other *prima facie* moral claims that count in favor of secrecy (such as those relating to privacy) before coming to a conclusion on whether autonomy may ground an obligation to disclose. On this approach, the most we could say at this point is that pay secrecy is permissible in the face of autonomy claims at least when pay disclosure would be highly costly to a firm. But we should not assume that pay secrecy is costly (Colella et al., 2007).

Instead, I want to take a different route. I argue that certain desires or goals, such as desires regarding how one's pay relates to that of others, do not generally provide others moral reason to satisfy them, even when it would be relatively costless or mutually beneficial to do so. Before getting into the weeds of a theoretical justification, let us turn to a modified pay negotiation case:

> Say there exists a government program that rewards an employer a sufficiently large amount of money every time she reveals her true reservation price in a wage negotiation. In this case, employer and employee interests align—it would be a net benefit to them both for the

> employer to disclose her reservation price. Nevertheless, the employer refuses to disclose her reservation price. The employer simply does not feel like doing so or does not wish to participate in the program, even though she would be better off financially if she did.

In this case, there is no cost to the employer in acting so as to enhance the autonomy of her employee. She could not just costlessly, but *mutually beneficially*, release this information to the employee. And yet she does not. Intuitively, it still seems there is nothing blameworthy about her conduct. It does not seem that the employer would justifiably be subject to blame, resentment, or recrimination from her employees. The employee would not have a claim to having been wronged merely because the employer did not disclose her reservation price. What underlies these intuitions is likely the fact that not all desires or interests provides others with moral reasons to fulfill them. Some desires, even when they provide some reason for us to act, are very weak and do not override whatever our contrary desires may be. Let us next examine a well-regarded view of what sorts of desires or interests for an agent bear morally on other agents, in order to adjudicate whether the desires or interests at stake in the pay secrecy debate do incur obligations.

A Nagelian Perspective on the Promotion of Value

Thomas Nagel (1989) offers a relatively ecumenical account of moral reasons for and against action. He claims that while we all have reason to respond to agent-neutral reasons to promote agent-neutral (impersonal) value, we need not always respond to purely agent-relative reasons to promote merely agent-relative value. Positive duties may stem from morality's demands on us to pursue or protect *impersonal* value. As Nagel (1989: 167) notes, while the prevention of a headache would prevent pain and therefore

advance impersonal value, someone's mountain climbing expedition does not give me reason to help them.

Nagel (1989: 167) classifies at least basic pain and pleasure as kinds of impersonal (dis)value which provide agent-neutral reasons for action. The general logic is that agent-relative value "is not impersonally detachable, because it is too bound up with the idiosyncratic attitudes and aims of the subject" (Nagel, 1989: 168); in general, "[i]t seems too much to allow an individual's desires to confer impersonal value on something outside himself…" (Nagel 1989: 169). In brief, we do not have reason to help others bring to fruition every goal they have—we only have reason to enable certain goals, goals which promote "values that are independent of a particular perspective and system of preferences of [an] agent" (Nagel, 1989: 170; also Donaldson & Walsh, 2015).

Some desires are just categorically different from others in terms of whether they generate moral reasons at all that apply to other agents. Some desires generate agent-neutral reasons—reasons any agent should be responsive to—while others generate only agent-relative reasons, or reasons only the agent who holds the desire ought to be responsive to. If a stranger walks up to you on the street and says, "I think I'd like to paint my house red. I'm getting tired of the blue," you will properly respond "Okay" and walk away. We can often immediately recognize desires that have no bearing on us. In the house painting case, any thought that would arise in our minds as to what finances or time we might be able to spare to help fulfill this stranger's desires would represent, to adapt Bernard Williams's (1981) words, "one thought too many."

Nagel's view may define even starker lines between agent-relative and agent-neutral desires than is needed to reject the autonomy claims in favor of pay secrecy. Even where others' idiosyncratic desires *do* give us some reason to act, they typically do not give us reasons that amount to an obligation. Even if I did have reason to want a climber to succeed in her climb of Mt. Kilimanjaro, acknowledging this reason does not mean I have an obligation to aid in the climb. Other morally salient factors intervene. It is not just that helping a climb in such a way could be materially costly for me, but we often think our own desires and goals (whether they include watching a movie or going for a run) prevent others' idiosyncratic desires from imposing on us obligations to act. I would rather watch a movie than physically help someone climb a mountain, and I would rather save any financial contribution that I could have given her to climb the mountain.

Overall, if such self-serving preferences can disarm the reasons that attach on behalf of the climber's desires, then the kinds of reasons in favor of helping either are not generally obligatory, or could be said to not really exist at all.[46] In the following sections, I engage in a more systemic identification of the kinds of desires and goals employees may have and whether these, given this framework, might generate any reasons, or reasons amounting to an obligation, to disclose pay.

Desires Regarding Pay as an End

This framework will suggest that the desires of an agent regarding their pay *as an end* (e.g., desiring "to make as much as some of their co-workers, and more than others

[46] This line of reasoning is inspired by a discussion by Taurek (1977), who reasons in one case that if even the weakest of self-serving reasons can negate a supposed obligation, then it is best said that the obligation never existed at all.

[or]…to be paid a wage they regard as fair…" [Moriarty, 2018: 693]) do not generally bear impersonal value. These are merely idiosyncratic desires that do not seem to bear on impersonal value in the world, or at least bear strongly on us to fulfill them. Consider the case in which an individual wants to be paid a wage *they merely regard* as fair. Were this desire regarded as providing impersonal reasons for action, it would provide an employer *pro tanto* reasons for moving from a wage that is *actually fair* to one the employee *regards as fair*.[47] This seems to be a case where such agent desires, if taken to create impersonal reasons for action, would overstep the Nagelian bounds, allowing the individual to confer impersonal value where there is none—even on an arbitrarily different distribution of wages. This judgment seems even clearer if we contemplate an 'excessively entitled employee' (Fisk, 2010) who has a desire for a positively unfair distribution of wages—e.g., a desire for a state of affairs where most of the profits would flow to her alone. Such a desire would not create even *pro tanto* reasons to act so as to enable their satisfaction. I contend, then, that employers have no reason to act so as to enable the satisfaction of desires which regard pay as an end, since they do not generally bear on impersonal value. In the case of pay disclosure, this means an employer would not have moral reason to disclose pay in virtue of desires to inhabit a firm with some particular pay distribution.

Desires regarding pay as an end are not the only desires in question, however. We might also consider the deontic performativity of employees' desires to have (or not

[47] Approaches rooted in the positivist organizational justice literature identify the just wage with the perceived just wage (Marasi et al., 2018; e.g., Marasi and Bennett, 2016), even promoting 'informational justice' as a distinct psychological construct (Scheller and Harrison, 2018); but normative ethics maintains a line between perception and reality (Alzola, 2019; Kim and Donaldson, 2016).

have) each person's pay disclosed (i.e. desires regarding pay disclosure as an end), as well as of other desires which take pay to be a *means* to fulfill other desires (paradigmatically, to buy goods or services). Let us first examine the former type.

Desiring Disclosure or Secrecy

Employees may desire pay disclosure, have no desires regarding pay disclosure, or desire pay secrecy. While the specific preferences of employees may be relevant to the performance impacts of pay secrecy policies (Smit and Montag-Smit, 2018), it has been thought that desires against pay disclosure do not generally bear on the autonomy reasons that putatively favor pay disclosure (Moriarty, 2018: 699). But one might think that putative autonomy-grounded reasons to help someone are, indeed, overcome when that person has a strong desire against help.

Not only could one permissibly withhold help from an agent in the case where withholding is preferred by the individual, but if one provides help anyway, one might be said to be violating another's autonomy while purporting to act in virtue of it. This critique does not just boil down to the idea that 'it is wrong to help someone who desires not to be helped.' Such a principle, unqualified, is not especially compelling. We might save someone's life despite her desire against it, for instance. It boils down, rather, to a principle that forbids us from helping people *in virtue* of their desires, while at the same time *contradicting* their desires.

Someone, for instance, may want to climb a mountain and climb it as quickly as possible, and at the same time not want others to hasten her climb with their help. Even if one's desire to climb a mountain were to provide us with reason to help her, surely this

particular person's desire against our help would extinguish such reasons. Indeed, her desire against help may not only make it permissible to not help her but may make it *wrong* for anyone to help her. Thus, employee desires, while not the be-all-end-all of the ethics of pay secrecy, are immensely relevant when considering reasons of autonomy. This is because employee desires against pay disclosure seem to extinguish many of the autonomy-grounded reasons for pay disclosure.

In general terms, we cannot both act directly against an agent's desire and purport to act in virtue of that agent's desires. More specifically, we cannot act directly against employees' desires (e.g., in disclosing pay against their desires) while at the same time purporting to act in virtue of those desires (i.e. claiming to act in virtue of their autonomy). This is true even if one wishes to deny Nagel's contention that such desires do not generally give us reason to act so as to fulfill them. In short, we must not forget that choice at least has the potential to be morally transformative (Zwolinski, 2007).

There is little modern empirical evidence speaking to the actual desires of workers for pay disclosure or secrecy policies. Partly because of this, we should briefly consider here the case of the firm where nearly all employees desire pay disclosure, but where management does not. May managers, in this case, keep pay secret?

Returning to our earlier distinction between agent-relative and impersonal reasons, it does not seem we can make a principled distinction between desires regarding pay disclosure, desires regarding pay as an end, and desires regarding the disclosure of reservation prices in pay negotiations. They all seem to be part of the same perspective-dependent kind. Whether one desires to have their firm's pay public or private does not

seem to be connected to any sort of impersonal value in the world. While not a perfect or comprehensive heuristic, at least anything we might describe colloquially as "simply a matter of preference," or a matter of curiosity (see Colella et. al., 2007: 62), likely is not connected to impersonal value in the right way. I think most of these matters, when considered as ends of our desires rather than mere means to something else, are all simply matters of preference—whether one wants their pay to be disclosed, wants to work amidst a pay distribution with certain features, or wants their negotiators to disclose their reservation price.

This conclusion is easier to accept if we come to understand pay secrecy (or pay disclosure) as simply one perk employees could have at some firms but not others. Some may prefer to work at firms with secret pay, some may not. Some firms provide extra vacation or concert ticket discounts, others do not and offer instead higher pay. Whatever the particular employee's preferences of these kinds, they do not seem to generate obligations on the part of the firm to fulfill those preferences (see Maitland, 1989).

Desiring Goods/Services and Needing Pay

So far, we have considered what we might call 'special cases' of desires—when employees have desires specifically regarding their pay or regarding pay disclosure. But mostly, we have desires for other things. And one of the chief attributes of money is its fungibility—its ability to be converted into other things which are important to us. We may want to travel, buy books, buy movies, or buy houseplants. Money can help us get these things. Money is thus closely connected to our goals. At least some of our goals are connected to impersonal value, and many of these are plausibly enabled or advanced by

money. There is no dispute, then, that money can be (and perhaps is often) connected to impersonal value in important ways.

Pay disclosure is, though, one degree removed from actual money. Pay disclosure merely gives us information about money, not money directly (though it may, theoretically, yield some financial benefit for employees). So, in cases where autonomy seems to demand that employers disclose pay, it seems that one must think that employers are instead free to fulfill their obligations merely by paying their employees more. If money is ultimately what is needed as a means to fulfill the others' desires, the desires which make moral demands on us, then money may be all that is demanded of us. This money can be granted either via instituting pay disclosure (assuming pay disclosure would yield some sufficient financial benefit to employees) or via direct payment. But, if we accept this argument, then the obligatory nature of fulfilling these desires seems to fade away. For instance, consider a debtless doctor who makes $240,000 per year. If we contend that her autonomy makes a claim upon an employer to disclose pay so that she may fulfill her desires using money as a means, then we must also contend that her autonomy makes a claim upon an employer to *pay her more*. But this doesn't seem right. It does not seem that such a doctor could confront her employer, demand more money on moral grounds, and offer as a justification that it would assist her autonomy.

In response to this line of argument, one might point to the fact that paying someone more is oftentimes costly. This cost may generate our negative intuitions in the doctor's pay raise case, whereas disclosing pay is plausibly profitable. But remember that paying someone more is also plausibly profitable. We can assume in this case that the

doctor, indeed, would provide more value to the organization if she were paid more. Still, it does not seem she could register a moral complaint against employer for not paying her more.

While the idea that autonomy provides reason for paying someone more (or for pay disclosure) does not seem to attach in the general case, it may in certain cases. Perhaps most intimately connected with impersonal value, besides our desires against pain, are our desires for necessities—food, shelter, healthcare, etc. Thus, we might think that autonomy can ground demands to enable our employees to live (Arnold and Bowie 2003; cf. Brennan 2019). In such cases, we might concede that where we are in a position to enable someone's pursuit of those particular needs, we should.

There are two reasons why this observation does not support an obligation to disclose pay. First, the intersection of the category of people who would benefit from pay disclosure and the category of people who require additional assistance to attain necessities seems to be very narrow. The benefits of pay disclosure presuppose certain privileges, and the class of those who have these privileges and the class of those who are in need of help to attain certain necessities seem to overlap very little. These privileges include (1) the privilege to have a meaningful choice in one's job at all, and (2) the privilege to have a choice between jobs which differ meaningfully in pay, and (3) the privilege to have a choice between jobs whose incomes are relatively opaque.

Regarding (1), many individuals who do not have necessities do not have any choice at all regarding what job they have. For these people, pay disclosure does very little. For those who have this privilege but lack privilege (2), pay disclosure similarly

does not help them because all the jobs that are open to them have relatively comparable incomes. They do not have the choice between becoming a social worker or a banker—they have, perhaps, a choice between working as a cashier at one store or the other, but are in no position to be helped by pay disclosure. A much larger class of individuals lack privilege (3), since, as alluded to before, pay information is not as difficult to come by as it used to be. So even for people who are not able to attain their necessities and who have a meaningful choice between occupations with meaningfully different pay, many will not benefit from pay disclosure because it is not difficult to ascertain a general idea of what available occupations make in certain areas.

I have no data to support my supposition that the category of people who have all of the privileges above intersects only narrowly with the category of people who need help to attain their necessities. Furthermore, I have not conclusively established that necessities are the only objects of desire connected to impersonal value strongly enough to create obligations on the part of others. So allow me to offer one additional reason to be skeptical that firms are obligated to disclose pay to enable the autonomy of even those who we have impersonal reasons to help.

I leveraged above the connection between autonomy and paying someone more as a modus ponens to demonstrate that if we buy into the idea that autonomy creates deontically consequential reasons to disclose pay, it would entail that we have similar obligations to pay individuals more. The affluent doctor case, I think, demonstrates that this is not so. Here we can return to this connection, but from a contrastivist point of view.

We might think if employers do really have obligations to act so as to enable employees to attain these necessities, what they ought to do is to pay them more.[48] Sure, disclosing pay is better than *not doing anything*, but what they should do is pay them more. This is reinforced by the observation that it does not seem that pay disclosure in many cases will make the difference between someone getting their necessities and someone not, for instance. It would seem off for us to tell an employer who does not pay her employees enough for them to achieve certain ends, such as necessities: "Well, what you should do is disclose pay." This is often not only not the 'difference-maker,' but also leaves up to chance at any given time whether market conditions will actuate such that the transparency will enable the employee, somehow, to receive a living income. Such a move would not take responsibility for fulfilling supposed obligations for employee autonomy and put it in the unsure hands of the market to advance it.

Modes of centralized distribution, whether at the corporate- or state-level, are often necessary to properly ensure needs are met (Bentham 1908 [1802]: 130–132). Robust literatures on internal labor markets demonstrate that the form and function of employment are not totally constrained by external labor market forces; firms face choices of severe moral and economic consequence in designing administrative rules that govern employment and compensation within their firms (Pfeffer and Cohen, 1984). This kind of discretion is precisely what gives rise to ethical questions in compensation (Moriarty, 2012). But in response to an employer who does not help or pay her

[48] Note that this section engages only with this conditional claim. I do not seek to justify or argue that employers are obligated to provide a living wage. I only ask what their obligations are with regard to pay transparency *if* this is the case.

employees enough, we should rather say that "you must pay your employees more." If an employer's employees are starving, pay disclosure is most likely not the answer.

We must keep in mind that pay disclosure does not concern the disclosure of one's own pay information to oneself. It seems a basic principle of commutative justice that one should know the compensatory conditions under which one is performing work. Rather, the question here is whether worker autonomy can ground a claim to know the pay of *other people*. The sum of factors that cast doubt on the autonomy claim for pay disclosure—the pre-existing wide availability of general pay information, the largely idiosyncratic desires individuals have about pay distributions, the other much more straightforward ways companies could help if they were obligated to do so, combined with the general adversarial nature of the market (Heath, 2007)—constitutes a significant case in favor of the permissibility of pay secrecy in the face of autonomy interests.

A Logical Objection: The 'Iffy Oughts' Problem

One may object to the above analysis because of its logical structure. In examining the discrimination objection, I disaggregated firms into two categories—discriminating and non-discriminating firms—and premised each prescription upon firms' membership in those categories. One might see a similarity between this method and one demonstrated in a critique by Kolodny and MacFarlane (2010) using the following example:

> Ten miners are trapped either in shaft A or in shaft B, but we do not know which. Flood waters threaten to flood the shafts. We have enough sandbags to block one shaft, but not both. If we block one shaft, all the water will go into the other shaft, killing any miners inside it. If we block

> neither shaft, both shafts will fill halfway with water, and just one miner, the lowest in the shaft, will be killed (115).

They map the possibilities:

	Miners are in shaft A	Miners are in shaft B
We block shaft A	All saved	All drowned
We block shaft B	All drowned	All saved
We block neither shaft	One drowned	One drowned

Koldony and MacFarlane point out that we might be tempted to disaggregate the world into two possible states—one world in which the miners are in shaft A and one in which they are in shaft B—and formulate our prescriptions in the following way:

(1) If the miners are in shaft A, we ought to block shaft A.

(2) If the miners are in shaft B, we ought to block shaft B.

Since either the miners are in shaft A or in shaft B, this would imply either that we should block shaft A or that we should block shaft B. But this contradicts what they take to be the intuitively correct answer, which is that we should block neither shaft, resulting in the certain death of 2 miners. In brief, so-called "iffy oughts" (Willer, 2012)—oughts separated into different 'if' conditions—challenge whether some of our basic rules of inference are valid.

First, it is worth pointing out that this concern does not affect the weaker form of my argument—that, to the extent firms should combat discrimination or enable autonomy, they can do so through substitutable means. This is because this assertion is fundamentally a factual assertion, not relativized to any disaggregated conditions of the world.

But we might reconsider my argument in its stronger form from the discrimination section, which says that when firms are discriminating, they should stop discriminating, whereas when they are not discriminating, it makes no sense to say we need pay secrecy to combat discrimination.

First, this argument is entirely consistent with the argument that when firms are discriminating, they should not discriminate, and when firms are not discriminating, identically, they should not discriminate. The normative conclusion is the same; the purpose of the disaggregation was simply to isolate those firms for which this normative requirement of non-discrimination was trivially fulfilled (i.e. non-discriminating firms) from the those firms for which it would not be (i.e. discriminating firms).

Second, the 'iffy oughts' problem primarily comes into view when a firm is unsure of whether it is a discriminating or non-discriminating firm. But I have specified a *distinct* normative prescription for such firms—that they ought to fulfill their duties to discover whether they are engaged in discrimination. In other words, whereas the typical 'iffy oughts' problem merely *assumes* an ineliminable epistemic uncertainty as to actual the state of the world on some relevant dimension, I assume no such uncertainty. If firms do not know whether they are engaged in discrimination, they should figure out if they are; if they are, they should not discriminate. If they can find no reason to think that they are discriminating, and thereby devise no method through which they could reduce discrimination, then it is still true, but only trivially true, that they should not discriminate. And it is true of both types of firms that they should prevent future discrimination.

These responses may not seem to be enough to resolve the potential logical problem. Consider the analogy of a student who has a test tomorrow which she wants to pass, and she is trying to decide whether to study. She reasons that there are two possible worlds. If she is in the world where she passes the test tomorrow, then she does not need to study. However, if she will not pass the test tomorrow, studying would be a pointless waste of time. Therefore, she should not study. But this, of course, ignores the fact that whether or not she studies is not exogenous to the fact of which world she will find herself in. It may be the case that she is currently in the world where she will not pass tomorrow, but she could pass *if* she chose to study.

In the case of pay secrecy, we may say that my earlier argument ignores the fact that pay transparency could affect whether or not the firm eventually becomes a discriminating firm. In other words, pay transparency's role as a prophylactic measure might be excluded by considering only those two states in which a firm is discriminating and in which the firm is not. But we already addressed this objection in the form of the 'Prevention Reply.' In our response, we pointed out that, yes, the question of what effectively prevents discrimination could be distinct from the question of what addresses extant discrimination. But the very same normative logic applies here: the obligation of firms is to prevent discrimination, and firms have discretion as to the ways in which this obligation is fulfilled insofar there are number of effective options.

VI. Rights And Obligation in Business Ethics

I have argued that neither autonomy nor the mitigation of discrimination provides sufficient reasons to ground a duty to disclose pay. However, one might think that even if a focus on obligation and rights is analytically justified, it reflects a craven view of business ethics inquiry. Business ethics must also involve knowledge and understanding that help us live better lives (Freeman and Greenwood, 2020).

There are, however, clear costs to a neglect of rights-talk. Rights and obligations become salient chiefly when there is a conflict between desires or interests and we must specify what kind of discretion an actor has in making their decision—am I obligated to X or may I choose Y? The decades-old tradition in our field of positing a harmony between ethics and economics—between rights, the good, and profit—in many respects has done business ethics a great disservice, for it examines ethics where we need it least—where there is so little conflict—and abandons ethical inquiry where we need it most—where decisions require trade-offs (Corvino 2006; Kolstad 2007; Paine 2000). Without the principles that mark out the territory of right and wrong, we undermine our ability to map out "integrative reasons to prefer one course of action over another" (Smith and Dubbink, 2011: 219).

Instead of providing such crucial guidance, the proliferation of responsibility ascriptions couching "all interests or 'goods'…in the language of rights" thereby threatens to "dilute and therefore cheapen the notion of rights" (Schauer, 1983: 74). Any scholarship which treats the discourse around rights and obligations as uninteresting or unimportant forfeits any legitimacy to assert a right when one must be asserted—we should not want to become the "boy who cried obligation." The existence of corporate privileges is in part

what gives *force* to bona fide obligations when they do attach. Discourses that paper over these distinctions predictably lead some to argue that business ethicists are engaged in naked "business-bashing" (Machan 2006) or are wholly disconnected from our daily commonsense moralities which draw clear lines between what we *must* do as a matter of moral principle and what we are at liberty to do (Otteson, 2006).

We cannot ignore the importance of rights, duties, and privileges to the practical outlook, the outlook which recognizes that "[r]ights are the at the rock bottom of modern moral deliberation[…]and refer to goods of critical importance and impose duties that not to be taken lightly" (Donaldson, 1989: 66–72). My effort in this paper has been to not take lightly the posited rights and obligations with regard to pay secrecy.

VII. Pay Secrecy Implications

In response to treacherous banking practices in the early 20th century, future Supreme Court Justice Louis Brandeis (1914) remarked that 'sunlight is….the best of disinfectants.' What was once only an excerpt from an influential progressive exposé—a vague metaphor meant to fit into a thoughtful argument regarding the role and effectiveness of transparency in banking regulation—is now appropriated by academics and other advocates in an effort to advance the moral cause of transparency across the legal[49] and managerial domains.[50]

[49] Mark Fenster (2010, p. 626 n.28) notes that, as of 2010, more than 550 Journals and Law Reviews in the Westlaw database used "sunlight" and "disinfectant" in the same sentence.

[50] Popular business articles, in particular, are dotted with endorsements of transparency, often invoking prudential concerns alongside a vague concept of 'trust' as a justification for an unconditional imperative for transparency. For selections from the *Harvard Business Review*, see 'The Strategic Benefits of Transparency' (Balter, 2007); 'Want Your Employees to Trust You? Show You Trust Them' (Brower,

The social endorsement of transparency is meant to coax us "to fling upon the windows of the companies and to render them transparent to all ethical critics," as Cory (2004, p. 46) implores us to do. Instead, I have prioritized an examination of the purposes and functional aspects of transparency (Keane 2008). Transparency is just one of many ways of pursuing or disseminating knowledge. Any view that posits a direct and largely unmitigated connection between the value of accountability and real-world regimes, as the processual theorists discussed in Essay 1 point out, is destined to seem somewhat credulous and reductionistic (also O'Neill 2006, 2009; Roberts 2009).

I argue that managers have more freedom in handling pay information than many popular moral convictions would suggest, at least insofar as those convictions take autonomy or discrimination to be their motivating force. I thus have endeavored to demonstrate why at least two oft-cited reasons for pay disclosure do not apply or do not create obligations for individual firms to disclose pay. These reasons constitute the reasons for which pay disclosure may be a 'directed obligation,' insofar as it is an obligation *to* employees. They collectively define the central arguments advanced against pay secrecy in popular and academic circles. They are also those arguments which are grounded in employee interests and rights, and we are usually tempted to think of pay disclosure as obligatory *in virtue* of those interests or rights. Thus, if my arguments hold, they constitute a significant contribution to the ongoing debate surrounding pay secrecy.

Lester, & Korsgaard, 2017); 'Winning in an Age of Radical Transparency' (Goleman, 2009) 'Trust in the Age of Transparency' (Kirby, 2012); 'Trust Through Transparency' (Nayar, 2009); 'What's Needed Next: A Culture of Candor' (O'Toole & Bennis, 2009); 'Why Radical Transparency is Good Business' (Tabibnia, 2012); 'Heed the Calls for Transparency' (Wilkin, 2009).

Secrecy can conceal and enable wrongdoing (Carreyrou, 2018; Gibson, 2014; Van De Bunt, 2010), but secrecy is not, as some call it, "inevitably detrimental" (Lightfoot and Wisniewski, 2014). It can alternately be virtuous, invidious, or neutral in any given situation (Simmel, 1906; Bok, 1989; Heald, 2006; Dean, 2001: 626; Keane, 2008; Schipper and Bojé, 2008). Given the above analysis, 'pay secrecy,' despite the phrase's foreboding aura, is presumably permissible until an argument comes along that convinces us of the contrary. An account that would offer satisfying, concrete reasons which would obligate firms to disclose pay, in a context where there exists no corresponding legal mandate, remains to be seen.

VIII. General Theoretical Implications: Transparency as a Regulative Ideal

The most theoretically novel insights to emerge from this study for a general ethics of secrecy and or general business ethics is the implication that prescriptions, to a significant extent, depend the *perspective* one adopts—i.e. the moral vs. the regulatory/regulative perspective. This is in stark contrast to the claims of many top-down theorists, who argue self-regulation and traditional regulation are commensurable—whether someone regulates you, or your regulate yourself, it is argued, you should come up with very similar prescriptions (Heath, 2014; Norman, 2011). It is on this central principle that many top-down efficiency-focused approaches build their theories. We have cast doubt on this principle in our examination of transparency.

Oftentimes, the reason we might demand transparency is because secrecy covers up organizational wrongdoing. In the case of pay secrecy, the primary worry is pay

discrimination, but secrecy can cover up other crimes, enable corruption, and perpetuate or lead to any number of ills (Van De Bunt 2010). Sometimes, the only mechanism via which we can exert regulatory or coercive power over corporations, it sometimes might be thought, is transparency. This mechanism could thereby be justified solely by the fact that there are wrongdoing corporations out there (Laufer 2010). In this light, however, transparency performs a policing or regulating function. This function is, at least in principle, plausibly totally distinct from the ethical requirements that well-meaning corporations should take themselves to be required to meet.

We might draw a useful analogy to airline security. You and I would never hide bomb-making materials in our shoes. If the world were just filled with people like you and me, the policy that shoes be removed and scanned would be a bad, useless policy; there is no good in either of us taking off our shoes (i.e., in being 'transparent' about the contents of our shoes). In such a world, further, I would have no reason to *volunteer* that my shoes be scanned, even if we all recognize in our current world, there ought to be a policy mandating that everyone's shoes be scanned, including my own. (Shoe) Transparency only becomes an important policy once 'bad' people come to inhabit the world. In other words, transparency with regard to my or anyone's shoes is not important unless there is a danger that I or anyone are not intrinsically motivated to refrain from using shoes for illicit purposes.

One useful way of thinking about transparency, then, is that we need it for 'bad firms' to be accountable to morality or to the social mandates codified in law and policy. This notion is by no means striking or revolutionary. Several theorists have suggested

transparency is fundamentally about addressing asymmetric power relationships that are liable to abuse (Bok ,1989: 105–112; Feldman, 1988; Henriques, 2007: 30–31; Toegel et al., 2021; Younes et al., 2018). But the fact that transparency may fit into a larger category of *regulatory tools* designed to respond to bad individual has hither-to underexamined, serious implications for how we judge transparency from the standpoint of ethics.

The first major implication is that, while we can make the case for policy regimes to ensure compliance and accountability, transparency in the *absence* of such regimes is not a moral requirement any more than me taking off my shoes in airline security would be a moral requirement were there no policy requiring it. In other words, regulations we *impose on ourselves* (self-regulation) should not always be similar in content to those regulatory principles which others' might ideally subject us to.

The second major implication is that the value of transparency can be understood as primarily *instrumental* in nature. I have suggested that, too often, reasons offered in favor of transparency are paraded as *moral* reasons grounding an obligation for voluntary action—as in the case of Brandeis's sunlight dictum—when those reasons would actually only support regulatory intervention. Transparency is not a moral end in itself, but one of many tools of corporate governance and corporate regulation. But then transparency becomes subject to critique based on its *effectiveness* as a regulatory mechanism, especially compared to potential alternative mechanisms.

Once we evaluate transparency on its merits as a value that is operationalized as a social-regulatory mechanism, e.g., as a *transparency initiative* or *transparency policy*,

however, it comes up rather short. There have been a select few scholars developing serious self-critical theories about the prospective effectiveness of transparency as a form of social regulation. Etzioni (2010, 2018) criticizes transparency requirements in codified formal state-backed regulations, arguing they suffer from several major pitfalls, including a reliance on: a vigilant and broadly educated public; a public which effectively and promptly integrates the information into their commercial decision-making (also Day, 1976); the veracity of the corporation's released information; and on the digestibility of the information.

In management literature, Barnett (2014) and colleagues (2018), examining informal regulation via stakeholder influence (see Frooman, 1999), have similarly held that the information-promoting effects of social media and other initiatives are counteracted by a variety of factors including: the cognitive limitations of stakeholders in the face of increased information overload and lower-quality or less filtered information (also Laud and Schepers 2009; O'Neill 2009);[51] the increased ability of firms to promote "alternative facts" or otherwise "contro[l] information flows and the narrative" by engaging in framing contests across fragmented media outlets; and the increased ability of firms to traffic in lip service or "slacktivism" given its normalization. In short, having more transparency initiatives has not translated into society having more control.

[51] Bentham, himself, argued for "publicity driven by the graphic technologies of writing and print" as opposed to speech as "a corrective strategy for disciplining speech" (Gaonkar and McCarthy 1994). The obvious obsolescence of this view in the context of modern digital writing further emphasizes the stark differences the digital age has ushered in terms of the structure, quality, and manageability of information flows.

But consider the counterfactual in which we *were* able to construct some real-world transparency regimes that advanced true, sincere transparency of firm conduct. Even in this counterfactual, many boundaries exist to change for the better (Locke 2013, pp. 30–33). One example is illustrative: a significant proportion of workers do not know crucial and eminently public information such as their overtime rights, minimum wage rights, and at-will employment status (Alexander, 2015). These rights are not 'secret' in any sense, but they are still unknown. Consider also that even a significant proportion of workers who *do* know their rights and whose rights are violated actually fail to initiate any proceedings to enforce those rights (Alexander, 2015: 212–215). All of this is to suggest that there are many boundaries to overcome even once information is itself collected or made public (Orts, 2013: 227). In short, we have very little reason to think transparency *actually works* as regulatory tool, despite some optimistic accounts to the contrary (cf. Hess 2007; Park 2014).

It is not just that transparency mechanisms can be *ineffective*, but they can also make things worse. Transparency, as Etzioni (2010) points out, is often seen as a substitute rather than supplement to coercive regulation (Pozen, 2018). It can therefore displace effective regulation and facilitate an agenda of deregulation (e.g., Crovitz, 2009), in "shift[ing] the work from the government to the average citizen" (Swartz, 2010: 269).

Transparency initiatives may themselves also serve as a cloak for corporations as well as a pacifier to those who are willing to accept corporate representations at face value (Heimstädt 2017). All the while, many of those who are most vocal about a need for mechanisms of accountability and responsibility in business recognize a tendency for

corporations to orient their transparency policies so as to assuage scrutiny rather than directly serve the public interest (Laufer 2008, p. 154). The limited empirical evidence available attests to the vast extent of wrongdoing by and within corporations without corresponding public accountability (Diamantis and Laufer 2019; Ethics & Compliance Initiative 2018; Soltes 2019). Transparency initiatives thus not only threaten to erode organizational efficiencies (Licht and Naurin 2016); they threaten to erode organizational accountability itself, the very value which they are purported to advance.

ESSAY 3 YOU, ME, AND THE MARKET: FROM AMORALISM TO IMPERSONALISM

This essay concerns how individuals ought to relate in commerce (or 'the market'): more specifically, it inquires, from the top-down perspective, into what general rules we should want individual market participants to internalize when deciding with whom to transact.

This paper begins by considering three extant answers to this question, as outlined by Amy Sepinwall (2021). The first two—the 'formal egalitarian view' and 'economic view'—attempt to justify what I call "broad (market) access rules"; these rules hold that individuals are required to broadly transact with individuals and firms in markets—i.e., give broad access to their products and services—even when the projects in which other transactors are engaged are objectionable from a transactor's point of view or personal conscience. This is to say that vendors would not be justified in refusing customers in most contexts. The third view, which Sepinwall proposes, rejects broad access rules as a procedural commitment; instead, it adopts a substantive criterion, whereby access is justly refused when doing so would advance substantive egalitarian values, or, under certain conditions, when doing so would violate the conscience of the vendor.

This paper begins by arguing that the argument of the 'economic view' for broad access rules has not been given due elaboration and consideration. Many theorists have painted the economic tradition epitomized in the thought of Friedrich Hayek and Milton

Friedman as endorsing a largely heartless and cruel amoral outlook. I argue that it is implausible to endorse such a characterization while also attributing to these theorists an endorsement of broad access rules. In an attempt to present an alternative version of the economic view, I construct an account pulling on threads of work from this economic tradition. This outlook, instead of embracing amoralism, embraces what I call *impersonalism*. Impersonalism suggests that market interactions should be impersonal, which is to say that we should engage in an intentional alienation from own selves and conscientious commitments when entering into transactions with others. This alienation ensures that all individuals, despite intractable differences in beliefs and worldviews, can contribute to and benefit from flourishing markets. On the impersonal view, the market sphere is unique in its function of eschewing political, social, and moral conflict within its boundaries in order to provide the material and occupational benefits which are necessary to the flourishing of all individuals. It is these set of commitments from which we can construct a compelling and distinctive justification for broad access rules. The commitments of impersonalism also bring to the fore some problems with adopting substantive criteria for access rules as Sepinwall suggests.

The first part of the essay considers Sepinwall's critique (2021) of the position that individuals should be required to broadly transact with individuals and firms in markets, even when the projects in which those individuals are engaged are objectionable from a transactor's point of view or conflict in some way with their identity. I call the position under critique 'broad (market) access rules,' since it mandates that vendors provide remarkably broad access to one's goods or services, often regardless of

individuals' beliefs or projects. I spend a good deal of time at the outset arguing that the economic view Sepinwall considers in favor of broad access rules is underspecified.

The second part and bulk of the essay is dedicated to formulating a renewed economic account in favor of broad access rules, based primarily in the tradition of economists like Milton Friedman and Friedrich Hayek. These broad access rules are premised on the value of inclusive, productive markets in a modern pluralistic society. The primary claim of this account is not that markets ought to be amoral, but rather *impersonal*. An impersonal market is one in which we all intentionally alienate ourselves from our own identities and moral commitments when transacting in the economic sphere. The market, in this picture, is bigger than you or me, or any particular communities to which we belong. Far from buttressing a 'libertarian' picture of market activity, in which market actors can choose or refuse their trading partners on a wide range of even bigoted bases (e.g., Epstein, 2014), the impersonal perspective implies access rules should be rather broad. I show how this perspective will respond to both of Sepinwall's primary concerns with broad access rules. My aim is not to show the impersonal perspective to be superior to all others, but rather to pursue the positive project of *illustrating and systematizing its commitments as a compelling moral-economic view*, one made even more compelling when it is divorced from the objectives of profit maximization with which it is often associated.

The final section of this essay makes the case that, given the difficulty of self-alienation, the impersonal view also calls for a significant role for secrecy in economies. Secrecy enables impersonality by inhibiting interpersonal information-sharing or -

gathering and therefore easing self-alienation. Against those who claim the reduction of information asymmetries an unqualified good relative in advancing market efficiency (Alexander, 2015; Eisenberg, 2011; Heath, 2014; Norman, 2011; cf. Calo, 2015), this essay demonstrates that the impersonal view, as a compelling top-down approach to market ethics, in fact calls for a good deal of secrecy.[52]

II. Mapping the Conceptual Terrain: 'All Customers (Must Be) Welcome Here'

In her review of recent court findings and commentary, Sepinwall (2021) discerns what is an essentially "blanket prohibition on turning patrons away," embodied in Justice Kagan's pronouncement in *Masterpiece Cakeshop*: a "vendor can choose the products he sells, but not the customers he serves—no matter the reason." Justifications for this blanket prohibition take on two forms, Sepinwall argues.

The Profit Claim View

The first is advocated by those who see business as performing an exclusive function of generating profits, which Sepinwall finds not just in the writing of economists like Milton Friedman, but most surprisingly in the dissenting opinion of Justice Ginsburg in *Hobby Lobby* and in the briefs of other progressive organizations who opposed conservatives' exclusion of people of certain identities from markets. This position, as Sepinwall describes, is the *amoralist* position, since it is premised on the idea that the

[52] I owe a great debt to the work of Ryan Calo (2015), which heavily informed my thinking about how markets relate to information, efficiency, and social value as well as the dangers of an "ideological and socially fraught" market sphere. It also directed me toward Jules Coleman's (1987) work on competition and cooperation.

primary or exclusive purpose of corporations is to make money or generate profit (let's call this the *Profit Claim*). This claim, she argues, amounts to an assertion that "market transactions are inherently amoral," adopting an "avaricious picture of the marketplace" as a "morality-free zone." In Sepinwall's description of the position, the approach's implicit commitment to the view that "market transactions are inherently amoral," leads to the conclusion that "it can never be immoral to provide service; it can only be immoral to deny it."

The Directly Egalitarian Approach

The second, alternative position which supports broad access rules consists in what she calls the *Equal Access* view; on this view, "a store may not sell a particular good to one person and then refuse to sell that same good to a different person." Instead of ejecting morality from the market together, this position adopts a consciously egalitarian constraint in allowing access to customers.

In Section II, I turn to Sepinwall's proposed view, which does away with the broad access rules both of these approaches imply. But for the remainder of this section, I dispute Sepinwall's characterization of the first view that extends from the *Profit Claim*. This view, I argue, is not amoral, though it is at present underspecified.

Is the economic approach to broad access rules amoral?

One of the most striking claims Sepinwall advances is that there is a thread across law and scholarly commentary supporting broad access rules which rests on the contention that the market is an *amoral* arena for profit-seeking. But I argue here that this

characterization is problematic.[53] In short, I argue it is impossible for an amoral view to generate a moral justification for broad access rules—one that implies "it can never be immoral to provide service; it can only be immoral to deny it"—because amoral views do not recognize moral reasons and thereby cannot offer any *moral* justification whatsoever. Too, a purely *economic justification* fails to motivate the amoralist to endorse broad access rules. Thus, the amoral approach is not just unattractive, as Sepinwall contends, but it is not even a candidate approach for connecting the *Profit Claim* and broad access rules.

Below I lay out the way Sepinwall might connect the *Profit Claim*— the claim that "the purpose of such corporations is simply to make money" (*Hobby Lobby*, as cited by Sepinwall)— to broad access rules, using *amoralism*. I argue that this connection between the Profit Claim and amoralism is not defensible.

Amoral Economic Reasons

We begin with the amoral focus on profit and its potential to justify broad access rules on exclusively economic grounds. Here is a plausible statement of how one might think amoralism generates an economic justification for broad access rules:

P1: Amoral individuals or firms care only about profit.

[53] To be clear, Sepinwall does not herself endorse the amoral view; she objects to it on independent grounds (namely that it is unnecessary to justify anti-discrimination in public accommodations, and that a publicly endorsed amoral view promises sour social consequences). But she formulates the amoral view herself, based on the pronouncements of various commentators and jurists, and presents it as a coherent, if mistaken, view.

P2: If you care only about profit, you do not care who buys your products or services.

P3: If you do not care who buys your products or services, you will offer your products or services to anyone who will buy them.

P4: If you will offer your products or services to anyone who will buy them, you endorse broad access rules.

C1: Therefore, amoral individuals or firms endorse broad access rules.

This argument presents a plausible bridge from the *Profit Claim* to broad access rules. But consider this counterargument:

P1: Amoral individuals or firms care only about profit.

P4: If you care only about profit, you will engage in any business practice that is profitable.

P5: If you will engage in any business practice that is profitable, you will exclude individuals on the basis of their identities or affiliations when it is profitable.

P6: If you will exclude individuals on the basis of their identities or affiliations when it is profitable, you do not endorse broad access rules.

C2: Therefore, amoral individuals or firms do not endorse broad access rules.

This counterargument suggests that an amoralist will exclude individuals when it is profitable (P5). This possibility exposes an issue in the original argument, in Premise 2. As P2 suggests, it is true that the amoralist does not care *per se* about the identity of their customers—since they only care about profits—but who you include among your customers is not a decision which is exogenous to profits. If *excluding individuals can*

itself be a source of profit, the amoralist may care about the identities or affiliations of their buyers insofar that such a factor will affect the bottom line.

But one might defend the initial argument, saying that, although, *conceptually*, amoralists are directly not committed to broad access rules, *functionally* they will be committed to them. This could be the case if an additional premise holds: that it is always profitable to offer broad access. It might be thought, empirically, the more customers a vendor attracts—whatever their beliefs, whoever they are—the better. We may therefore be tempted to posit a practical convergence between the *Profit Claim* (that businesses should pursue or maximize profits), the amoral view of the market, and broad access rules, insofar as broad access rules advance or maximize profits. So here is a revised version of the original argument:

Practical Amoral Argument for Broad Access Rules

P1: Amoral individuals or firms care only about profit.

P2*: If you care only about profit, you only care who buys your products or services insofar as it affects profits.

P3*: If you only care who buys your products or services insofar as it affects profits, you will offer your products or services to the set of buyers of certain identities or affiliations that maximizes profit.

P4*: If you will offer your products or services to the set of buyers of certain identities or affiliations that maximizes profit, you will offer your products or services to the broadest set of buyers possible.

P5*: If you will offer your products or services to the broadest set of buyers possible, you will offer your products or services to anyone who will buy them.

P6*: If you will offer your products or services to anyone who will buy them, you endorse broad access rules.

C1*: Therefore, amoral individuals or firms endorse broad access rules.

Here, the key premise is P4*, which holds that the set of buyers that maximizes profits is the same as the broadest set of buyers. This premise is problematic. Consider, for instance, profitable, wrongful discrimination. A pure amoralist would feel comfortable engaging in wrongful discrimination against customers if it benefitted her: for instance, a purely amoral country club owner would feel comfortable excluding Black individuals if she thought this exclusion would gain her some premium return from other customers. Similarly, a purely amoral owner of a news show would play to racist fears and give lip service to white supremacist concepts if doing so would best attract her target customer base. These hypothetical amoralists would do these things not because they reflectively endorse this outlook or these commitments, but because they serve their interests.

Amoralists with such an orientation are not just hypothetical. Ever since Becker's (2010 [1957]) rosy analysis of the economics of discrimination—which alleged that self-interested actors generally lose out if they discriminate— a number of empirical studies have shown that commercial discrimination is very real, and that this discrimination is not stamped out by market forces (see generally Rodgers III, 2006; especially Hellerstein & Neumark, 2006; Sunstein, 1991).

Because broad access rules are not always the most profitable access rules, the amoralist cannot plausibly justify broad access rules with an appeal to economic justifications alone. We must search for some other route if amoralism is to succeed in generating a justification for broad access rules.

The Amoralist's Moral Justification

So far, we have interrogated if the amoralist "will endorse broad access rules" based on economic reasons. But, of course, even if they were to give broad access to their products and services on reasons of self-interest alone, it would be a stretch to call them "committed to broad access rules," or at least the kind of rules in which we are interested. That it might generally be profitable to transact with a wide variety of buyers does not mean the amoralist can be said to hold an actual commitment to transacting with those buyers. This was Kant's primary point in his example of the shopkeeper who always gives the correct change; a shopkeeper who acts on a principle of volition that solely revolves around profit may *resemble* an admirably honest person if they recognize giving the correct change tends toward their self-interest (2002 [1785]: G 4:397). But if it were to serve her interests to steal from her customers, her principle of volition, being rooted in self-interest rather duty, would entail that she would steal. In the same way, the fact that an amoralist would exclude buyers under certain counterfactuals gives us reason to resist characterizing them as having some kind of actual commitment to broad access rules.

While we have so far considered whether the amoralist "will endorse broad access rules"—as a predictive matter of whether they will sell to a broad range of buyers—courts and commentators tend to offer the *Profit Claim* as a kind of *moral justification* of

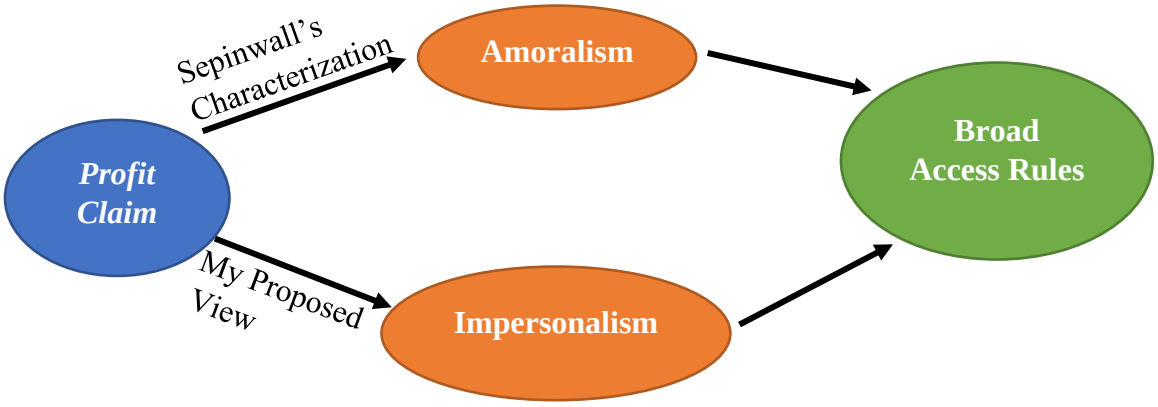
broad access rules, as Sepinwall correctly depicts. In other words, they seek to offer reasons that morally justify the propriety of broad access rules instead of merely predicting that businesses *will* act *as if* they internalized such rules. It is for this reason that Sepinwall takes on the task of drawing a line from the *Profit Claim* to a distinctively *moral* claim about broad access: in particular, the moral claim that "it can…be immoral to deny [a service]."

But if we are to assemble a number of candidate justificatory routes one can take to get from the *Profit Claim* to this ultimate moral claim, amoralism seems to be disqualified from the outset. This is because an amoral outlook *by definition* will be unable entail a moral prescription. On a purely amoral outlook, it is *not* generally immoral to deny services, because it is neither moral nor immoral to do anything in a "morality-free zone," as Sepinwall calls it. To see this, we might first imagine what market access 'rule' a true amoralist would, starting from first principles, formulate. It is true that an amoralist would see no moral reason to refuse a transaction; but it also follows that an amoralist would see no moral reason to be strictly *inclusive* in transactions either.

If the views of those who advance the *Profit Claim* are to play into some plausible justification for broad access rules, it will not do so via amoralism. We are therefore left with the question of how the *Profit Claim* is supposed to support the case for broad access rules. The bulk of the remainder of the paper is dedicated to formulating an alternative, moral-economic account to fill this theoretical vacuum, focused instead on

the *impersonal outlook*. We should look to impersonalism rather than amoralism. The structure of the core disagreement is depicted in Figure 2 below.

FIGURE 2: CONNECTING THE PROFIT CLAIM TO BROAD ACCESS RULES



Before outlining my own view, we should remind ourselves of some basic differences between the approach in question and the Equal Access approach, which, as Sepinwall outlines, endorses broad access rules on directly egalitarian grounds. Sepinwall pinpoints a highly salient difference between these two approaches, a difference that is arguably the entire point of her analysis: while they both endorse strict rules of broad access, the profit-centered approach, associated with economists and their kin, does rely on some vision of the economic purpose of the firm and does not necessarily endorse equal access on directly egalitarian grounds. Too, both of these approaches hold the notion of *conscience* to not be of great moral relevance in formulating access rules. Broad access rules impose severe limitations on vendors regarding refusals of products or services on the basis of their own conscience.

Sepinwall's main theoretical distinction between the economic view and the directly egalitarian Equal Access approach revolves around the notional rather than moral role of conscience. The latter holds that conscience is *morally* irrelevant, whereas the

economic view holds that conscience is in some way *incoherent* in markets; that is, that the economic view is what we might call *notionally skeptical* about conscience in commerce.

The posited *notional* rejection of conscience in the economic view was, however, based largely on its description as an *amoral* doctrine. Once the view has shed its amoral gloss, it is not clear any of the cited commentators endorsing the economic view in writings or opinions—from Justice Ginsburg to Milton Friedman—actually reject the *notional* coherence of conscience in the market. Friedman is a moralist who attempts to cultivate a particular (albeit profit-focused) conscience in managers, and we have few reasons to think Justice Ginsburg considers the market to be notionally conscience-free, even if she holds that conscience should not be determinative of rules of market access. Indeed, the economic view, once it is wrested from its association with amoralism, does not necessarily adopt a negative position on the metaphysical existence or notional coherence of conscience in the market.

Too, we should note that even if the economic view were notionally skeptical of conscience—i.e., were *a*-conscience—this would not mean it is *a*moral. The rejection of conscience-related moral reasons in markets does not constitute the rejection of all moral reasons in markets. Values such as autonomy or welfare, for instance, do not hinge on individual conscience. In short, once we establish that the economic view does not consist in an amoral outlook, and that it does not necessarily reject the notional coherence of conscience in commerce, we are left with a theoretical vacuum, without clear justificatory differentiation between the economic view and the directly egalitarian *Equal*

Access approach. It is clear that these approaches are different in some ways. Certainly, they make reference to different things: profit, efficiency, and the economic purpose of the firm on the one hand, and a particular view of *equality* on the other. But whereas the equal access egalitarian outlines their justification rather plainly—equal access is required because equality demands it—the economic approach remains incredibly underspecified as a normative account for broad access rules.

As I have contended, the purely amoral outlook cannot get us to a moral *ought* at all, because it is itself a tout court rejection of moral *oughts* in the market arena. Too, though, there is a large gap of reasoning between the various facts implicated by the *Profit Claim*—the purpose of business or the norms of profit maximization—and the moral *ought* of equal access to markets. If the economic approach does not get to the equal access conclusion by way of some *amoralism* or simply by way of some premise mandating profit maximization, how does it?

One might argue that this is not really too pressing of a puzzle in view of the fact that the equal access principles in market morality are not themselves attractive or plausible. Sepinwall offers several compelling arguments to this effect (reviewed in Section III, below). If such access rules are therefore not too attractive, constructing a route from the economic premises to the broad equal access principles could therefore be akin to building a bridge to nowhere. But I think once we formulate the most compelling logic possible on the economic view, supplemented by some reflection on justice and equality in the market, we might better elucidate the intuitive pull of these rather broad equal access principles.

Later, I offer a rehabilitation and development the broad access 'economic view'. I argue that the economic view is not *amoral*, but best seen as *impersonal*. Its rejection of conscience as a determinant of access rules in markets follows from a rather general and attractive view about the role of markets in pluralistic societies, one which endorses the market as a *unique* sphere of society in which self-regarding, and especially subjective, concerns for one's conscience or identity can and should be suspended for the common good.

In the next section, I summarize some of the reasons Sepinwall offers against broad access rules. These concerns fall into two main camps: (1) concerns dealing with alienation in the market (describing a meaningful relationship between individual conscience and a subjective, though important, sense of individual identity and self-conception), and (2) the advancement of substantively egalitarian projects and the non-advancement of substantively anti-egalitarian projects.

III. Sepinwall's Critiques and Positive Account

This section lays out the basic points of Sepinwall's argument relevant to our consideration. My goal is not primarily to rebut Sepinwall, but to illustrate how her concerns, which represent the best arguments against broad access rules, are addressed by my revised impersonal account.

Sepinwall's argumentative strategy is ingenious: If it is the case we care about *equality* or some analogous value of justice, and these values are meant to determine the access rules in markets, then any access rule is subject to critique if it mandates

transactions that contradict these values or estop transactions which would advance these values.

We might phrase this primary worry in terms of formally egalitarian access rules and substantively egalitarian access rules. Formally egalitarian access rules impose a criterion of *formal* equality of persons. As Sepinwall points out, such access rules "captur[e] the intuitive idea that we ought to treat likes alike." In the case of formal access rules, the relevant comparison is whether a transactor is an individual and whether you have or have held yourself out to sell this *same* product or service to other individuals. Broad access rules make no distinction between these individuals but accord them equal status and equal entitlement to transact. This formal equality, too, affects what features are relevant in determining what counts as the 'same' products or services. On the formal approach, the individual's intentions, beliefs, or intended uses for a product or service are exogenous to the definition of the product or service.

But Sepinwall argues this is problematic, insofar that it is underspecified. Products and services "might come in endless varieties," and "which of these are sufficiently similar" to attach the broad access rule is not obvious. Must a baker, she asks, offer rainbow cakes if they otherwise offer cakes "decorated in all the shades of the rainbow?" And even if we establish that a product is sufficiently physically similar, she argues that differences in intended use are meaningful. Whether a cake with KKK written on it represents the initials of someone's name or the domestic terrorist organization, Sepinwall argues, seems to matter. How could an access principle not allow us to make such distinctions?

And the substantive import of the product or service should not only allow us to turn individuals away—it should also mandate that we offer certain products even where it is not offered to someone else. The slight of *not* offering a rainbow cake to a gay customer, Sepinwall offers, is different than the slight of not offering one to an eight-year-old for her birthday party, so it is no consolation if a baker complies with the equal access rules when she refuses to offer rainbow cakes to anyone.

Whereas formal equality consists in a vendor selling products and services in a consistent manner, Sepinwall offers, this is a red herring: really, "what matters is whether he is treating his patrons with the respect they deserve."

When we endorse a wide-ranging formal protection for all individuals, completely content-neutral as to the beliefs or characteristics on which an individual may want to exclude another, we should question, as Sepinwall does, whether we are going overboard. Surely not *all* beliefs or characteristics are on a par, equally worthy of protection. In particular, a society that aspires to a kind of egalitarianism, if it does not *mandate* intolerance for hateful or regressive projects, surely must *allow* such intolerance.

In Sepinwall's reformed account, discrimination on protected characteristics would not be acceptable, but that is not the only discretion vendors have to deviate from equal access rules. For instance, Sepinwall argues that "commercial enterprises may, in the spirit of 'hate has no home here,' refuse commissions communicating hate." A baker may refuse a cake that communicates animus toward LGBTQ+ people, she offers, while agreeing to sell a cake for a gay wedding. This distinction is not rooted in any notion of

equal access, but rather in substantive egalitarian principle. One regresses egalitarian aims and so can be refused, whereas the other does not.

Sepinwall's point is not just that the *actual* advancement of egalitarian values can be decisive here. We are also justified in refusing participation or involvement writ-large in those projects even when that participation or involvement is rather tenuous. That is, if selling an object or service that is in some way involved in the hate-communicating project does not satisfy some set of *objective* criteria for substantially or causally advancing certain projects, vendors can also make refusals based on a subjective sense of complicity. We may be conscientious objectors not only in war, but in markets too, and this objection is valid even in cases of complicity that can be only subjectively justified. On Sepinwall's account, we can refuse to be recruited into projects that advance hate or oppression in a broad way, and what constitutes 'recruitment' can be subjectively defined.

We can distinguish the two objections Sepinwall voices against broad access rules:

(1) **Alienation:** disregard for self-regarding concerns of complicity, which involves identity-based and subjective determinations.

(2) **Substantive advancement of egalitarian projects, or non-advancement of inegalitarian projects:** the obvious reality that some projects substantively advance hate and some projects substantively curb it, and that a true appreciation of equality requires these to justify vendors to differentially allow access.

In what follows, I begin by outlining the core commitments of the *impersonal* market and what lessons we can draw from its proponents, in particular Milton Friedman. Subsequently, I elaborate on how this vision responds to Sepinwall's key concerns.

IV. The Impersonal Market Vision

The vision of the market as an impersonal order is perhaps most viscerally depicted by Voltaire's account of the Royal Exchange in London:

> …a place more venerable than many courts of justice, where the representatives of all nations meet for the benefit of mankind. There the Jew, the [Muslim], and the Christian transact business together, as though they all professed the same religion, and give the name of infidels to none but bankrupts. There the Presbyterian confides in the Anabaptist, and the Churchman depends on the Quaker's word.
>
> At the breaking up of this pacific and free assembly, some withdraw to the synagogue, and others to take a glass. This man goes and is baptized in a great tub, in the name of the Father, Son, and Holy Ghost: that man has his son's foreskin cut off, whilst a set of Hebrew words…are mumbled over his child; others retire to their churches, and there wait for the inspiration of heaven with their hats on; and all are satisfied (Voltaire, 1901: Vol 19, p 218 [1773]).

The market is a place where we can come together, engage in beneficial transactions, and, ideally, relate to one another as equals, despite pervasive, extreme, and intractable differences in beliefs. An integral part of the market is not only the existence of mutual interests in interaction, but also the ability of individual transactors to overcome their differences in order to realize these mutual interests. Adam Smith offers that:

> In civilized society [man] stands at all times in need of the cooperation and assistance of great multitudes, while his whole life is scarce sufficient to gain the friendship of a few persons….[M]an has almost constant occasion for the help of his brethren, and it is in vain for him to expect it from their benevolence only." (Smith, 1976: 26)

The reason benevolence is so scarce is not only because individuals are unkind or egoistic. It is also in view of the fact that many of us heartily disagree with one another about the proper way to live, and are liable to refuse to transact on principle, or give preference to a specific group of people. We cannot all take time to befriend one another, and it would indeed be unfortunate for us if the only way to facilitate cooperation with another person were "endeavour[] by every servile and fawning attention to obtain their good will," much as a dog begs for food (Smith, 1976: 26).

Smith paints appeals to each other's "self-love," therefore, in terms of a necessity—we *must* appeal to each other's self-love, lest we not gain the necessary cooperation. But one can also see how the threat of politics in markets may exacerbate the uneasy dependence we have on the cooperation of individuals who, without self-interest, may never cooperate.[54] It is not just that many are not our friends and are therefore *indifferent* to our own flourishing; many may be actively hostile to us. If the butcher does not like me, I may not be able to buy meat; if the baker does not like me, I may find myself in need of bread; and we should not even contemplate if, goodness forbid, the brewer does not like me.

Self-interest is held out by Smith as the only means by which all of these individuals might be convinced to transact. But we can also consider many instances in which self-interest is not up to the task of overcoming disdain or disagreement. Consider two cases of refusals of service that Sepinwall tentatively endorses:

[54] In management literature, this dynamic is explored through what is called "resource dependence theory" (e.g., Frooman, 1999; Pfeffer & Salancik, 2003).

> the restaurateur who announced, in the wake of the Orlando nightclub shootings, that owners of assault rifles were not welcome at her establishments; or the owner of the Red Hen restaurant, who ejected Sarah Huckabee Sanders, former press secretary for President Trump, because Sanders had defended the President's policy of separating immigrant children from their parents….

Putting the particular cases aside, we may wonder what would happen if everyone internalized a principle permitting refusals to those with whom we disagreed. On the impersonal approach, there are two primary concerns. One is that this will lead to an atomization of markets by which individuals and communities will be denied the immense benefits of larger and more liquid markets. Another is that to be in a position where one's ability to transact relies on others' benevolence or political approval might be said to be put in a state of unfreedom or domination. For individuals to transact on anything other than characteristics relating to one's productivity is for those individuals to hold sometimes invaluable access to markets, products, or services hostage to changes they would prefer to happen in the political or civil spheres. These worries, for the impersonal theorist, entail a *radical* pluralism as a unifying notion of market morality, one which properly crowds out vendors' conscientious worries as well as their regard for whether particular products or services may or may not substantively advance larger political-moral goals.

Progressives ought not to shut out Trump supporters from the market, nor ought social conservatives to shut out LGBTQ+ people. Many ultimate goals of efforts to do either—the economic impoverishment of Trump supporters or of LGBTQ+ people, or the identity- or politics- based segregation of markets and commerce—are morally wrong on this staunchly pluralist, impersonal outlook. Further, self-regarding

conscience/complicity concerns cannot justify the atomization of markets these kinds of division would sow; such atomization would ultimately hinder the functioning of markets themselves. The impersonal ideal supports broad access rules, insofar that such rules forbid the selective selection of potential transactors on features unrelated to productivity.

I begin with an intellectual background to show how this vision of the market is informed and constituted by a long history of insightful ethical reflection by economists who recognize the potential for conflict in markets to destroy them. I demonstrate that the impersonal vision of the market has a long and prominent intellectual provenance, in particular in the work of Friedman, Knight (as interpreted by Coleman), and Hayek.

V. Intellectual Background: Mistaking the Impersonal for the Amoral

I begin by drawing some insights from Friedman's worries about activism in the market. I do not adopt a framework anything like what he notoriously proposes, but I do think he makes some fundamental distinctions that frame some of the motives behind the *impersonal* standpoint in market. After presenting some of his and analogous views, I then consider what inspiration we can take from them to form a newer account of access rules in markets.

Friedman Beyond Shareholders

Let us return, in the first instance, to the earlier suggested distinction between the *amoral* and *impersonal* pursuit of profit. It is easy to confuse the *amoral* competitive pursuit of profit writ-large and the principled competitive *impersonal* pursuit of profit,

not least because defenders of free markets often fail to distinguish the two. Friedman himself marshaled many distinct and often jointly incoherent arguments in favor of shareholder value maximization. But consider this distinction he draws:

> Competition has two very different meanings. In ordinary discourse, competition means personal rivalry, with one individual seeking to outdo his known competitor. In the economic world, competition means almost the opposite. There is no personal rivalry in the competitive market place. There is no personal higgling. The wheat farmer in a free market does not feel himself in personal rivalry with, or threatened by, his neighbor, who is, in fact, his competitor. The essence of a competitive market is its impersonal character (Friedman, 2009).

Consider how horrible markets would be if we were to endorse something like the first sense of competition—were we to deride our rivals or those very different from ourselves instead of seeing them as fellow members operating within a larger framework, one which holds promise to advance our individual and collective benefit. One could see this derisible model of competition thriving in the amoralists' vision. But ironically, it is not too far of a stretch to also imagine this as the ideal of those who believe subjective personal identity can and should be front-and-center when we engage in transactions. A person who cannot stand a Trump supporter, or a person who cannot stand a Sanders supporter, could not only choose to vote differently at the ballot boxes, but buy from different stores, go to different markets, or traffic different online retailers. In the eyes of many, "it is better to shop than to vote" (Hertz, 2001).

The market impersonal theorist, however, believes we can interact in markets without feeling personally attacked or antagonized by competitors or without having our identities threatened. We can avoid the first sense of competition Friedman describes.

To understand why Friedman (2009) draws the line so close to the impersonal ideal, we must return to his basic concern around the political morality of the market. Friedman's primary concern with the pursuit of social responsibility objectives in the economic sphere is the translation of economic power into other forms of power, namely civil and political power. Using more Walzerian language, there is a worry that power in the economic sphere can be translated problematically into or across other spheres. Part of the reason a market must be impersonal is to proscribe inclinations we might have to using our economic influence to impose on others our vision of the world:

> an impersonal market separates economic activities from political views and protects men from being discriminated against in their economic activities for reasons that are irrelevant to their productivity - whether these reasons are associated with their views or their color (Friedman, 2009).

This impersonal order does not just protect from various types of discrimination, in Friedman's account; elsewhere he reiterates this claim more broadly in terms of *personal freedom*—he says competitive capitalism:

> separates the economic activities of the individual from his political ideas or activities and in this way provides individuals with an effective support for personal freedom.

In his view, the mandate for the pursuit of profit (one with a number of strong caveats, we should keep in mind) was not primarily a *freeing* principle for individuals in the market—one which let loose the bull of the free market or that threw off restrictions that may bind us in other areas of life or society—but it was an *immensely constraining* objective. The mandate for the pursuit of profit is most compelling when framed not as a *prescription* for managers to follow, but as a general *proscription* of adopting other objectives. The profit constraint serves to proscribe any efforts to use one's economic

power to achieve social objectives other than the accretion of profit in an open and free market within the boundaries set by law and custom. For Friedman, the economic power of individuals or corporations, if used for social ends, would threaten civil and political liberty. It is for this reason that Friedman thinks that firms with sufficient economic power to pursue extra-economic objectives would do nothing less than "destroy a free society" were they to attempt to pursue those objectives (a claim later repeated by Hayek (Kusunoki, 2016)). This is why "the business of business is business."

Friedman therefore shares some concerns with the primary critics of corporations today, insofar that their criticisms focus on the political influence of corporations, their singular economic power (which he argued must be "widely dispersed"), their exacerbation of market failures and market power to generate parasitic profits, and their endeavor to limit, control, or influence their employees' religious and moral beliefs. In light of this, we can return to the initially somewhat confusing self-conscious association of Ginsburg and some progressive organizations with a 'the business of business is business' view, at least in their legal arguments.[55] Progressives' self-association with this view is not motivated by an urge to reject morality *tout court* within markets, or for that matter to endorse Friedman's prescription of profit-maximization. Instead, they see the

[55] It may be that some progressives use this justification only selectively. One would be reasonable in thinking a progressive who, in this case, uses the Friedmanite argument to constrain socially conservative employers like *Hobby Lobby*, would also wish to provide latitude to employers urging progressive changes within workplaces. Indeed, this would fall within Sepinwall's general approach of allowing substantively egalitarian policies and disallowing substantively inegalitarian policies. Thus, these progressives may be only rhetorically committed to the procedural arguments of the Friedmanite position. But the point still stands that they see the merit in Friedman's arguments for *constraining* at least one category of employer.

value in the view's *proscriptive power*, in excluding certain forms of activism and political activities on behalf of powerful employers.

Indeed, Friedman's skepticism about how a truly free society could allow the powerful in the economic sphere to involve themselves in the shaping of the civil and political domains of society are not concerns only of a deceased conservative economist. They are now on the cutting-edge of modern progressive critiques of 'philanthrocapitalism,' private philanthropy, and corporate social responsibility as promoting less visible but ever more potent forms of private, corporate power (Aschoff, 2015; Banerjee, 2008; Bishop, 2013; Giridharadas, 2018; R.B. Reich, 2008). Concerns of the encroachment of corporations on the political realm, of course, are also part of a long-standing progressive tradition that is critical of corporate political donations and other political activity (e.g., Hussain & Moriarty, 2018). The primary intuition shared by classical liberals and these critical progressives is that politics and markets must be separated (most recently, see The Economist, 2021).

Where a focus on profit is *constraining* for vendors, it is *liberating*, on Friedman's account, for those who would otherwise suffer at the hands of market participants, whether because of their race, other identity characteristics, or set of beliefs. Indeed, Friedman claims that "the groups in our society that have the most at stake" in this set of arrangements, "are those minority groups which can most easily become the object of the distrust and enmity of the majority." Friedman implicitly recognizes that we will all face a temptation to incorporate factors into our purchasing decisions that are unrelated to productivity.

But Sepinwall may have an easy rejoinder to Friedman here. It is true that racists may want only to transact with members of a certain race, and that progressives may only want to engage in transactions that further progressive causes. But the solution need not be that the racists and the progressive are *both* forbidden from considering reasons unrelated to productivity. It may seem as though the progressive *just are objectively correct* in their inclinations about justice, whereas the racists *just are objectively wrong* in theirs. So, couldn't we say that racists are disallowed from considering race, and progressives are allowed and even encouraged to consider justice? Isn't this what market activism should be all about? The principle that might follow is:

> ***Substantively Progressive Market Activism:*** Market activism is permissible when it is progressive, and impermissible when it is not.

This principle rejects procedural and other formal objections to corporate involvement in the civil and political sphere and instead adopts a substantive standard of corporate conduct.

Friedman would mount at least two responses to this proposed principle, both of which those who would endorse this principle may not find especially convincing.

Friedman's standard response would be that all social responsibility standards detached from the pursuit of profit lack suitable accountability mechanisms to protect against abuse. This is a skepticism about our ability to keep corporations accountable in view of the ends to which we want to hold them accountable, once we reject a formal framework specifying a specific, measurable objective that is profit. This concern is still

largely unresolved in extant business ethics literature,[56] and it is the one that also motivates progressives insofar that they worry that such initiatives have and will be exploited only for managerial or corporate gain (Banerjee, 2008). This response, though, is not immensely convincing insofar that profit is not itself a reliable, easy metric for accountability. For evidence of this, consider the corpus of work on agency theory: its primary motivation is the fact that it is difficult for parties to tell when other parties are shirking, even according to economic metrics. The difficulty consists in large part in our inability to compare actual profit outcomes to potential counterfactual outcomes. Microsoft is profitable, but no one knows how profitable it would be without shirking. This inherent difficulty is also why the Business Judgment Rule is so deferential to

[56] Friedman worried that the move away from a formal framework, characterized by shareholder capitalism, would enable abuse, given how notoriously easy it is to stretch the meaning of social responsibility (Votaw, 1972). The manifestation of Friedman's worry would be managers engaged in masterful and sophistical story-telling, wielding the vague notion of social responsibility to accrue value for the corporation. It is remarkable that story-telling is one of modern stakeholder theory's primary aims. Its main exponents have asserted that "the focus of theorizing needs to be about how to tell better stories" which "help managers create value for stakeholders" and sustain a "profitable enterprise" (Parmar et al., 2010). Indeed, "[t]here is no such thing as stakeholder theory", as it is rather "a genre of stories about how we could live" (Freeman, 1994). An ethical thought leader's primary role, then, is as "an orator or rhetorician" oriented toward persuasion (Duska, 2014). The malleability of such a framework—its ability to switch in and out different "normative cores," and be wielded by a feminist (Wicks, Gilbert, & Freeman, 1994), libertarian (Freeman & Phillips, 2002), or ideologue of any stripe—is counted as one of its most redeeming qualities (Parmar et al., 2010). Rather than concerning itself with "transcendental" ethical "truth," stakeholder theory is, beyond anything else, *useful* (Parmar et al., 2010). But what is it useful for? While its proponents say value creation, Friedman might say value *appropriation* by the manager who is no longer accountable to a single metric. The worry is that stakeholder theory can adapt to any sort of normative justification if you tell a good enough story; whereas this is precisely Friedman's nightmare, this is indeed the aspiration of the primary theory in the field of business ethics. Friedman might say that, as we, with noble hearts, implore the managers of corporations to direct their resources where justice or social responsibility demand, we also remove the leash from the bull. And as we provide them with the malleable frameworks with which they could justify nearly any decision, we beg to suffer the bull's horns. This is the essence of his worry about moving away from formal frameworks focused around profit. The Economist recently reiterated its commitment to Friedman's framework alongside the worry that the stakeholder concept is "vacuous" (The Economist, 2021).

corporate boards when shareholders bring suit against a corporation for a breach of fiduciary duties. The difficulty of showing a breach of fiduciary duties extends precisely from the difficulty of reliably assessing financial outcomes under counterfactual scenarios. In brief, it is not clear that financial accounting would be more effective at ensuring accountability than newer, innovative forms of stakeholder accounting.

Friedman's alternative response would likely default to his basic concern for certain forms of individual liberty as privileged above other egalitarian aims. Earlier we examined a point Friedman made, which critiqued majoritarianism in markets. In other words, he has a concern that differences in ways of living and beliefs in markets are resolved via the gatekeepers, barons, or majorities of markets, who wield economic power to impoverish those who could not or refused to conform (also Heyne, 1968). This is the impersonal theorist's domination concern. The market activism principle outlined above says that such power is unproblematic so long as it is exercised toward progressive ends. Friedman, on the other hand, has a formal or procedural objection to this power in virtue of liberty interests.

The conflict between Friedman and this market activism principle may, then, seem to boil down to the classic conflict over the priority of liberty vs. equality (e.g., Buchanan, 1976). This conflict calls for a determination as to what extent corporations with a just mission can use their power to influence those with inegalitarian, or insufficiently egalitarian, beliefs or modus operandi. Some have held that the right answer to resolve such conflicts within markets cannot be resolved *a priori*, but must be determined democratically through political processes (Singer & Ron, 2020). Whatever

the answer, there may seem to be little resolution to be had between a progressive endorsing the market activism principle and Friedman whose account consists in the basic assertion of individual liberty.

However, not every conflict in market access is a substantive one between liberty and equality. In many cases, the conflict is between liberty and conscience. In other words, as Sepinwall points out, there are many cases in which refusing transactions does not substantively advance equality. Rather, many refusals, like the above refusals to transact with Huckabee Sanders or assault rifle owners, are most intelligibly based in a subjective sense of identity or conscience. One might therefore hold that Friedman's concern here is still compelling, insofar that the interest in protecting one's conscience is not on a par with others' interests in nondomination. In brief, the nondomination concern may ultimately defeat others' legitimate, though lower priority, interest in following their subjective consciences in markets.

A better argument for the impersonal market, though, is found outside of Friedman's domination concerns. It extends from the tight relationship between respect for pluralism and the good that is social cooperation. I begin by motivating the role of pluralism in the formulation of market access rules which then leads to a view of the market as one designed for overcoming the social ills that pluralism can produce—in particular, the ills produced when the market is taken as a forum for political or moral disagreement and deliberation rather than as one for cooperation. For the statement of the impersonal view itself, I rely largely on Jules Coleman's characterization of the view, which is presented better than I myself could present it. After reviving this impersonal

view, I examine how it can answer Sepinwall's concerns with broad market access rules, and then examine the role of secrecy in markets it suggests.

VI. From Pluralism to Cooperation: An Argument for Broad Access Rules

Pre-school, Pie, and Pluralism

Consider a diverse pre-school in which every child has another as a 'buddy.' At lunch time, the staff distributes pieces of pie they order from an outside bakery. The pieces of pie are large, and they would ideally like to halve them for each child, but such central coordination is simply impossible given the limited time and resources the cafeteria staff have to prepare lunch. So, they distribute only one piece to each buddy pair for them to share.

What rules should they want the children to internalize regulating their sharing the piece with their buddy? The rule may be: "we do what we will with the piece of pie, without force or fraud." In that case, whoever is handed the piece of pie gets to decide how much to give the other person. And that person may choose to give their buddy nothing, and themselves the entire piece of pie. Another candidate rule: "we must share the piece with our buddy." In such cases, some clever children might give only a crumb to their buddy.

But the pre-school staff are egalitarians, and think the children objectively should be egalitarians, so formulate the rule "we must share the piece equally." But it turns out some children then distribute the piece based on age, because they think equality

demands that the older person get a bigger piece. Or they may think equality depends on caloric needs, so the person with the higher caloric need should get a proportionally larger portion. Or they may think Santa had the right idea in doling their presents and coal, and that equality should correspond to virtue, and each should receive in proportion to their virtue. Or they may think that only members of their religion are worthy of God's grace, and so when they are given a delicious piece of pie, which could only be an act of God, they understand that equality demands sharing with all members of their religion; if their buddy is not a member of that religion, they get to keep the whole thing.

The pre-school staff may then be tempted to forsake any of these contested concepts, and resort to a physical rule. They say the children should cut the pie in half and share one half with their buddy. But some clever children figure out that they can cut each piece horizontally and give themselves the bigger piece.

Let us assume that, in any case of conflict, a fight will break out, that will result in a not-very-fun food fight that would really ruin everyone's lunch. Let us also assume that the pre-school staff are correct that morality demands each child to split the pie equally, in the colloquial sense you and I would understand it. But they struggle to specify a rule that would grip everyone in the correct way. Notice also that this problem is not a problem of noncompliance or 'gaming the system,' since we can assume that the children are acting on sincerely held beliefs or principles. Instead of a problem of noncompliance, it represents a conceptual problem in specifying general rules within a system populated by people of plural beliefs.

The staff also faces the worrisome implications of too many disputes between the children; too much conflict will ruin lunchtime for everyone. Indeed, what is the purpose of lunch time if not to have a pleasant break and to eat food? If the staff are headstrong and endorse the principle of equally sharing the pie *come what may*—in spite of the predictable consequences such a principle would spell in a pluralistic lunchroom—each period there would be a chaotic food fight where food is flung rather than eaten, and in which lunch time is dreaded rather than enjoyed. Such a principle would defeat the whole purpose of lunchtime and make everyone worse off! Another option would be to remove the pie altogether, but then everyone would be worse off compared to a state in which at least half the children received a piece of pie, even if they chose not to split it at all.

There is a famous solution to the pie-splitting problem, which is to allow one person to make the cut, and the other to choose among the remaining pieces (e.g., Rawls, 2009). But why does this work? Well, for one, it relies on something everyone takes to be some sort of reason for action, which is self-interest. That is, while there is no conception of equality shared among the children that could dictate interaction, there is a concept of self-interest on which everyone can interact.

The impersonal theorist does not endorse self-interest as the explicit maxim of action, but still has a compelling intuition about how pluralism should encourage us to adopt content-neutral rules— where markets are understood as being ‘about’ production enabling individual and collective prosperity—when interacting in systems of exchange. Within markets, the impersonal theorist holds it is problematic to endorse contested,

substantive principles for exchange in markets, given that markets are forums precisely for interacting with people that are not necessarily like ourselves.

In a pluralistic society, cooperation requires some tolerance like that displayed in Voltaire's account of the Royal Exchange, lest the markets be spoiled themselves. We have already outlined one primary concern for the individual or identity group from Friedman's work: the threat of domination in markets. But there is another concern more fundamental to our *collective* (in addition to individual) prosperity, which is the atomization of markets. The impersonal theorist's two primary concerns can be summarized thusly:

(1) **The atomization of markets**: When the larger market atomizes to several smaller markets—e.g., where Christians only transact with Christians within the *Christian Market*, Jewish people only with Jewish people in the *Jewish Market*, and so on— we would all obviously suffer significant negative individual and communal consequences.[57]
(2) **The domination by the powerful:** A Machiavellian outcome, wherein the morality of the market is simply dictated by the powerful. One group, for instance, could demand the religious conversion of the other, lest they be excluded from the Exchange altogether.

There is an immense literature now on 'public reason' and how it intersects with our formulation of political-moral rules. This paper does not purport to enter this debate or to formally show why a system like Sepinwall's fails.[58] I merely here wish to motivate the attractiveness of the impersonal view given the intuition that there is something

[57] Calo (2015: 667) expresses the worry thusly: "the unfettered personalization of transactions will balkanize markets, splintering each market into smaller markets of the like-minded."
[58] One reason why 'public reason' is not the best lens to adopt here is that public reason theorists often focus on the grounds on which the basic structure of states or their laws can be constructed or formulated (Quong, 2018), rather than on individual market conduct (cf. Gaus, 2010). Indeed, some of the central (Rawls, 1993), progressive scholars in public reason (e.g., Schouten, 2013) specifically allow for largely self-interested conduct within markets, given the institutional (rather than individual) focus of justice (cf. Berkey, 2016, 2021).

important about the condition of pluralism we face in modern markets. It is this intuition that establishes the generic attractiveness of a constraint on the set of reasons people may be able to take into consideration in market access decisions, looking toward enabling the cooperation we all require or benefit from.

Market Systems for Modernity: Cooperation and Pluralism

Habermas contemplates two kinds of cooperation: one, occurring in the "lifeworld," which is where cooperation is based on background consensus; and the other, in "systems", in which it is not. An effective summary of 'systems' is provided by Sabadoz & Singer (2017):

> In order to get greater numbers of people to cooperate in the large scale demanded by modern societies, we introduce various forms of incentives and disincentives to get people to do what cooperation demands, without the difficult process of getting everybody to agree on the same norms. Insofar as these incentives have a particular pattern or logic to them, we can speak of a social system in which human cooperation is mediated by systemic incentives. In a manner of speaking, as societies grow, they tend to "outsource" the organization of cooperative activity to the systems.
>
> The market…get[s] people to cooperate without shared background assumptions of what the terms of cooperation are….Habermas (1984b: 171) refers to the latter as a "block of more or less norm-free sociality," meaning that the market does its work of enabling the division of labor and inducing social action through more or less instrumental means. Much like Adam Smith's "invisible hand," the historical development of the market is so remarkable in this view because it allows for more people to cooperate with one another without requiring that people even know or identify with one another, let alone getting them to agree on shared norms.

That *modernity* is what creates the conditions for a need for norm-free systems is also argued by Hayek (1982), who derides the urge for social 'solidarity,' as an "atavistic craving" for "unitedness in the pursuit of common goals" typical of smaller groups and societies (111). Here, Hayek contrasts the consensus-oriented norms of religiously,

racially, and culturally homogenous market societies more common in pre-modernity and the modern diverse pluralistic market societies that we live in today. The market sphere is no longer one for cooperation based on agreement, but based on incentives. We must "renounce[]" acting in "solidarity…namely acting on the principle that 'if people are to be in harmony, then let them strive for some common end'" (Hayek, 1982: 149). Such a principle would corrupt that market which formed the Great Society, or that "abstract order on which man has learnt to rely and which has enabled him peacefully to co-ordinate the efforts of millions" (150). Indeed, "[t]o make it a condition for the membership of a society that one approved of, and deliberately supported, the concrete ends which one's fellow members serve, would eliminate the chief factor which makes for the advancement of such a society" (111).

Many decades before Hayek, Durkheim (1984) makes an almost identical observation: as we move away from the "homogeneity" which "is the distinguishing mark of primitive societies" (150), the individual becomes more autonomous and free. But, it is also true that the individual "depends ever more closely upon society" (xxx), in virtue of the cooperation requisite for modern modes of production. The puzzle brought about by modernity, and in particular modern forms of economic organization, consists in formulating ways of ensuring social order while preserving the "individual personality" that such pluralist markets both allow and encourage. This is a puzzle because the tool that once reinforced social order—what Durkheim and Hayek both independently call kinds of "social solidarity," based on the pursuit of common goals, traits, or beliefs—is now obsolete, and we must find a replacement.

Hayek's proposal is that we embrace abstract market rules to construct the social order, which, he holds, has already had a unifying effect in connecting millions across the globe. It is the unifying character of market-instrumental logics that Maitland calls the "human face of self-interest":

> No one can realize his or her self-interested goals without the cooperation of others. As a consequence, self-interest draws us together…We associate with others for our mutual benefit because cooperation is a surer way of achieving our goals than is autarky or self-reliance. It is the absence of self-interest – or of some interest whose realization depends on the cooperation of others – that leads to social isolation or withdrawal or solipsism, not its presence" (Maitland, 2002: 8).

Indeed, our collective interdependence "which tends to make all mankind One World, not only is the effect of the market order but could not have been brought about by any other means." (Hayek, 1982: 112).[59] Our modern, large, pluralistic society, to say nothing of the global society, requires that we overcome substantive conflict *if* cooperation is to be attained, and "it is the market order which makes peaceful reconciliation of the divergent purposes possible—and possible by a process which redounds to the benefit of all" (Hayek 1982: 112).

Cooperation is a crucial good from the perspective of justice, given its immense benefits in providing some primary social goods. Jules Coleman (1987), expounding on some of Frank Knight's work, presents perhaps the most compelling forms of the

[59] Durkheim's *The Division of Labour in Society* (1984) makes a similar point. For him, the growth of productive activities, as they require and include the cooperation of so many different economic actors, does not just make room for pre-existing pluralism within a larger order, though, but actually *creates* pluralism. This is because, as each economic actor has come to occupy particularized 'role' in society, they become more unlike one another, further disposing of the social solidarities which bound preindustrial societies so tightly. In short, "[f]unctional diversity entails a moral diversity that nothing [can] prevent, and it is inevitable that one grows at the same time as the other."

argument, both at the individual and broader-market levels (cited by Calo, 2015). At the individual level, Coleman (1987) offers:

> First, by interacting with one another in markets, we provide for one another the opportunity to improve our respective well-being. We 'take advantage' of one another for our mutual advantage….This form of cooperation, however, is *impersonal* in the sense of being undifferentiating among partners…when you and I exchange, we need share no conception of the good that by exchanging we jointly pursue…Still, we come together because by exchanging, I am better off and so are you. (emphasis added)

At the broader level:

> ….broad consensus is extremely difficult to come by and equally difficult to maintain once secured. It is both rare and fragile. The question facing free and equal persons then is the following: given that stability depends on mutual agreement and that such consensus is both rare and fragile, which sorts of institutional arrangements ought we prefer? How ought we live our social lives? One very plausible answer to this question is that we should prefer institutions that maximize the domain or scope of social interaction for mutual advantage which do not themselves require broad consensus. That is, we would prefer that our social interactions did not always raise fundamental questions about our basic values and commitments. Such questions are very likely to be controversial and spawn significant disputes, some of which might threaten the stability of the social order. This is not to say that questions of fundamental importance and commitment ought never to be raised, only that we should look for institutional arrangements that did not always bring them to the foreground. The institution that maximizes the opportunities for interaction without at every turn calling into question the values of others or the legitimacy of the ends they seek is the market.

This is, to date, the very best statement of the impersonal view, demonstrating the view's primary concern with organizing mutually beneficial cooperation in the face of ineliminable pluralism.

Earlier, the economic broad access view seemed like one which was premised on an amoralism, where the endorsement of broad access rules followed from a notional skepticism about values in markets. I showed how an economic view that endorsed a normative principle prescribing broad access rules could not, however, be premised on amoralism. There obviously was a moral-economic case for broad access rules, but the

broad contours of this view were at first unclear and underspecified. Here, we have outlined such an account, which prioritizes the cooperative role of markets. The impersonal market theorist endorses broad access rules as a function of her desire to minimize the conflicts that threaten markets, conflicts which follow from intractable debates about nonetheless important areas of social concern. We can now turn to what resources this view might have in responding to Sepinwall's two primary objections to broad access rules.

VII. Answering the Critiques of Broad Access Rules

Remarkably, the impersonal view that I eventually formulate is explicitly responsive to Sepinwall's two primary concerns.

Objection 1: Alienation

Concerning the problem of alienation, the impersonal view does not deny the possibility of complicity, as the pure amoralist would, nor does it dismiss it as mere folly—rather, the impersonal view takes as one of its primary aims to *encourage participants to alienate* themselves for the greater good and for others' freedom. Alienation is not a problem so much as it is a goal. It's not that the market is *amoral*, but rather a public sphere where a pluralistic orientation should encourage us to overcome our self-regarding concerns in the spirit of Pareto exchange. In other words, market dealings should not be personal. To say that individuals should not 'take things personally,' is not to minimize their experiences, but to hold that self-conceptions *should be as a matter of justice* sensitive to an ideal that realizes mutually reinforcing

communitarian and liberal values: peaceful coexistence in a pluralistic society and the promotion of the common good through markets. On this view, we must demand of ourselves a kind of *magnanimity*—a heroic divorce of our feelings of insult, resentment, and personal conscience from our market activity.

This is not to say there is nothing tragic about alienation—that nothing is lost when someone must act against or in spite of their conscience. But this *is* to say that concerns over political, social, or moral conflict in markets *overcome* the concern one might have about preserving their identity with the market sphere. Just as individuals who become judges or other public officials may be required to alienate themselves from their own values in administering the law—for instance, in issuing marriage licenses to same-sex couples—individuals in the market are called on to exercise a similar, however potentially tragic, restraint. While not agents of any state, market participants might be said to be agents of the market, one which is constructed specifically for certain social benefits that could not be replicated via any other mechanism (Heath, 2014).[60] The social benefits engendered by the adoption of substantive principles, as they inspire serious conflict, will lead to the atomization of markets and inhibition of exchange.

One might object that this alienation calls for us to 'submit' ourselves to the market in an objectionable way (Whyte, 2019), privileging economic ends over many of

[60] It is therefore instructive that the area of law which regulates these access rules is referred to as *public* accommodation, and that for-profit status decisively places an organization under its aegis (Sepper, 2015; cited in Sepinwall, 2021). This characterization resists thinking of the market as 'private,' which is to say, a system of natural liberty, cut off from social or political obligations (cf. Buchanan, 1976).

our otherwise worthwhile projects. On the impersonal view, however, the market is *not* an end, but a means for our ends which we should all strive to enable. Hayek argues that:

> It is…a misunderstanding to represent this as an effort to make 'economic ends' prevail over others. There are, in the last resort, no economic ends. The economic efforts of the individuals as well as the services which the market order renders to them, consist in an allocation of means for the competing ultimate purposes which are always non-economic…The market order reconciles the claims of the different non-economic ends by the only known process that benefits all… (113).

'The economic' need not prevail over 'the non-economic;' but the non-economic also cannot be taken to corrupt the very mechanism which enables the flourishing in pluralistic societies and the attainment of those non-economic ends. The argument here is that a certain form of alienation should be encouraged rather than mitigated within markets. It therefore fully endorses one of Sepinwall's characterizations of the view: that "the privilege of hanging out a shingle rightly comes at the cost of suspending one's conscience."

Objection 2: Not Advancing Substantively Egalitarian Ends

The objection to broad access rules from the failure to advance egalitarian ends is more easily addressed by the impersonal view than the equal access egalitarian view. This is because the equal access egalitarian view is easily held to a contradiction, insofar that it justifies broad access rules on the basis of the value of equality, while at the same time seemingly mandating transactions which might hinder egalitarian projects and prohibiting transactions which would advance them. The value that approach purports to advance is not advanced in the best possible way via broad access rules.

The impersonal view suffers from no such contradiction. The renewed economic broad access conception sees the advancement of egalitarian projects as primarily reserved for political or civil institutions and recognizes that activism within markets threatens to corrupt the benefits toward which markets should be directed. This follows on the long tradition in normative political economy of specifying different "logics of agency" across different "spheres" of society, which dates at least back to Adam Smith (Herzog, 2013: 133–134). This impersonality is thereby grounded not in some "intrinsic" feature of market exchange, but on a conception of justice placing markets in the context of a wider division of moral labor in a liberal society (see Mäkinen & Kourula, 2012; Rawls, 2009; Smith, 2019c; Walzer, 1984).

However, the impersonal view must still be held to account for some of Sepinwall's examples which motivate her objection to broad access rules.

Many of Sepinwall's examples provide an illustration of the problems in *universal* access rules—for instance, when she makes reference to transactions that might assist Neo-Nazis or members of the KKK in their hateful projects. I accept Sepinwall's point here; any set of broad access rules must have some limiting principle. Transactions already have limits. Least controversially, they must not involve force and fraud (e.g., firms should not sell assassin services). Too, it seems, the impersonal approach must be able to make room for access refusal in those clear cases in which a market actor is facilitating such hateful projects.

There may be more overlap in individual case judgements between Sepinwall's and the impersonal view than at first glance. But it should be stressed that Sepinwall

endorses essentially substantive principles and argues against the formal/procedural norms that currently prevail. While any plausible impersonal view must articulate some substantive limits to its proceduralism—for instance, a vendor should not sell guns to a violent mob—these limits do not call for a *tout court* rejection of the core procedural norms, or the distinctive justification underlying the impersonal view. Therefore, the impersonal view is much more procedural than the view which Sepinwall describes, and rests on a different vision of how the market plays into (not) advancing justice.

How do we navigate when impersonal rules prevail and when we find exceptions? This is a problem that affects all top-down approaches that specify some set of rules for managers to follow (see Smith, 2018). I do not have room here to develop a full account of the line that must be drawn between where substantive problems override our obligations to abide by an impersonal orientation. But although there certainly are limits in the extreme case where we are clearly exempt from the duty, much like the duty to follow the law, this does not mean the duty is not meaningful in core cases. And surveying these cases suggests a few considerations relevant to evaluating where we may override our otherwise obligatory impersonal orientation.

In the case of the impersonal view, restaurant service refusals based on political affiliation would seem to be disqualified. And, of course, there is no shortage of political fractures among customers across other industries, with conservatives organizing against "woke" corporations (Sargent, 2021), and progressives championing conscious consumerism or CSR campaigns which increasingly include criteria concerning political

affiliations or exacting standards of ethical purity.[61] These are the kinds of conflicts broad access rules endeavor to forbear.

Too, even those engaged in projects which some find horrible and inegalitarian, but which do not project hate, would seem to still require broad access. Take for instance those who will find the professional boxing or American football industries horrible in perpetuating inherently violent sports which leaves their participants with lasting brain damage in far too many cases. Even in these cases, it seems as though a vendor would not be justified in denying football fans service.

Beyond pumping these intuitions, we should try to formulate some criteria that, even if not fully and easily determinate of outcomes in every potentially exceptional case, can indicate what factors *do* and *do not* seem relevant to the impersonal theorist for allowing exceptions to the impersonal outlook. These considerations may create a basis for a future, more fully specified conception of the impersonal approach.

To begin, we might consider a more generally stigmatized fandom than football fandom: we can imagine a plumber who is a committed fan of chicken-fighting or dog-fighting, and who comes to fix our sink. May we turn her away? I am of the opinion that, even in these cases, refusals to transact are not justified. It is worth it to briefly examine what considerations may play into this determination. Throughout this exercise, though, we should keep in mind the *positive* vision of impersonal markets: one where we can just have people fix our sink, and send them along their way, not necessarily enmeshing

[61] Emma Irving (2021) recently documented the "risks of being a woke brand," and the progressive backlash against ethics-oriented consumer product companies such as Tony's Chocolonely and Oatly.

ourselves with one another—our identities, our concerns, or our projects. Sometimes, we just want someone to fix our sink, and it is fine and even magnanimous to pay the person who meets criteria for a good plumber—skilled, affordable, reliable, etc.— in spite of their unsavory (or reprehensible) beliefs, interests, hobbies or pasts.

VIII. Considerations for Exceptions to Impersonal Rules

Condition 1: Proportionality

First, we must keep in mind the *universalized* nature of the inquiry here. Remember that we have been interrogating what rules we would want all agents to internalize. If we encourage universalized refusals to fans of chicken-fighting, is the implication then that this person simply cannot be a plumber? Can she work anywhere? Can she shop at the local grocery store, or any other stores?

Perhaps this line of thought proceeds on the wrong universalized principle, however. We need not *encourage* refusals to negate broad access rules—we need only say that they are permissible. On this vision, a universalized *allowance* to refuse may not be objectionably dominating, because although everyone would be permitted to refuse her, not everyone actually will. If the errant customer learned of her chicken-fighting hobby and turned her away, she would not be too badly affected. But then the propriety of the refusal of the plumber would be premised on the salutary fact that *other* people would not refuse her, whether out of ignorance of the plumber's hobbies or out of indifference to them. So, if it is so salutary that others will not refuse her, why is it permissible for you to do so?

This would seem to boil down to a concern about proportionality: so long as she is dominated only a little (perhaps, just by you, in your refusal of her plumbing services), it is more acceptable. Questions arise, though, as to what safeguards in particular cases there are to prevent a 'piling on' of market refusals. What level of assurance do we have that she won't face many more refusals in the future? This is a species of the more general problem of proportionality in responding to wrongs among an uncoordinated group of agents—the propriety of our own response to wrongdoing depends to a great extent on whether and how severely *others* respond (Bhargava, 2020).

Condition 2: Punishment, Activism, or Conscience?

So proportionality is one key factor. Another factor at play may be the motivation, aim, or effect of the refusal. In short, what are we actually trying to do when we tell the plumber to go away, and is that type of response consistent with the impersonal view?

One thought is we refuse her on self-regarding conscience grounds—I could get it into my head that, by allowing the plumber to fix my sink, I therefore condone her horrible and violent nighttime activities, and thereby make myself complicit. This particular kind of conscience consideration, as we have reviewed, is explicitly excluded by impersonal rules. The impersonal theorist would counsel that we get over the idea that every transaction we enter into involves ourselves in some way with our transactor. In order to be good agents within an impersonal market order, we should actively disabuse ourselves of the idea that each transaction intersects with our identity in such ways.

If refusals are allowed in these kinds of cases, they are not allowed on conscience grounds. Perhaps the refusal is instead punitive in character. It may have nothing to do

with my conscience, and everything to do with doling out what punishments are deserved. It might be thought that she gets what's coming to her when I refuse her plumbing services. But the impersonal theorist would object to this kind of refusal as well: the same reasons which ground the impersonal approach's writ-large exclusion of politics in markets apply *a fortiori* to punishment in markets. If the impersonal approach wishes agents would not act as "social dictator[s]" (Heyne, 1968)—i.e., as civil or political administrators— surely it will want to avoid individuals acting as finders of guilt and dolers out of punitive sentences—i.e., as judges.

Perhaps, though, the most defensible justification for my refusal is that this refusal will actually *motivate her* to stop being a fan of chicken-fighting—we might call this the substantive activism response. This seems a noble enough goal. Because of the impersonal approach's general rejection of conscience in markets, refusals, if they are allowed, must be premised on some substantive benefit of justice that would extend from the making of an exception. Exceptions are not typically made merely for self-regarding reasons of conscience since they aspire to eschew such reasons all together. So aside from the proportionality constraint on exceptions to impersonal rules, we might formulate another constraint: that your conduct must substantively further (or inhibit) conduct that is worthy of (non-)furtherance.

Notice that refusals on such a basis will look very different than the archetypal refusal. Sepinwall is correct that many documented refusals are on conscience-based grounds, where someone's disapproval of another is decisive for refusing to transact with them. This is not acceptable on the impersonal view. Rather, refusals, if they qualify as

an exception, must aim for some change. Thus, someone, in making a refusal not aimed at change, is still properly subject to critique, even if they *could have* made a refusal aimed at change that met the criteria to count as an exception under the impersonal view.

Condition 3: Agency

We have already imposed several limitations on exceptions to impersonal rules. They must have a specific goal of substantive furtherance of some value, and they must meet some kind of proportionality restraint. In response to these constraints, one might argue that, if the plumber wants to be relieved of her exclusion—even if such exclusion could be described as 'domination'—then she should 'stop being a fan of' chicken-fighting. She could be said to be *choosing* this treatment, insofar that the obvious path to be relieved of her exclusion is to abandon her fandom. So, this concern seems to turn on a question about how her *agency* affects our privilege to refuse her.

Of course, the agency of the person experiencing domination or loss does not free us of all of our constraints. If I am at a shooting range, you are in my way, and I give you fair warning that I am about to shoot, the mere fact that you do not move out of the way does not give me license to shoot you. In other words, even where an agent could be said to *choose* certain courses of action, fully aware of the consequences, that does not render the expected consequences proper or just.[62]

[62] This fact is most evident in the United States' court systems' criminal sentencing for possession or distribution of drugs. In such cases, it can be thought that even when individuals considering committing drug crimes have no excusing or mitigating circumstances, and fully understand the potential punishment of engaging in the criminal activity, that the disproportionate punishment doled out by courts will still be unjust.

There is still the question of how easy it would be for the plumber to change, and what must be changed. In refusing her services, you might endeavor to either disincentivize her from ever going to a fight again, or you might want to help her change her character for the better, in encouraging her to renounce her commitments to deriving pleasure from animal violence. It is easy to default to the first interpretation, to give us the widest latitude in refusals. We may say, in enacting our refusal, all we ask is for someone to act differently than they are acting now. In terms of physical or material resources, it is easy for someone to vote for a different politician given that they are voting at all, and it is easy for someone to remove political signs from their yard supporting problematic political agendas. So it might be thought that her agency to engage in the desired behaviors provides us with greater latitude to refuse her. She can just stop attending the fighting matches.

But it is not really these actions which are the relevant subject of social change; according to our previous constraint, an exception involves some substantive advancement of values, and the changing of a single vote or taking down of signs will not meet that criterion. In this case, it may seem of little consequence if she just stops attending matches. If there is any relevant substantive advancement to be had, it is in changing her attitudes. The person's ability to '*stop being a fan'* of animal fighting, in this case, should be interpreted in terms of her ability to reform her core commitments—deriving pleasure from animal fighting—which is not easy.

These challenges she faces figure into the moral calculus in two ways. First, they strengthen her claim against domination, insofar that the behavior that must be

changed—for which we hold our plumbing projects' revenues hostage—is difficult to change. Second, her relatively weak agency to alter the commitments tempers the claim of the *refuser* to deviate from impersonal rules. This is because he can only justify his refusal in terms of substantively advancing values. If the relevant value is unlikely to be realized in view of the plumber's unlikelihood of changing, the refuser has a lesser claim to have met the substantive advancement of values criterion.

Three Conditions: Still Not Enough

So now we have three conditions, relating to proportionality, the refuser's orientation toward the action, and the potentially weak agency of the refusee to change. It will be edifying to first show how these three conditions are not, without supplement, consistent with an impersonal perspective, before presenting the fourth and fifth conditions.

Imagine we only adopted the previous three constraints. This would imply that the impersonal theorist would allow refusals whenever you (1) advance substantive values, (2) do so only by imposing proportional losses, and (3) in a manner compatible with the individual's agency to change the relevant belief or characteristic. These criteria, when taken to be comprehensive, would rule out a good deal of refusals, but they would not imply an impersonal perspective. An approach which adopted these criteria alone would essentially be equivalent to an objective, substantive justice criterion for market activism (akin to the ***Substantively Progressive Market Activism*** principle examined earlier) with added considerations of agency and a procedural constraint of proportionality. This resembles an impersonal view only insofar that it excludes conscience as a basis for

refusals and takes issue with disproportionate responses. But the impersonal view is not *only* a rejection of the role of individual conscience in determining market access, or a rejection of disproportionate responses. Rather, the impersonal view forbids refusals even in the case where justice can be substantively advanced in the market (in virtue of its commitment to a separation between markets and politics) *and* it will want to do so even when justice can be advanced with minimal or proportional domination (given its concern with the atomization of markets in addition to domination). So we need additional conditions to shore up the impersonal view.

Condition 4: Character of the Wrong

The fourth condition is perhaps most integral to the impersonal perspective, which is related to, but distinct from, the proportionality constraint: the character of the wrong in question. There seems to be some difference not only in degree, but *in kind*, between the plumber case and the 'renting a concert hall to a neo-Nazi group' case. The principle Sepinwall recommends to be codified in law is to allow "refusals of service for products or service that would be used in projects involving hate." I shall call this the *Hate Principle*.

Sepinwall endorses the *Hate Principle* in virtue of it being compatible with the advancement of the posited values of public accommodation law: egalitarian values. The impersonal theorist could consider adopting the Hate Principle, though on different grounds, since the impersonal theorist does not see access refusals as revolving directly around substantive egalitarian ends. The impersonal view could make room for refusals of hate instead on the basis of their distinctively evil character. This would allow for

refusals in the KKK and Neo-Nazi cases, while not allowing a refusal in the animal-fighting case.

Sepinwall comes to interpret "hate" rather broadly. For her, hate is implicated not only in events involving the "assertion or celebration of the supremacy of one identity-based group relative to another" but also events "that have the effect of creating or perpetuating supremacy." In the latter category, she includes legal marriage ceremonies involving underage girls.

There is always a worry, in specifying the Hate Principle, that 'hate' comes to be so broad that it encompasses anything we might have an objection to. But I do not think Sepinwall does this. She seems entirely reasonable in supposing that one does not need to transact with an avowed supremacist in order for one's transaction to count as advancing projects of supremacy. Hence, I think the Hate Principle as it is currently formulated is properly broad.

Even under this broad interpretation, notice that an impersonal approach that internalizes the Hate Principle will still not allow refusals to the fan of the animal-fighting, insofar that they are not furthering or endorsing a kind of inegalitarian supremacy.[63] This criterion also would seem to not allow the restaurant owner to forbid owners of assault rifles. This particular criterion would perhaps allow the restaurant's refusal to Huckabee Sanders, since the separation of children from their parents at the

[63] I am open to the possibility that, as a fan, the plumber endorses a problematic anthropocentrism, which could be understood as a kind of supremacy. But that would not seem to be implicated by the Hate Principle as Sepinwall has formulated it, which is relative to egalitarian concerns within the human social world.

southern border could reasonably be understood as cultivating or perpetuating a variety of kinds of supremacy (geographic, racial, national, socio-economic, cultural, etc.). But this refusal would still be estopped by the substantive advancement criterion if we understand that rejecting Huckabee Sanders from restaurants will almost certainly not affect the underlying policy.

Condition 5: Non-market Alternatives

A fifth criteria involves the substitutability of a refusal for non-market alternatives. One of the core claims of impersonal theorists—examined in more depth in the next section—is that political or justice aims can often just as easily be pursued within the social and political sphere. That is, instead of advancing whatever project is so substantively important in the market sphere, we are obligated to advance it in the civil or political sphere instead, when possible. This obligation places an even further demanding constraint on exceptions to impersonal rules. This is because many of the political aims we may be tempted to pursue in the market sphere we can just as well pursue in other spheres. In such cases, the advancement of sincerely valuable substantive ends cannot always provide justification for deviating from impersonality norms, since those ends could be advanced without violating the norms within the market sphere. In the case of animal-fighting, instead of turning the plumber away, you might solicit the help of a social worker, or some other non-market mechanism to facilitate the change that is desired. The following section focuses more closely in on this factor of substitutability, which turns out to be core to the impersonal project.

We can conclude this section by offering that, although the five criteria relevant in determining exceptions to impersonal rules seem vague, the key point is that the impersonal view makes access refusal an extraordinary event—it is the exception to the rule rather than part of the rule itself. In this way, it aims to have participants hold themselves to an incredibly high standard, where impersonal rules should only be breached for cases that plausibly fit a number of demanding exemption criteria.

IX. Advancing Justice in Non-Market Spheres

But how is civil and political justice to be achieved, if not through the market mechanism? One rejoinder Friedman offers is that individuals can give to charity—they could distribute dividends or even donate their shares—or operate in their own political capacities as citizens. In addition to libertarians, some liberal democratic theorists share the intuition that there is something problematic with circumventing civil or political mechanisms to shape society by using one's market power (Hussain, 2012b). More broadly we can put their concerns in terms of our ability to jointly participate in the market sphere in an impersonal way and the civil and political spheres in highly personal ways. Shareholders can, as individuals, participate in egalitarian initiatives without directing the corporation to do so. Waheed Hussain similarly argues that consumers should participate in their individual civil and political roles before directing their own collective market power toward change (Hussain, 2012b).

But then Friedman and Hussain both face objections analogous to those Sepinwall advanced against the Equal Access view. For instance, if corporate shareholders have

"prosocial" intentions, for instance "if a shareholder is willing to spend $100 to reduce pollution by $120, why would that consumer not want a company he or she holds shares in to do this too?" (Hart & Zingales, 2017). Or, contra Hussain, if consumers' intentions are to enact "genuinely positive change" (Hassoun, 2019) or "valuable social goals" (Barry & MacDonald, 2018), why shouldn't they do so? Many of these critics dispute, in particular, the assumption that activism via civil or political spheres can be just as effective as market activism.

Without room for examining all of these objectors in total, allow me to examine the particular objection Hart and Zingales (2017) level against Friedman, which is illustrative of the central conflict between those who argue for substantively good or just change and those who endorse procedural rules which would forbid it.

Missing the Mark(et): Effective vs. Principled Separation of Markets and Politics

Hart and Zingales (2017) argue that Friedman was wrong to claim that shareholder individual civil and political activism was just as effective at advancing shareholder interests, or what they call Friedman's "separability assumption" (249). They hold this assumption is wrong insofar that corporations could advance causes shareholders would want them to advance in a much cheaper way than shareholders themselves could. They offer this example:

> Consider the case of Walmart selling high-capacity magazines of the sort used in mass killings. If shareholders are concerned about mass killings, transferring profit
> to shareholders to spend on gun control might not be as efficient as banning the sales of high-capacity magazines in the first place (249).

Their model is an attempt to formally show the conditions under which corporate activism will be preferable to distributing dividends. Such activism-related desires are folded into a conception of "shareholder welfare," in which shareholders care about more than just market value. They may wish some market value to be sacrificed in the interest of achieving social goals, in particular when this would represent a cheaper route to achieve those social goals than them spending their dividends as individuals. As these claims are folded into a concept of 'welfare,' Hart and Zingales even incorporate some measure of what we might call conscience into the shareholder's welfare function, captured by the degree to which a shareholder "feels responsibility for the [corporate] action in question." In doing this, they functionalize something resembling the subjective conscience interest Sepinwall defends.

While Hart and Zingales may effectively disprove some of Friedman's economic claims about the equivalence of "shareholder value" and what Hart and Zingales call "shareholder welfare," the critiques miss the mark on the implicit moral claim. The desire for separability is backed up by two differentiable claims. The first is a (perhaps specious) assertion that shareholders could always enact political or social change just as effectively when corporations leave social or political causes to their individual shareholders to pursue (call this the ***equivalent activism claim***). But separability is ultimately backed up by a larger moral-political claim about the (non)role of politics in markets. That is, the separability assumption has two forms: one, an exclusively instrumental[64] claim about the costs and effectiveness of activism at the corporate or

[64] Here I use instrumental in the management literature's sense of "instrumental theory," which is theory which "establishes (theoretical) connections between certain practices and certain end states" (Jones, 1995; citing Donaldson & Preston, 1995).

individual shareholder level, and another, moral-procedural claim about how politics and markets ought to intersect. The *equivalent activism claim* is used by Friedman and others to make the moral-procedural claim more attractive; insofar that little is lost or much is gained by allowing shareholders to engage in their own desired political activity, the moral-procedural claim separating politics and markets seems even better. But rejecting the *equivalent activism claim* does not thereby lead to a rejection of the moral-procedural claim, which, as part of the impersonal view, rests on free-standing principled justifications beyond considerations of effective activism.

Indeed, when we are confronted with Hart and Zingales's model, in which corporate activism is examined in the particular case of when shareholders harbor "prosocial attitudes," we are again teleported into the world of substantive rather than procedural principles for directing market behavior. As Sepinwall allows vendors to use their power for substantively egalitarian ends (at least in formulating access rules), Hart and Zingales license vendors to use their economic power for substantively "prosocial" ends. We have already reviewed why such substantive principles for market action betray the larger impersonal outlook. We might then use this opportunity to frame the conflict in terms of enacting the social vision of corporate shareholders, versus achieving or sustaining pluralistic, inclusive, and efficient markets. The impersonal prescription is premised primarily on the achievement of the latter, not on the achievement of the former. Therefore, to undermine the *activism effectiveness claim* would not be to undermine the case for the impersonal market. It merely demonstrates that shareholder social activism *may not* be maximized once corporations are forced to adopt an impersonal outlook, a fact which is not too problematic for the overall impersonal view.

But it is instructive that the conflict on which the impersonal view is premised is entirely omitted by Hart and Zingales's (2017) model. Hart and Zingales (2017) entertain only two possibilities: that shareholders are "prosocial" or "not prosocial." In the former case, corporate activism will be beneficial for them and society. If shareholders are not prosocial, they say, the corporation will default to profit maximization (Hart & Zingales, 2017: 271). Thus, on their model, maximizing shareholder welfare will either be prosocial or, at worst, consist in the so-far norm of profit maximization. Hart and Zingales fail, however, to entertain the possibility that shareholders harbor *antisocial* desires. In such cases, corporations will not default to profit maximization, but will use corporate resources to enact their shareholders' antisocial visions, even at the expense of some market value.

It is not just that some people are wonderfully moral (let's call them the moralists), and others are indifferent and focus only on productive activities (the impersonal market agents). This third category of shareholders harbor rather immoral visions of society. And it is not that this category of shareholders is in some way intentionally evil, but that they harbor good-faith beliefs that are counter to the larger 'true moral' agenda. If we assume egalitarianism is this true moral agenda, then we might imagine the third category of shareholders as *anti*- or at least *non*-egalitarian in a variety of ways.

The impersonal thesis is that the conflicts between the first category and last category of people, when they infect markets, threaten to maim or destroy them. Hence, the impersonal view favors those who recognize the possibility of this conflict and thereby place themselves in the second category, i.e., those who focus only on productive

activities. It is impossible for Hart and Zingales to entertain this possibility from within their model since they make no allowances for those who both reject particular impersonal ideals of profit maximization and also reject whatever we might categorize as substantially "prosocial" aims.

Impersonal Market Activity without Shareholder Maximization

The proposal that we separate markets and politics, which consigns the advancement of civil and political justice to outside of the market boundaries, is nonetheless detachable from the shareholder value maximization claim. It can be understood as a claim about how corporate resources may not be directed toward social initiatives in view of the proper separation of markets and politics, without reference to purported shareholder property interests or shareholders' status as primary claimants on the firm's objectives.

In order to adopt the impersonal stance, it is not the case that corporations must maximize the residual earnings directed to shareholders. In principle, a corporation can be impersonal and direct resources to any stakeholder group. Therefore, the consignment of activism to other spheres does not require the prescription that shareholders reap all the value or that they constitute the primary concern of the corporation. Rather, the important aspect of the impersonal view is the *proscription* of corporations' use of those resources in insufficiently impersonal ways. Thus, on this vision, we can remain agnostic as to the positive question of how to distribute corporate wealth; rather, we need only endorse the proposition that corporate wealth *must be used in productive ways or distributed*, which

is to say that wealth may not be used for certain kinds of activism.[65] Progressives like Ginsburg who endorse the impersonal view, then, need not carry along with it the baggage of shareholder value maximization. The impersonal view is entirely consistent with a variety of views on the number and identity of constituencies whose interests should take centerstage in formulating the corporate objective.

From Effectiveness to Principles back to Effectiveness

I have illustrated how Hart & Zingales's dispute of the activism effectiveness claim does not undermine the larger principled impersonal vision. But we should be careful not to abandon all hope for the activism effectiveness claim, since it *is* often the case that activism will be just as effective, or more effective, outside of the market. Consider the case of consumers who worry about supply chain issues. Their difficulty in addressing these supply chain issues in their market behavior in large part stems from ineliminable epistemic limitations (or 'uncertainty') within markets and market activity. There is often good reason to suppose resources are better dedicated to resolving such problems via non-market avenues. It is on this basis that Kingston (2021) recently argued in *Business Ethics Quarterly* that consumers dedicated to redressing morally problematic supply chain flaws would best direct their efforts to initiatives that fall outside of activism in their actual consumption behavior. He argues that "in light of the epistemic limitations that ordinary consumers face" they often have moral reason to favor "purchasing goods without regard to their apparent connection to grave flaws upstream in the supply chain

[65] It is partly for this reason that it is best to understand corporations as unowned rather than 'owned by shareholders' or 'owned by themselves,' insofar that they must distribute those resources to some set of claimants (Strudler, 2017).

and channeling the benefits received to fitting projects." Often, it is *in light of the bulk of that which we do not or cannot know* that it is advantageous to use non-market mechanisms to redress the flaws that are most socially, morally, or politically problematic. This is particularly true when markets can provision the efficiencies or resources necessary to fixing these issues.[66]

As I have argued, the *effective activism claim* is not necessary for the impersonal view to go through. But the fact that other mechanisms for effective activism exist makes the allowance to ignore one's impersonal market mandate *all the more extraordinary* on the impersonal view. If the ends in question can be advanced via a non-market, alternative route—that is, advanced without overriding one's impersonal orientation within the market—one is not dismissed from their impersonal obligations.

X. Secrecy as Sustenance for the Impersonal Market Order

If we aspire to the impersonal order, what threatens it and how might it be sustained? Many accounts of market ethics and regulation hold it to be relatively undisputed that, the more information is distributed, the better markets work (Alexander, 2015; Doorey, 2012; Eisenberg, 2011; Estlund, 2010, 2014; Heath, 2014; Hebb, 2006; Norman, 2011; Stiglitz, 1999, 2002; Verrecchia, 2001).

[66] Elsewhere, Bill Laufer and I argue that supposedly progressive anti-market agendas are actually anti-progressive, not least because they betray the mechanism that can generate the resources to fund the progressive policy and social agendas (Laufer & Caulfield, 2019).

From the top-down standpoint, this is undoubtedly true in many cases. In many cases, secrecy can therefore be held to represent an opposition to free markets, a form of rent-seeking run rampant in spite of employers' "rhetoric championing the unimpeded free market" (Rosenfeld, 2021: 57–64). The most prominent political-philosophical theory of business ethics, the Market Failures Approach (Heath 2014), argues from the value of Pareto efficiency and its undergirding assumption of perfect information that competitors have no right to take advantage of information asymmetries (Heath, 2014: 33, 37, 44, 102, 199, 201). Indeed, to take advantage of these would represent "one of the primary forms of unethical conduct" under the approach (111).

The value of eliminating information asymmetries thus represents one of the rare areas of agreement between economists and ethicists. This emergent consensus, I argue, is problematic.

A Threat to the Impersonal Order: That Which is Visible

I argue here that it is the *visible* that will sometimes facilitate a divergence from the impersonal market order, and then that the *invisible or secret* will therefore be helpful in preserving or sustaining it.

This insight can be derived from the long tradition among economist-philosophers which holds that we do not sufficiently appreciate the downstream, larger implications of our actions, and that we tend to overweight the immediate or most visible implications of our actions. Perhaps the first to call our attention directly to this was Frederic Bastiat in his essay "That Which is Seen and That Which is Not Seen"; he focuses on the diffuse and difficult (or impossible) task of estimating the implications of our actions within

markets (Bastiat, 2007 [1850]). He catalogs a human tendency to focus on the visible benefits of intervention without considering that intervention's less visible costs, such as opportunity costs. David Schmidtz describes how such a "tunnel vision" can be attributed not just to the impossibility of ourselves knowing certain implications (Hayek, 1945) or to failures of cognition; rather, we can be "aggressively and self-righteously unaware of the external cost of our projects" (2017: 844–845).

Hayek catalogs how we, being drawn by the "visible need" of certain groups (e.g., professions, trades, villages, towns, countries), harbor an urge to override "the ideal of impersonal justice based on formal rules." We succumb to "emotions of justice" that "attach[] to concrete objects" and manifest themselves in "feelings of personal loyalty," leading us to seek some "visible common purpose" rather than abide those rules which constitute the impersonal order (Hayek, 1982: 143–144). Thus, we face a conflict "between loyalty and justice" (147) or, equivalently, between 'tribal emotions' and the "universal humanism" embodied in the market (149).[67] Instead of following the modern, "new moral conceptions" that permit "indirect guidance by an expected monetary return"— circumscribed by "general rules limiting the range of permitted actions" (144)—we instead resort to those conceptions which "prescribe particular aims." Thus, the urge to pursue egalitarianism within the market order can be said to be an urge to pursue one such particular aim, as part of an unfortunate "revolt against the discipline of abstract rules" (143).[68]

[67] Take, for instance, the anti-cosmopolitanism that is implicit in 'buy local' campaigns (Young, 2021).
[68] In Essay 1, I briefly alluded to how this kind of view serves as an effective critique of much of modern management research on corporate social responsibility, insofar that those theories focus on visible

We do not need to be quite as devoted or dramatic as Hayek to appreciate the key takeaway that the *visible* tempts us to override the impersonal order. Our conscience is felt most strongly when we find ourselves struck with visible people, needs, or causes. Asking someone to intentionally alienate themselves, as the impersonal view does, asks them to ignore that which is *visible* in favor of a faith in the broad access rules. Sometimes this will be a monumental task, insofar that it asks people to override some commitments they feel are core to their conscience.

However, it may be that the prescription that an individual conceptualize themselves as a "part of a whole upon which he depends," Durkheim (1984: 298) offers, is too "abstract" and "vague." The worry is the abstract rules Hayek may recommend are not actually a solution to the puzzle consisting in maintaining social order while also tolerating individual autonomy and pluralism. This is because they may provide "no avail against the vivid, concrete impressions that are aroused at every moment in each one of us by his professional activity." If the "occupations that fill our daily lives tend to detach us from the social group to which we belong," then the call to cooperate "will never be sufficient to hold us" (Durkheim, 1984: 298). In short, Durkheim concurs with Hayek as to human tendencies to focus on the "concrete," but is more skeptical that anyone will

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responsiveness to stakeholder interests or visible social legitimation among them. That CSR can sometimes be used as a tactic of mollification is evidenced in a recent survey conducted by Lucian Bebchuk and Roberto Tallarita of signatory CEOs of the Business Roundtable statement, which endorsed a supposedly major shift toward a stakeholder corporate objective. Of the 48 CEOs that responded, only 1 of them had run the decision by their Board of Directors (Bebchuk & Tallarita, 2020). As these 47 CEOs signed this statement, many of their formal corporate governance guidelines which codify shareholder value as the firm's overriding concern went unchanged (Bebchuk & Tallarita, 2020).

actually heed the call to be impersonal, if alienation from their own commitments and social categories (identity, religion, what have you) is what is at stake.

As Durkheim suggests, even for those ready and willing to take on the task of self-alienation, sheer willpower may not be enough. Too, there will be those who do not recognize the value of the impersonal orientation and therefore refuse to adopt it.[69] Although these struggles are significant, it could be said civilization depends upon our ability to overcome them.[70]

One solution to these difficulties, I propose, is more secrecy in markets. That is, it is often the case that less information is better when attempting to alienate oneself. This is because if we can intentionally hide aspects of the identities or activities of the people with whom we transact, it may improve our ability to engage impersonally. Information scarcity promises to support impersonality. It is for this reason that Friedman, when discussing how the impersonal market may stave off discrimination, finds it salutary that:

> [n]o one who buys bread knows whether the wheat from which it is made was grown by a Communist or a Republican, by a constitutionalist or a Fascist, or, for that matter, by [a Black person or a white person]…

When individuals are simply unable to make such distinctions, they cannot incorporate them into their intentional behavior, and therefore cannot discriminate on that

[69] We should be careful not to be too pessimistic about our collective ability to follow rules. As Gaus (2010) argues, the mere existence of the Great Society, which is "a moral order of anonymous persons that is grounded in their market relations" (471) is evidence to this fact. In a review of formal and empirical evidence, Gaus (2010) convincingly argues that "[l]arge-scale cooperative social orders among anonymous strangers are possible because we are rule followers. Our reason did not produce social order – we did not reason ourselves into being followers of social rules. Rather, the requirements of social order shaped our reason" (547).

[70] As Hayek puts it, most melodramatically, "A refusal to submit to anything we cannot understand must lead to the destruction of our civilization" (1994: 211 cited in ; Whyte, 2019)

information. To buttress the impersonal orientation of market actors, we should consider making market informational environments more deliberately scarce.

An Argument from Calo's Farmer's Market

Ryan Calo claims that "privacy" and markets, where the former is typically thought to be in opposition to the latter, actually in some ways share a supportive relationship. When he uses privacy, he functionally means *information asymmetry*. To motivate his point, Calo asks us to:

> [i]magine a farmers' market somewhere in the United States. Alice is buying vegetables and Bob is selling them. Alice goes from booth to booth trying to find vegetables that meet her standards of quality but also her budget. The vegetables are all laid out next to their prices and descriptions. Alice decides that Bob's vegetables strike the right balance. She asks Bob a few questions about his farm; Bob makes a remark about the weather. Then Alice pays Bob's asking price and takes the vegetables home (2015: 650).

But then Calo asks us to imagine if consumers and businesses knew everything, such as other parties' politics, sports team allegiances, religion, and hobbies:

> Imagine everyone in our farmers' market were wearing special glasses that recognize a buyer or seller's face and create a bubble above their head containing more or less everything about them that appears in a database. Some of this information would be quite useful to market participants. Thus, Alice could more easily comparison shop and could verify that Bob has a license to grow and sell food. But…Alice would find out much more than that. She would see, for instance, that Bob voted for a politician Alice hates, that he doubts we landed on the moon, or that on the weekend he enters (and wins!) erotic cake competitions. Alice does not need to know these things about Bob to transact with him, or to accomplish her goal of the best vegetables at the lowest price. And yet, the information is likely to affect her decision to purchase vegetables from Bob. What Bob finds out about Alice could in turn affect his willingness to sell to her…Were all participants transparent to one another in all aspects of life…information extraneous to the market could distort it. Alice would not necessarily stop looking when she found the farmer with the best goods at the right price; she would look for who in the farmers' market aligned enough with her worldview.

Calo's ultimate point is that information asymmetry is in many ways a feature, rather than an enemy, of functioning markets. His point is primarily *functional* in nature, describing the nature of markets and how information asymmetries may enable them. In particular, he says:

> the market mechanism itself can be seen as a distance technique—a veil that permits us to focus on the exchange of goods and services at a price, though we are simultaneously real people living in a complex world. Without it, market participants would constantly confront that familiarity that famously breeds contempt (Calo, 2015: 669).

Here, he comes incredibly close to the impersonal view. Only, in this passage, he presents the veil as something which the market provides rather than something we must *provide the market*.[71] The impersonal theorist holds that we *should* want the farmer's market to run as smoothly as the idealized Royal Exchange, and so the customers should forbear from acting on such considerations, or do what will enable them to do so. If they cannot orient themselves impersonally through sheer willpower, the impersonal theorist would claim that the shoppers have a moral obligation to take off the special glasses.

If information asymmetries are institutional features which support the goal of inclusive and flourishing markets, we are not relegated only to expressing gratitude for informational asymmetries that already exist, or the ones the law already mandates (e.g., Calo, 2015). We can and should intentionally orient ourselves so as to avoid transforming

[71] Calo does, in his article, include a discussion of ways in which government and corporate policy might promote "privacy" in order to enhance the veil's effects. Thus, that we must provide the conditions of the market in such a way is not lost on him. I only mean to contrast this particular passage, which expresses what we might call the 'natural' or 'organic' veiling effects of the market, with the veiling effects we might, ourselves, introduce or enhance.

the market into what Calo (2015) describes as an "ideological and socially fraught environment where quality and price take a second stage."

The information asymmetries in Calo's initial farmer's market are perhaps 'natural,' in the sense that they arose without anyone intentionally constructing them. Therefore, they do not fulfill our definition of secrecy, insofar that they do not count as *intentional* concealment. But the call for more secrecy in markets is a call for more *deliberately constructed* information asymmetries.

The intentional promotion of information asymmetries is not most charitably put in terms of 'enabling alienation,' although that is precisely what it does. It can also be understood as *constraining the interests*, broadly construed, which agents pursue in their market activity. Consider the role of information in the liberal model of market society, found in the thought of Smith and Hegel:

> the provision of information about certain goods that are sold in markets [among other measures]...make sure that everyone has a chance to make decisions that are free not only in the sense that they are unhindered by external circumstances, but also in the sense that they are made by agents who are competent to do what is in their own interest (Herzog, 2013: 130).

The ideal here is one in which individuals must pursue their interests as autonomous and free agents, and, if they are to do so, they require the most information possible. These interests are interpreted rather broadly, rejecting the constraints of the neoclassical 'economic man.'

The impersonal theorist is sympathetic to informational interventions insofar that they are geared toward addressing concerns of interpersonal domination. But the impersonal theorist also adds that we should want to *constrain* the kind of interests

individuals consider in market activity. For instance, the Christian's 'interest' in their exchange partner also being Christian is not just morally irrelevant, but one that the impersonal theorist hopes does not affect that agent's behavior. If, as the liberal model holds, more information promises to expand the diversity of interests which individuals may pursue, then *less information* holds promise to *limit* the diversity of interests pursued.[72]

Some Examples of Secrecy for Good

Many of the most compelling examples of information asymmetries being used for good are those cases in which they support some type of anonymity. Anonymity does not just concern hidden names, but more generally relates to the "*noncoordinatability of traits in a given respect,"* which is to say, "one has anonymity or is anonymous when others are unable to relate a given feature of the person to other characteristics" (Wallace, 1999). Thus, we set up intentional information asymmetries to inhibit the matching of certain pieces of information about someone with other pieces of information. To recognize that anonymity may be beneficial is to recognize the real costs increased visibility can have on various categories of individuals (Adut, 2018: 118–132).

Some studies have shown that, when ride-sharing apps implement information asymmetries, for instance obscuring indicators of gender or race (e.g., pictures or names) of potential passengers, it reduces discrimination on a number of metrics (Brown, 2019; Ge, Knittel, MacKenzie, & Zoepf, 2016; Mejia & Parker, 2020). The matter is not entirely straightforward, as bias can be 'pushed' into other stages of the transaction—for

[72] This is, for instance, precisely the hypothetical function of Rawls's (2009) 'veil of ignorance.'

instance, into the ride cancelation phase (Mejia & Parker, 2020). But the logic of the design is evident. A similar anonymity is leveraged in professional orchestral auditions, whereby a violinist will audition behind an opaque screen to hide their identity and various traits one may infer from their appearance (Calo, 2015). One famous study examined these attempts to "orchestrate impartiality," finding evidence that the practice increases the probability women will be advanced in the audition and eventually hired (Goldin & Rouse, 2000).

Recent legislative agendas in various states and municipalities have sought to ban questions about salary histories—in hopes of reducing persistent pay disparities from job to job—as well as questions about criminal history in initial hiring stages (for a review, see Lobel, 2020). These initiatives essentially endeavor to advance justice by preempting certain considerations from playing a large part in determining how individuals are paid and whether they advance in the hiring process. While empirical evidence of the efficacy of these initiatives at present is either mixed or not-yet-available (Lobel, 2020), these efforts illustrate the gripping logic of how the promotion of information asymmetries holds promise to limit the considerations on which market actors make decisions.

There are also considerable worries about discrimination in pricing across genders online and elsewhere (Cahn, Carbone, & Levit, 2019), as well as big-data-driven personalized pricing that enhances firms' ability to (potentially wrongfully) erode consumer surplus (Moriarty, 2021; Steinberg, 2020). There is great potential to scrutinize these practices and propose various measures which may alter information flows—e.g., in

preventing the collection of certain personal information in pricing products or services—that could improve desired outcomes.

Many of these examples counsel the use of structured information asymmetries to inhibit wrongful discrimination. They therefore show how intentional information asymmetries can enable the least controversial form of alienation, which is alienation from one's racist, sexist, or otherwise discriminatory commitments. But visibility does not only stand to harm those groups who may be coherently subject to wrongful discrimination. Recent literature on 'surveillance capitalism' has drawn a close relationship between the aggregation of information by certain groups—in particular Big Tech— and domination over individual autonomy (Andrew & Baker, 2019; Zuboff, 2015, 2019). Within management literature, too, the experience of those employees in workplaces who are 'seen' or monitored has arisen as a research topic, concerning in particular employee privacy, autonomy, and productivity (Bernstein, 2014, 2012, 2016; Kellogg, Valentine, & Christin, 2020). In short, the examples I provide above illustrate perhaps the most intuitive instance in which more secrecy can lead to preferred outcomes, but there is much work to be done across business ethics, management theory, and social theory writ-large on how secrecy may be intentionally promoted in order to facilitate the achievement of certain values or outcomes.

The impersonal theorist, though, will endorse more secrecy not only in those contexts where it leads to preferred outcomes from the perspective of progressive justice. Too, they will also want to use secrecy to help individuals or firms to alienate themselves from enacting various progressive or 'prosocial' commitments within markets, insofar as

those commitments may inhibit markets or threaten domination. In this vein, for example, to the extent different corporate social reporting or marketing practices present information that is 'not related to productivity'—for instance, information about 'buy one give one' campaigns of companies with whom we transact—the impersonal theorist may wish that that information be made more scarce.

XI. Conclusion: Complex Equality & Markets

One need not to be an impersonal theorist 'all the way' in order to appreciate the compelling moral reasons the view brings to the fore. The implications and policy prescriptions of the impersonal view—for instance what types of information are deemed to be "extraneous" (Calo 2015: 654) and thus removed from transactional environments— will depend to a large degree on how we define what 'relates to productivity.' I have suggested that shareholder value maximization is neither a necessary nor a very attractive corporate objective on the impersonal account. In place of this objective, some have begun thinking in terms of "value creation" or "collective value" (Donaldson & Walsh, 2015). Research in stakeholder accounting (e.g., Hall, Millo, & Barman, 2015) presents a variety of nascent but promising alternatives for keeping corporations accountable to these less concrete objectives, in place of those shareholder value-centric metrics Friedman or Hayek would counsel. The corporate objective ultimately, though, must be compatible with some robust separation of markets and politics; worries still linger that alternatives to shareholder maximization remain

"vacuous" or otherwise dangerously unenforceable (The Economist, 2021; e.g., Hasnas, 2013; Orts & Strudler, 2009).

Still, even if we have not yet settled a full positive theory of the impersonal market actor, we have been able to generate some insights as to the narrower topic of market access rules, in particular in gesturing to some behaviors the view would proscribe. We have shown how the impersonal view presents a distinctive and compelling rationale for broad access rules which forbids various political and social goals from determining one's transacting partners. This view is not premised on any kind of amoral doctrine of profit or shareholder value maximization, nor, for that matter, on an overly formal notion of 'equality' which is blind to substantive egalitarian ends; rather, it is premised on pluralistic and flourishing markets within a larger moral division of labor, one which is ultimately oriented toward justice. The impersonal view is not indifferent to equality. It recognizes that equality within society is rather "complex" in the sense Walzer (1984) deployed, which is say that the value of equality may require acting with differing orientations or on different reasons depending on the sphere of society in which the actor is located. A market sphere in which all are welcome and in which conflicts about important values are to be put aside for our mutual and common good is one to which we should aspire.

BIBLIOGRAPHY

Adams, J. S. 1963. Towards an understanding of inequity. ***The Journal of Abnormal and Social Psychology***, 67(5): 422.

Adut, A. 2018. ***Reign of appearances: The misery and splendor of the public sphere***. Cambridge University Press.

Agarwal, R., & Holmes, R. M. 2019. Let's Not Focus on Income Inequality. ***Academy of Management Review***, 44(2): 450–460.

Albu, O. B., & Flyverbom, M. 2019. Organizational Transparency: Conceptualizations, Conditions, and Consequences. ***Business & Society***, 58(2): 268–297.

Alchian, A. A., & Demsetz, H. 1972. Production, Information Costs, and Economic Organization. ***The American Economic Review***, 62(5): 777–795.

Alexander, C. S. 2015. Transparency and Transmission: Theorizing Information's Role in Regulatory and Market Responses to Workplace Problems. ***Connecticut Law Review***, 48: 177–218.

Allen, A. L. 2002. Privacy Isn't Everything: Accountability as a Personal and Social Good 2003 Daniel J. Meador Lecture. ***Alabama Law Review***, (4): 1375–1392.

Altman, A. 2016. Discrimination. In E. N. Zalta (Ed.), ***The Stanford Encyclopedia of Philosophy*** (Winter 2016). Metaphysics Research Lab, Stanford University. https://plato.stanford.edu/archives/win2016/entries/discrimination/.

Alzola, M. 2019. Even When No One Is Watching: The Moral Psychology of Corporate Reputation. ***Business & Society***, 58(6): 1267–1301.

Anand, V., & Rosen, C. C. 2008. The Ethics of Organizational Secrets. ***Journal of Management Inquiry***, 17(2): 97–101.

Anderson, E. 2017. ***Private Government: How Employers Rule Our Lives***. Princeton ; Oxford: Princeton University Press.

Andrew, J., & Baker, M. 2019. The General Data Protection Regulation in the Age of Surveillance Capitalism. ***Journal of Business Ethics***. https://doi.org/10.1007/s10551-019-04239-z.

Arnold, D. G., Audi, R., & Zwolinski, M. 2010. Recent Work in Ethical Theory and Its Implications for Business Ethics. ***Business Ethics Quarterly***, 20(4): 559–581.

Arnold, D. G., & Bowie, N. E. 2003. Sweatshops and Respect for Persons. ***Business Ethics Quarterly***, 13(2): 221–242.

Aschoff, N. 2015. ***The New Prophets of Capital***. London ; Brooklyn, NY: Verso Press.

Balter, D. 2007, November 13. The Strategic Benefits of Transparency. ***Harvard Business Review***. https://hbr.org/2007/11/the-strategic-benefits-of-tran.

Banerjee, S. B. 2008. Corporate Social Responsibility: The Good, the Bad and the Ugly. ***Critical Sociology***, 34(1): 51–79.

Baraibar-Diez, E., Odriozola, M. D., & Sánchez, J. L. F. 2017. A Survey of Transparency: An Intrinsic Aspect of Business Strategy. ***Business Strategy and the Environment***, 26(4): 480–489.

Barnett, M., Henriques, I., & Husted, B. 2018. The rise and stall of stakeholder influence: How the digital age limits social control. ***Academy of Management Perspectives***. https://doi.org/10.5465/amp.2017.0080.

Barnett, M. L. 2014. Why Stakeholders Ignore Firm Misconduct: A Cognitive View. ***Journal of Management***, 40(3): 676–702.

Barry, C., & MacDonald, K. 2018. Ethical consumerism: A defense of market vigilantism. ***Philosophy & Public Affairs***, 46(3): 293–322.

Bartlett, K. T. 2009. Making Good on Good Intentions: The Critical Role of Motivation in Reducing Implicit Workplace Discrimination. ***Virginia Law Review***, 95(8): 1893–1972.

Bastiat, F. 2007. ***Bastiat Collection, The***. Ludwig von Mises Institute.

Bebchuk, L. A., & Fried, J. M. 2004. Executive Compensation at Fannie Mae: A Case Study of Perverse Incentives, Nonperformance Pay, and Camouflage Studies on Executive Pay. ***Journal of Corporation Law***, 30(4): 807–822.

Bebchuk, L., & Tallarita, R. 2020, August 6. Opinion | 'Stakeholder' Capitalism Seems Mostly for Show. ***Wall Street Journal***. https://www.wsj.com/articles/stakeholder-capitalism-seems-mostly-for-show-11596755220.

Becker, G. S. 2010. ***The economics of discrimination***. University of Chicago press.

Belogolovsky, E., & Bamberger, P. A. 2014. Signaling in Secret: Pay for Performance and the Incentive and Sorting Effects of Pay Secrecy. ***Academy of Management Journal***, 57(6): 1706–1733.

Bentham, J. 1908. ***Theory of Legislation***. (R. Hildreth, Tran.) (Translated from the French of Etienne Dumont). London: Kegan Paul, Trench, Trübner & Company.

Bentham, J. 1996. ***The Collected Works of Jeremy Bentham: An Introduction to the Principles of Morals and Legislation***. Clarendon Press.

Berglund, T. 2014. Corporate governance and optimal transparency. ***The Oxford Handbook of Economic and Institutional Transparency***, 359–371.

Berkey, B. 2016. Against Rawlsian Institutionalism about Justice. ***Social Theory and Practice***, 42(4): 706–732.

Berkey, B. 2021. Rawlsian Institutionalism and Business Ethics: Does It Matter Whether Corporations Are Part of the Basic Structure of Society? ***Business Ethics Quarterly***, 31(2): 179–209.

Berle, A. A., & Means, G. C. 1933. ***The Modern Corporation and Private Property***. Macmillan Company.

Bernstein, D. 1985. ***Company Image and Reality: A Critique of Corporate Communications*** (1st Edition.). London: Holt, Rinehart & Winston Ltd.

Bernstein, E. 2014. The Transparency Trap. ***Harvard Business Review***, 92(10): 58–66.

Bernstein, E. S. 2012. The Transparency Paradox: A Role for Privacy in Organizational Learning and Operational Control. ***Administrative Science Quarterly***, 57(2): 181–216.

Bernstein, E. S. 2016. Making Transparency Transparent: The Evolution of Observation in Management Theory. ***Academy of Management Annals***, 11(1): 217–266.

Bhargava, V. R. 2020. Firm responses to mass outrage: Technology, blame, and employment. ***Journal of Business Ethics***, 163(3): 379–400.

Bielby, W. T. 2000. Minimizing Workplace Gender and Racial Bias. ***Contemporary Sociology***, 29(1): 120–129.

Bierman, L., & Gely, R. 2004. “Love, Sex and Politics? Sure. Salary? No Way”: Workplace Social Norms and the Law. ***Berkeley Journal of Employment and Labor Law***, 25(1): 167–191.

Birchall, C. 2011a. Introduction to ‘Secrecy and Transparency’: The Politics of Opacity and Openness. ***Theory, Culture and Society***, 28(7–8): 7–25.

Birchall, C. 2011b. Transparency, Interrupted: Secrets of the Left. ***Theory, Culture & Society***, 28(7–8): 60–84.

Birchall, C. 2014. Radical Transparency? ***Cultural Studies ↔ Critical Methodologies***, 14(1): 77–88.

Birchall, C. 2016. Digital Age| Managing Secrecy. ***International Journal of Communication***, 10: 12.

Birkinshaw, P. 2006. Transparency as a Human Right. In C. Hood & D. Heald (Eds.), ***Transparency: The Key to Better Governance*** (1 edition): 47–57. Oxford ; New York: Oxford University Press.

Bishop, M. 2013. Philanthrocapitalism: Solving Public Problems through Private Means. ***Social Research***, 80(2): 473–490.

Blau, F. D., & Kahn, L. M. 2000. Gender Differences in Pay. ***Journal of Economic Perspectives***, 14(4): 75–100.

Bloom, M. 2004. The ethics of compensation systems. ***Journal of Business Ethics***, 52(2): 149–152.

Boatright, J. R. 1994. Fiduciary Duties and the Shareholder-Management Relation: Or, What’s so Special about Shareholders? ***Business Ethics Quarterly***, 4(4): 393–407.

Boatright, J. R. 1999. Does Business Ethics Rest on a Mistake? ***Business Ethics Quarterly***, 9(4): 583–591.

Bok, S. 1989. ***Secrets: On the Ethics of Concealment and Revelation*** (Reissue edition). New York Toronto: Vintage.

Borradori, G. 2016. Between Transparency and Surveillance Politics of the Secret. ***Philosophy and Social Criticism***, 42(4–5): 456–464.

Bowie, N. E. 2017. ***Business Ethics: A Kantian Perspective*** (2 edition). New York, NY: Cambridge University Press.

Brandeis, L. D. 1914. ***Other people's money, and how the bankers use it***. New York : Stokes. http://archive.org/details/otherpeoplesmone00bran.

Brennan, J. 2012. For-Profit Business as Civic Virtue. ***Journal of Business Ethics***, 106(3): 313–324.

Brennan, J. 2019. Should Employers Pay a Living Wage? ***Journal of Business Ethics***, 157(1): 15–26.

Brock, G. 1998. Are Corporations Morally Defensible? ***Business Ethics Quarterly***, 8(4): 703–721.

Brower, H. H., Lester, S. W., & Korsgaard, M. A. 2017, July 5. Want Your Employees to Trust You? Show You Trust Them. ***Harvard Business Review***. https://hbr.org/2017/07/want-your-employees-to-trust-you-show-you-trust-them.

Brown, A. E. 2019. Prevalence and Mechanisms of Discrimination: Evidence from the Ride-Hail and Taxi Industries. ***Journal of Planning Education and Research***, 0739456X1987168.

Buchanan, J. M. 1976. The Justice of Natural Liberty. ***Journal of Legal Studies***, 5: 1.

Burkus, D. 2016. ***Under New Management: How Leading Organizations Are Upending Business as Usual***. Houghton Mifflin Harcourt.

Cahn, N., Carbone, J., & Levit, N. 2019. Discrimination by Design. ***Ariz. St. LJ***, 51: 1.

Calland, R. 2007. Prizing Open the Profit-Making World. In A. Florini (Ed.), ***The Right to Know: Transparency for an Open World***: 214–242. New York: Columbia University Press.

Calo, R. 2015. Privacy and Markets: A Love Story. ***Notre Dame Law Review***, 91: 649–690.

Calvasina, G. E., Calvasina, R. V., & Calvasina, E. J. 2015. Pay secrecy: Legal, policy, and practice issues for employers. ***Journal of Legal, Ethical and Regulatory Issues***, 18(2): 1.

Canales, B. 2017. Closing the Federal Gender Pay Gap through Wage Transparency. ***Houston Law Review***, (4): 969–998.

Carreyrou, J. 2018. ***Bad Blood: Secrets and Lies in a Silicon Valley Startup*** (1 edition). New York: Knopf.

Carson, T. L. 2012. ***Lying and deception: Theory and practice***. Oxford: Oxford University Press.

Carson, T. L., Wokutch, R. E., & Murrmann, K. F. 1982. Bluffing in labor negotiations: Legal and ethical issues. ***Journal of Business Ethics***, 1(1): 13–22.

Castilla, E. J. 2008. Gender, Race, and Meritocracy in Organizational Careers. ***American Journal of Sociology***, 113(6): 1479–1526.

Castilla, E. J. 2015. Accounting for the Gap: A Firm Study Manipulating Organizational Accountability and Transparency in Pay Decisions. ***Organization Science***, 26(2): 311–333.

Caulfield, M. 2019. Expressive Business Ethics. ***Business Ethics***, vol. 3. Emerald Group Publishing Limited.

Caulfield, M. 2021. Pay Secrecy, Discrimination, and Autonomy. ***Journal of Business Ethics***, 171(2): 399–420.

Caulfield, M., & Laufer, W. S. 2018. The Promise of Corporate Character Theory. ***Iowa Law Review Online***, 103: 101.

Caulfield, M., & Laufer, W. S. 2019. Corporate Moral Agency at the Convenience of Ethics and Law The Ethics of Corporate Moral Agency: Applications of Corporate Moral Agency. ***Georgetown Journal of Law & Public Policy***, 17(Special Issue): 953–978.

Chamberlain, N. W. 1973. ***The limits of corporate responsibility***. Basic Books.

Chandler, A. 1977. ***The visible hand: The managerial revolution in American business***. Cambridge, MA: Harvard University Press.

Christensen, L. T., & Cornelissen, J. 2015. Organizational transparency as myth and metaphor. ***European Journal of Social Theory***, 18(2): 132–149.

Ciepley, D. 2013. Beyond Public and Private: Toward a Political Theory of the Corporation. ***American Political Science Review***, 107(1): 139–158.

Clark, J. M. 1939. ***Social Control of Business*** (2nd ed.). McGraw Hill, NY: McGraw Hill.

Cohen, M. A., & Peterson, D. 2019. The Implicit Morality of the Market and Joseph Heath's Market Failures Approach to Business Ethics. ***Journal of Business Ethics***, 159(1): 75–88.

Colella, A., Paetzold, R. L., Zardkoohi, A., & Wesson, M. J. 2007. Exposing Pay Secrecy. ***The Academy of Management Review***, 32(1): 55–71.

Coleman, J. 1987. Competition and cooperation. ***Ethics***, 98(1): 76–90.

Coombs, W. T., & Holladay, S. J. 2013. The pseudo-panopticon: The illusion created by CSR-related transparency and the internet. ***Corporate Communications: An International Journal***, 18(2): 212–227.

Corley, K. G., & Gioia, D. A. 2011. Building Theory About Theory Building: What Constitutes a Theoretical Contribution? ***The Academy of Management Review***, 36(1): 12–32.

Cornell, N. 2015. Wrongs, Rights, and Third Parties. ***Philosophy & Public Affairs***, 43(2): 109–143.

Corvino, J. 2006. Reframing "Morality Pays": Toward a Better Answer to "Why be Moral?" in Business. ***Journal of Business Ethics***, 67(1): 1–14.

Cory, J. 2001. ***Activist Business Ethics***. Kluwer Academic Publishers, Boston.

Cory, J. 2004. ***Business Ethics: The Ethical Revolution of Minority Shareholders***. Springer Science & Business Media.

Costas, J., & Grey, C. 2014. Bringing secrecy into the open: Towards a theorization of the social processes of organizational secrecy. ***Organization Studies***, 35(10): 1423–1447.

Crane, A., McWilliams, A., Matten, D., Moon, J., & Siegel, D. S. 2008. The Corporate Social Responsibility Agenda. ***The Oxford Handbook of Corporate Social Responsibility***. https://doi.org/10.1093/oxfordhb/9780199211593.003.0001.

Crisp, R. 2016. Rossian pluralism, egoism, and pleasure. ***Etica & Politica***, 18(1): 119–133.

Cropanzano, R., Bowen, D. E., & Gilliland, S. W. 2007. The Management of Organizational Justice. ***Academy of Management Perspectives***, 21(4): 34–48.

Crovitz, L. G. 2009, March 30. Transparency Is More Powerful Than Regulation. ***Wall Street Journal***. https://www.wsj.com/articles/SB123837223623167841.

Cullen, Z. B., & Perez-Truglia, R. 2018. ***The Salary Taboo: Privacy Norms and the Diffusion of Information***. Working Paper no. 25145, National Bureau of Economic Research. https://doi.org/10.3386/w25145.

Dando, N., & Swift, T. 2003. Transparency and Assurance: Minding the Credibility Gap. ***Journal of Business Ethics***, 44(2/3): 195–200.

Danziger, L., & Katz, E. 1997. Wage Secrecy as a Social Convention. ***Economic Inquiry***, 35(1): 59–69.

Darwall, S. L. 2006. ***The Second-person Standpoint: Morality, Respect, and Accountability***. Harvard University Press.

das Neves, J. C., & Vaccaro, A. 2013. Corporate Transparency: A Perspective from Thomas Aquinas' "Summa Theologiae." ***Journal of Business Ethics***, 113(4): 639–648.

Day, G. S. 1976. Assessing the Effects of Information Disclosure Requirements: Experience with Past Information Disclosures is a Useful Guide for Those Trying

to Understand and Respond to New Requirements. ***Journal of Marketing***, 40(2): 42–52.

De Maria, W. 2006. Brother Secret, Sister Silence: Sibling Conspiracies against Managerial Integrity. ***Journal of Business Ethics***, 65(3): 219–234.

Dean, J. 2001. Publicity's secret. ***Political Theory***, 29(5): 624–650.

Dees, J. G., & Cramton, P. C. 1995. Deception and Mutual Trust: A Reply to Strudler. ***Business Ethics Quarterly***, 5(4): 823–832.

Dennett, D. C., & Roy, D. 2015, March. How Digital Transparency Became a Force of Nature. ***Scientific American***. https://doi.org/10.1038/scientificamerican0315-64.

Department of Labor. n.d. Frequently Asked Questions Pay Transparency Regulations. ***Office of Federal Contract Compliances Programs***. https://www.dol.gov/ofccp/regs/compliance/faqs/PayTransparencyFAQs.html#Q2 .

Diamantis, M. E. 2017. Clockwork Corporations: A Character Theory of Corporate Punishment. ***Iowa Law Review***, 103: 507–570.

Diamantis, M. E., & Laufer, W. S. 2019. Prosecution and Punishment of Corporate Criminality. ***Annual Review of Law and Social Science***, 15(1): 453–472.

DiMatteo, L. A., & Wrbka, S. 2018. Planned Obsolescence and Consumer Protection: The Unregulated Extended Warranty and Service Contract Industry. ***Cornell Journal of Law and Public Policy***, 28(3): 483–544.

Dishman, L. 2017, September 28. Activist investor demands that Google provide more data on its gender pay gap. ***Fast Company***.

https://www.fastcompany.com/40474369/activist-investor-demands-that-google-provide-more-data-on-its-gender-pay-gap.

Dobusch, Laura, Dobusch, Leonhard, & Müller-Seitz, G. 2019. Closing for the Benefit of Openness? The case of Wikimedia's open strategy process. ***Organization Studies***, 40(3): 343–370.

Doll, J. 2012, May 31. How Keeping Salaries Secret Makes Employees Complicit in Wage Inequality. ***The Atlantic***. https://www.theatlantic.com/business/archive/2012/05/how-keeping-salaries-secrets-makes-employees-complicit-wage-inequality/327457/.

Donaldson, T. 1982. ***Corporations and Morality***. Prentice-Hall.

Donaldson, T. 1989. ***The Ethics of International Business***. New York: Oxford University Press.

Donaldson, T. 2017. Donaldsonian Themes: A Commentary. ***Business Ethics Quarterly***, 27(1).

Donaldson, T., & Dunfee, T. W. 1999. ***Ties that bind: A social contracts approach to business ethics***.

Donaldson, T., & Preston, L. E. 1995. The stakeholder theory of the corporation: Concepts, evidence, and implications. ***Academy of Management Review***, 20(1): 65–91.

Donaldson, T., & Walsh, J. P. 2015. Toward a theory of business. ***Research in Organizational Behavior***, 35: 181–207.

Doorey, D. J. 2012. A model of responsive workplace law. ***Osgoode Hall LJ***, 50: 47.

Dreisbach, T. 2014. “Pay Secrecy” Policies At Work: Often Illegal, And Misunderstood. ***NPR.Org***. https://www.npr.org/2014/04/13/301989789/pay-secrecy-policies-at-work-often-illegal-and-misunderstood.

Dufresne, R. L., & Offstein, E. H. 2008. On the Virtues of Secrecy in Organizations. ***Journal of Management Inquiry***, 17(2): 102–106.

Dunfee, T. W. 2006. Do Firms with Unique Competencies for Rescuing Victims of Human Catastrophes Have Special Obligations? Corporate Responsibility and the AIDS Catastrophe in Sub-Saharan Africa. ***Business Ethics Quarterly***, 16(2): 185–210.

Durkheim, E. 1984. ***The division of labour in society***. Houndmills, Basingstoke, Hampshire : http://hdl.handle.net/2027/uc1.32106013616716.

Duska, R. F. 2014. Why Business Ethics Needs Rhetoric: An Aristotelian Perspective. ***Business Ethics Quarterly***, 24(1): 119–134.

Edwards, M. A. 2005. The Law and Social Norms of Pay Secrecy. ***Berkeley Journal of Employment and Labor Law***, 26: 41–64.

Eells, R. 1962. ***The Government of Corporations***. New York: Free Press of Glencoe.

Ehrman, B. D. 1999. ***Jesus: Apocalyptic prophet of the new millennium***. Oxford University Press.

Eisenberg, D. T. 2011. Money, Sex, and Sunshine: A Market-Based Approach to Pay Discrimination. ***Arizona State Law Journal***, 43: 951–1020.

Eisenberg, E. M., & Witten, M. G. 1987. Reconsidering Openness in Organizational Communication. ***The Academy of Management Review***, 12(3): 418–426.

Elia, J. 2009. Transparency rights, technology, and trust. ***Ethics and Information Technology***, 11(2): 145–153.

Eliperin, J. 2014, April 8. Obama takes executive action to lift the veil of "pay secrecy." ***Washington Post***. https://www.washingtonpost.com/news/post-politics/wp/2014/04/08/obama-takes-executive-action-to-lift-the-veil-of-pay-secrecy/.

England, P. 2017. ***Comparable worth: Theories and evidence***. Routledge.

Epstein, R. A. 2014. Public Accommodations under Civil Rights Act of 1964: Why Freedom of Association Counts as a Human Right. ***Stanford Law Review***, 66(6): 1241–1292.

Estlund, C. 2010. Just the Facts: The Case for Workplace Transparency. ***Stanford Law Review***, 63: 351–408.

Estlund, C. 2014. Extending the Case for Workplace Transparency to Information About Pay. ***UC Irvine Law Review***, 4(2): 781.

Ethics & Compliance Initiative. 2018. ***Interpersonal Misconduct in the Workplace***.

Etzioni, A. 2010. Is Transparency the Best Disinfectant? ***Journal of Political Philosophy***, 18(4): 389–404.

Etzioni, A. 2018. The Limits of Transparency. In E. Alloa & D. Thomä (Eds.), ***Transparency, Society and Subjectivity: Critical Perspectives***: 179–201. Cham: Springer International Publishing.

Eurofound. 2018. ***Pay transparency in Europe: First experiences with gender pay reports and audits in four Member States***. Luxembourg: Publications Office of the European Union.

Evan, W. M., & Freeman, R. E. 1988. A stakeholder theory of the modern corporation: Kantian capitalism. In T. L. Beauchamp & N. E. Bowie (Eds.), ***Ethical theory and business*** (3rd ed.). Englewood Cliffs, N.J: Prentice Hall.

Fan, Z., & Grey, C. 2020. Everyday secrecy: Boundaries of confidential gossip. ***Culture and Organization***, 1–17.

Fan, Z., Grey, C., & Kärreman, D. 2020. Confidential Gossip and Organization Studies. ***Organization Studies***, 0170840620954016.

Feldman, S. P. 1988. Secrecy, information, and politics: An essay on organizational decision making. ***Human Relations***, 41(1): 73–90.

Fenster, M. 2005. The Opacity of Transparency. ***Iowa Law Review***, 91: 885–950.

Fenster, M. 2010. Seeing the State: Transparency as Metaphor. ***Administrative Law Review***, 62(3): 617–672.

Fenster, M. 2015. Transparency in search of a theory. (H. K. Hansen, L. T. Christensen, & M. Flyverbom, Eds.)***European Journal of Social Theory***, 18(2): 150–167.

Ferreras, I. 2017. ***Firms as Political Entities: Saving democracy through economic bicameralism***. Cambridge University Press.

Fieser, J. 1996. Do businesses have moral obligations beyond what the law requires? ***Journal of Business Ethics***, 15(4): 457–468.

Fisk, G. M. 2010. "I want it all and I want it now!" An examination of the etiology, expression, and escalation of excessive employee entitlement. ***Human Resource Management Review***, 20(2): 102–114.

Floridi, L. 2005. Information ethics, its nature and scope. ***ACM SIGCAS Computers and Society***, 35(2): 3–3.

Floridi, L. 2013. ***The ethics of information***. Oxford University Press.

Florini, A. 2000. The End of Secrecy. In B. I. Finel & K. M. Lord (Eds.), ***Power and Conflict in the Age of Transparency***: 13–28. New York: Palgrave Macmillan US.

Flyverbom, M. 2020. ***The Digital Prism***. New York: Cambridge University Press.

Flyverbom, M., Christensen, L. T., & Hansen, H. K. 2015. The Transparency–Power Nexus: Observational and Regularizing Control. ***Management Communication Quarterly***, 29(3): 385–410.

Forssbæck, J., & Oxelheim, L. 2014. The Multifaceted Concept of Transparency. ***The Oxford Handbook of Economic and Institutional Transparency***. https://doi.org/10.1093/oxfordhb/9780199917693.013.0001.

Foucault, M. 1980. ***Power/Knowledge: Selected Interviews and Other Writings, 1972-1977***. Pantheon Books.

Foucault, M. 1995. ***Discipline & Punish: The Birth of the Prison***. (A. Sheridan, Tran.). New York: Vintage Books.

Frederick, W. C. 1994. From CSR1 to CSR2: The Maturing of Business-and-Society Thought. ***Business & Society***, 33(2): 150–164.

Freeman, R. E. 1994. The Politics of Stakeholder Theory: Some Future Directions. ***Business Ethics Quarterly***, 4(4): 409–421.

Freeman, R. E., & Greenwood, M. 2020. Deepening Methods in Business Ethics. ***Journal of Business Ethics***, 161(1): 1–3.

Freeman, R. E., & Phillips, R. A. 2002. Stakeholder Theory: A Libertarian Defense. ***Business Ethics Quarterly***, 12(3): 331–349.

French, P. A. 1984. ***Collective and Corporate Responsibility***. Columbia University Press. https://www.degruyter.com/document/doi/10.7312/fren90672/html.

Friedman, M. 1962. ***Capitalism and Freedom***. Chicago: University of Chicago Press.

Friedman, M. 2009. ***Capitalism and freedom***. University of Chicago Press.

Frooman, J. 1999. Stakeholder Influence Strategies. ***Academy of Management Review***, 24(2): 191–205.

Frye, J., & Holmes, K. 2017, July 5. Wage Discrimination: Behind the Numbers. ***Center for American Progress***. https://www.americanprogress.org/issues/women/news/2017/07/05/435190/wage-discrimination-behind-numbers/.

Fung, A., Graham, M., & Weil, D. 2007. ***Full Disclosure: The Perils and Promise of Transparency***. Cambridge University Press.

Gaonkar, D. P., & McCarthy, R. J., Jr. 1994. Panopticism and Publicity: Bentham's Quest for Transparency. ***Public Culture***, 6(3): 547–575.

Garriga, E., & Melé, D. 2004. Corporate Social Responsibility Theories: Mapping the Territory. ***Journal of Business Ethics***, 53(1): 51–71.

Gaus, G. 2010. ***The order of public reason: A theory of freedom and morality in a diverse and bounded world***. Cambridge University Press.

Ge, Y., Knittel, C. R., MacKenzie, D., & Zoepf, S. 2016. ***Racial and Gender Discrimination in Transportation Network Companies***. Working Paper no. 22776, National Bureau of Economic Research. https://doi.org/10.3386/w22776.

Ghauri, P. N., Hadjikhani, A., & Pahlberg, C. 2014. Multinational Corporations' Relationship with Political Actors: Transparency versus Opacity. In J. Forssbæck

& L. Oxelheim (Eds.), ***The Oxford Handbook of Economic and Institutional Transparency***: 340–358. Oxford University Press.

Gibson, D. R. 2014. Enduring Illusions: The Social Organization of Secrecy and Deception. ***Sociological Theory***, 32(4): 283–306.

Gilbert, P. 1985. Review of Secrets: On the Ethics of Concealment and Revelation. ***Philosophy***, 60(231): 143–145.

Giridharadas, A. 2018. ***Winners Take All: The Elite Charade of Changing the World***. Knopf Doubleday Publishing Group.

Gittleman, M., & Kleiner, M. M. 2016. Wage effects of unionization and occupational licensing coverage in the United States. ***ILR Review***, 69(1): 142–172.

Glassman, M., & Mcafee, R. B. 2005. Pay Inversion at Universities: Is it Ethical? ***Journal of Business Ethics***, 56(4): 325–333.

Godfrey, P. C. 2006. A Reply to Bright: Virtuousness and the Virtues of the Market. ***Academy of Management Review***, 31(3): 754–756.

Goffman, E. 1959. ***The Presentation of Self in Everyday Life*** (1 edition). New York, NY: Anchor.

Goldin, C., & Rouse, C. 2000. Orchestrating impartiality: The impact of "blind" auditions on female musicians. ***American Economic Review***, 90(4): 715–741.

Goldman, B. M., Gutek, B. A., Stein, J. H., & Lewis, K. 2006. Employment Discrimination in Organizations: Antecedents and Consequences. ***Journal of Management***, 32(6): 786–830.

Goleman, D. 2009, May 7. Winning in an Age of Radical Transparency. ***Harvard Business Review***. https://hbr.org/2009/05/radical-transparency.

Gond, J.-P., Palazzo, G., & Basu, K. 2009. Reconsidering Instrumental Corporate Social Responsibility through the Mafia Metaphor. ***Business Ethics Quarterly***, 19(1): 57–85.

Goodpaster, K. E. 1991. Business Ethics and Stakeholder Analysis. ***Business Ethics Quarterly***, 1(1): 53–73.

Greenberg, J., & Edwards, M. S. 2009. ***Voice and silence in organizations***. Emerald group publishing.

Greenfield, K. 2008. The Failure of Corporate Law. ***The Failure of Corporate Law***. University of Chicago Press. https://www-degruyter-com.proxy.library.upenn.edu/document/doi/10.7208/9780226306988/html.

Grey, C., & Costas, J. 2016. ***Secrecy at Work: The Hidden Architecture of Organizational Life***. Stanford University Press.

Gumpert, G., & Drucker, S. J. 2007. Through the looking glass: Illusions of transparency and the cult of information. ***Journal of Management Development***, 26(5): 493–498.

Hall, M., Millo, Y., & Barman, E. 2015. Who and What Really Counts? Stakeholder Prioritization and Accounting for Social Value. ***Journal of Management Studies***, 52(7): 907–934.

Hansen, H. K., & Flyverbom, M. 2015. The politics of transparency and the calibration of knowledge in the digital age. ***Organization***, 22(6): 872–889.

Hart, O., & Zingales, L. 2017. Companies Should Maximize Shareholder Welfare Not Market Value. ***Journal of Law, Finance, and Accounting***, 2(2): 247–275.

Hasnas, J. 2004. Ethics and the problem of white collar crime. ***Am. UL Rev.***, 54: 579.

Hasnas, J. 2006. ***Trapped: When Acting Ethically is Against the Law***. Washington, D.C: Cato Institute.

Hasnas, J. 2013. Whither Stakeholder Theory? A Guide for the Perplexed Revisited. ***Journal of Business Ethics***, 112(1): 47–57.

Hasnas, J. 2020. The core of business ethics. ***Business and Society Review***, 125(4): 375–385.

Hassoun, N. 2019. Consumption and Social Change. ***Economics & Philosophy***, 35(1): 29–47.

Hauptman, R. 2017. Information Ethics: A Corrective. ***Journal of Information Ethics***, 26(2): 3–4.

Hayek, F. A. 1945. The Use of Knowledge in Society. ***The American Economic Review***, 35(4): 519–530.

Hayek, F. A. 1982. ***Law, Legislation and Liberty*** (1st edition). London: Routledge.

Hayek, F. A. 1994. ***The Road to Serfdom: Fiftieth Anniversary Edition*** (Anniversary edition). Chicago: University Of Chicago Press.

Hayek, F. A. 2012. ***Law, Legislation and Liberty, Volume 2: The Mirage of Social Justice***. University of Chicago Press.

Heald, D. 2006a. Varieties of transparency. In C. Hood & D. Heald (Eds.), ***Transparency: The Key to Better Governance?*** Oxford University Press.

Heald, D. 2006b. Transparency as an instrumental value. In C. Hood & D. Heald (Eds.), ***Transparency: The Key to Better Governance*** (1 edition): 57–73. Oxford ; New York: British Academy.

Heath, J. 2007. An adversarial ethic for business: Or when Sun-Tzu met the stakeholder. ***Journal of Business Ethics***, 72(4): 359–374.

Heath, J. 2014. ***Morality, Competition, and the Firm: The Market Failures Approach to Business Ethics*** (1 edition). Oxford ; New York: Oxford University Press.

Heath, J. 2018. On the very idea of a just wage. ***Erasmus Journal for Philosophy and Economics***, 11(2): 1–33.

Heath, J., Moriarty, J., & Norman, W. 2010. Business Ethics and (or as) Political Philosophy. ***Business Ethics Quarterly***, 20(3): 427–452.

Hebb, T. 2006. The Economic Inefficiency of Secrecy: Pension Fund Investors' Corporate Transparency Concerns. ***Journal of Business Ethics***, 63(4): 385–405.

Heimstädt, M. 2017. Openwashing: A decoupling perspective on organizational transparency. ***Technological Forecasting and Social Change***, 125: 77–86.

Hellerstein, J. K., & Neumark, D. 2006. Using matched employer-employee data to study labor market discrimination. ***Handbook on the Economics of Discrimination***, 3: 29–60.

Henriques, A. 2007. ***Corporate Truth: The Limits to Transparency*** (1st edition). London ; Sterling, VA: Routledge.

Hertz, N. 2001. Better to shop than to vote? ***Business Ethics: A European Review***, 10(3): 190–193.

Herzog, L. 2013. ***Inventing the market: Smith, Hegel, and political theory***. Oxford University Press.

Hess, D. 2007. Social Reporting and New Governance Regulation: The Prospects of Achieving Corporate Accountability through Transparency. ***Business Ethics Quarterly***, 17(3): 453–476.

Heyne, P. T. 1968. ***Private Keepers of the Public Interest***. McGraw Hill Text.

Hill, T. E. 2000. ***Respect, pluralism, and justice: Kantian perspectives***. Clarendon Press.

Hood, C. 2006. Transparency in historical perspective. In C. Hood & D. Heald (Eds.), ***Transparency: The key to better governance?*** Oxford University Press.

Hsieh, N. 2015a. Should business have human rights obligations? ***Journal of Human Rights***, 14(2): 218–236.

Hsieh, N. 2015b. The Social Contract Model of Corporate Purpose and Responsibility. ***Business Ethics Quarterly***, 25(4): 433–460.

Hsieh, N. 2017. The Responsibilities and Role of Business in Relation to Society: Back to Basics? ***Business Ethics Quarterly***, 27(2): 293–314.

Hughes, R. C. 2013a. Law and Coercion. ***Philosophy Compass***, 8(3): 231–240.

Hughes, R. C. 2013b. Law and the Entitlement to Coerce. In W. Waluchow & S. Sciaraffa (Eds.), ***Philosophical Foundations of the Nature of Law***: 183–206. OUP Oxford.

Humber, J. M. 2002. Beyond stockholders and stakeholders: A plea for corporate moral autonomy. ***Journal of Business Ethics***, 36(3): 207–221.

Hussain, W. 2012a. Corporations, Profit Maximization, and the Personal Sphere. ***Economics & Philosophy***, 28(3): 311–331.

Hussain, W. 2012b. Is Ethical Consumerism an Impermissible Form of Vigilantism? ***Philosophy & Public Affairs***, 40(2): 111–143.

Hussain, W., & Moriarty, J. 2018. Accountable to Whom? Rethinking the Role of Corporations in Political CSR. ***Journal of Business Ethics***, 149(3): 519–534.

Irving, E. 2021, April 14. Tony's Chocolonely: The risks of being a woke brand. ***The Economist***. https://www.economist.com/1843/2021/04/14/tonys-chocolonely-the-risks-of-being-a-woke-brand.

Jensen, M. C. 2002. Value Maximization, Stakeholder Theory, and the Corporate Objective Function. ***Business Ethics Quarterly***, 12(2): 235–256.

Jensen, M. C., & Meckling, W. H. 1976. Theory of the firm: Managerial behavior, agency costs and ownership structure. ***Journal of Financial Economics***, 3(4): 305–360.

Jones, G. M. 2014. Secrecy. ***Annual Review of Anthropology***, 43(1): 53–69.

Jones, T. M. 1995. Instrumental Stakeholder Theory: A Synthesis of Ethics and Economics. ***Academy of Management Review***, 20(2): 404–437.

Jr, J. L. B. 1997. ***Defining Moments: When Managers Must Choose between Right and Right***. https://www.hbs.edu/faculty/Pages/item.aspx?num=120.

Kagan, S. 1991. ***The Limits of Morality*** (Revised ed. edition). Oxford: Oxford University Press, USA.

Kamm, F. M. 2008. ***Intricate Ethics: Rights, Responsibilities, and Permissable Harm***. Oxford University Press.

Kant, I. 2002. ***Groundwork for the Metaphysics of Morals***. (A. W. Wood, Ed.). New Haven: Yale University Press.

Keane, C. 2008. Don't Ask, Don't Tell: Secrets—Their Use and Abuse in Organizations. ***Journal of Management Inquiry***, 17(2): 107–110.

Keeley, M. 1983. Values in organizational theory and management education. ***Academy of Management Review***, 8(3): 376–386.

Kellogg, K. C., Valentine, M. A., & Christin, A. 2020. Algorithms at work: The new contested terrain of control. ***Academy of Management Annals***, 14(1): 366–410.

Kim, T. W., & Donaldson, T. 2018. Rethinking Right: Moral Epistemology in Management Research. ***Journal of Business Ethics***, 148(1): 5–20.

Kingston, E. 2021. Shopping with a Conscience? The Epistemic Case for Relinquishment over Conscientious Consumption. ***Business Ethics Quarterly***, 31(2): 242–274.

Kirby, J. 2012. Trust in the Age of Transparency. ***Harvard Business Review***, 90(7/8): 158–159.

Kolodny, N., & MacFarlane, J. 2010. Ifs and Oughts. ***The Journal of Philosophy***, 107(3): 115–143.

Kolstad, I. 2007. Why firms should not always maximize profits. ***Journal of Business Ethics***, 76(2): 137–145.

Korsgaard, C. M. 1996. ***The Sources of Normativity***. (O. O'Neill, Ed.). Cambridge ; New York: Cambridge University Press.

Kulow, M. D. 2013. Beyond the Paycheck Fairness Act: Mandatory Wage Disclosure Laws - A Necessary Tool for Closing the Residual Gender Wage Gap. ***Harvard Journal on Legislation***, (2): 385–436.

Kusunoki, S. 2016. Hayek on corporate social responsibility. ***Constitutional Political Economy***, 27(1): 93–110.

Ladkin, D. 2018. ‘The Aesthetic’ and Its Relationship to Business Ethics: Philosophical Underpinnings and Implications for Future Research. ***Journal of Business Ethics***, 147(1): 35–51.

Lamming, R. C., Caldwell, N. D., Harrison, D. A., & Phillips, W. 2001. Transparency in Supply Relationships: Concept and Practice. ***The Journal of Supply Chain Management***, 37(4): 4–10.

Lamming, R., Caldwell, N., & Harrison, D. 2004. Developing the concept of transparency for use in supply relationships. ***British Journal of Management***, 15(4): 291–302.

Laud, R. L., & Schepers, D. H. 2009. Beyond Transparency: Information Overload and a Model for Intelligibility. ***Business and Society Review***, 114(3): 365–391.

Laufer, W. S. 2007. Law, Ethics, and Divergent Rhetoric. ***Business Ethics Quarterly***, 17(3): 441–447.

Laufer, W. S. 2008. ***Corporate Bodies and Guilty Minds: The Failure of Corporate Criminal Liability***. University of Chicago Press.

Laufer, W. S. 2010. Secrecy, silence, and corporate crime reforms. ***Criminology & Public Policy***, 9(3): 455–465.

Laufer, W. S. 2018. A Very Special Regulatory Milestone. ***University of Pennsylvania Journal of Business Law***, (2): 392–428.

Laufer, W. S., & Caulfield, M. 2019. Wall Street and Progressivism. ***Yale Journal on Regulation Bulletin***, 37(1): 8.

Law, S. A. 2018. Income Disparity, Gender Equality, and Free Expression. ***Fordham Law Review***, (6): 2479–2500.

Lawler, E. E. 1972. Secrecy and the need to know. In H. Tosi, R. J. House, & M. D. Dunnette (Eds.), ***Managerial motivation and compensation***: 455–475. East Lansing: Michigan State University Press.

Lawler, E. E. 2012, September 12. Pay Secrecy: Why Bother? ***Forbes***. https://www.forbes.com/sites/edwardlawler/2012/09/12/pay-secrecy-why-bother/#7efa7ea26a60.

Lawler, E. E. 2014. Why Pay Secrecy Needs to End. ***Forbes***. https://www.forbes.com/sites/edwardlawler/2014/12/17/a-pay-secrecy-rant/#25a5d21dce24.

Leadership & Ethics—Joseph L. Badaracco Jr. 2015. . https://www.youtube.com/watch?v=POyAnJFGzSg.

Lerner, J. S., & Tetlock, P. E. 1999. Accounting for the effects of accountability. ***Psychological Bulletin***, 125(2): 255–275.

Lessig, L. 2009, October 9. Against Transparency. ***The New Republic***. https://newrepublic.com/article/70097/against-transparency.

Levitt, T. 1958. The Dangers of Social Responsibility. ***Harvard Business Review***, 36(5): 41–50.

Lewis, P. V. 1985. Defining "Business Ethics": Like Nailing Jello to a Wall. ***Journal of Business Ethics***, 4(5): 377–383.

Licht, J. de F., & Naurin, D. 2016. Transparency. ***Handbook on Theories of Governance***. https://www.elgaronline.com/view/edcoll/9781782548492/9781782548492.00028.xml.

Lightfoot, G., & Wisniewski, T. P. 2014. Information asymmetry and power in a surveillance society. ***Information and Organization***, 24(4): 214–235.

Linstead, S., Maréchal, G., & Griffin, R. W. 2014. Theorizing and Researching the Dark Side of Organization: ***Organization Studies***. https://doi.org/10.1177/0170840613515402.

Lippert-Rasmussen, K. 2013. ***What Is Discrimination?*** Oxford University Press. http://www.oxfordscholarship.com/view/10.1093/acprof:oso/9780199796113.001.0001/acprof-9780199796113-chapter-02.

Lobel, O. 2020. Knowledge Pays: Reversing Information Flows and the Future of Pay Equity. ***Columbia Law Review***, 120(3): 547–612.

Locke, R. M. 2013. ***The promise and limits of private power: Promoting labor standards in a global economy***. Cambridge University Press.

Lyons, S. 2012. Why the Law Should Intervene to Disrupt Pay-Secrecy Norms: Analyzing the Lilly Ledbetter Fair Pay Act through the Lens of Social Norms. ***Columbia Journal of Law and Social Problems***, 46: 361–392.

Machan, T. R. 2006. Business Ethics in A New Key. ***Journal of Private Enterprise***, 21(2).

Machan, T. R., & Uyl, D. J. D. 1987. Recent Work in Business Ethics: A Survey and Critique. ***American Philosophical Quarterly***, 24(2): 107–124.

Mahon, J. E. 2018. Secrets vs. Lies: Is There a Moral Asymmetry? In E. Michaelson & A. Stokke (Eds.), ***Lying: Language, Knowledge, Ethics, and Politics***. Oxford University Press.

https://www.oxfordscholarship.com/view/10.1093/oso/9780198743965.001.0001/oso-9780198743965-chapter-9.

Maitland, I. 1985. The limits of business self-regulation. ***California Management Review***, 27(3): 132–147.

Maitland, I. 1989. Rights in the workplace: A Nozickian argument. ***Journal of Business Ethics***, 8(12): 951–954.

Maitland, I. 2002. The Human Face of Self-Interest. ***Journal of Business Ethics***, 38(1): 3–17.

Mäkinen, J., & Kasanen, E. 2016. Boundaries Between Business and Politics: A Study on the Division of Moral Labor. ***Journal of Business Ethics***, 134(1): 103–116.

Mäkinen, J., & Kourula, A. 2012. Pluralism in Political Corporate Social Responsibility. ***Business Ethics Quarterly***, 22(4): 649–678.

Mallin, C. 2002. The relationship between corporate governance, transparency and financial disclosure. ***Corporate Governance: An International Review***, 10(4): 253–255.

Marasi, S., & Bennett, R. J. 2016. Pay communication: Where do we go from here? ***Human Resource Management Review***, 26(1): 50–58.

Marasi, S., Wall, A., & Bennett, R. J. 2018. Pay openness movement: Is it merited? Does it influence more desirable employee outcomes than pay secrecy? ***Organization Management Journal***, 15(2): 58–77.

Marcoux, A. M. 2000. Balancing act. In J. R. DesJardins & J. J. McCall (Eds.), ***Contemporary Issues in Business Ethics***. Stamford, CT: Wadsworth/Thomson Learning.

Marcoux, A. M. 2006. The concept of business in business ethics. ***Journal of Private Enterprise***, 21(2): 50–67.

Marcoux, A. M. 2009. Retrieving business ethics from political philosophy. ***Journal of Private Enterprise***, 24(2): 21.

Martin, D. 2013. The contained-rivalry requirement and a 'triple feature'program for business ethics. ***Journal of Business Ethics***, 115(1): 167–182.

Mather, K. 2006. Object oriented goodness: A response to Mathiesen's "What is Information Ethics?" ***ACM SIGCAS Computers and Society***, 36(3): 7–10.

Mathiesen, K. 2004. What is information ethics? ***SIGCAS Computers and Society***, 34(1): 6.

McMahon, C. 1981. Morality and the Invisible Hand. ***Philosophy & Public Affairs***, 10(3): 247–277.

Mejia, J., & Parker, C. 2020. When Transparency Fails: Bias and Financial Incentives in Ridesharing Platforms. ***Management Science***, 67(1): 166–184.

Mejia, S. 2019. Weeding Out Flawed Versions of Shareholder Primacy: A Reflection on the Moral Obligations That Carry Over from Principals to Agents. ***Business Ethics Quarterly***, 29(4): 519–544.

Meyers, C. 2004. Wrongful Beneficence: Exploitation and Third World Sweatshops. ***Journal of Social Philosophy***, 35(3): 319–333.

Miller, A. S. 1960. The corporation as a private government in the world community. ***Va. L. Rev.***, 46: 1539.

Milliken, F. J., Morrison, E. W., & Hewlin, P. F. 2003. An Exploratory Study of Employee Silence: Issues that Employees Don't Communicate Upward and Why*. ***Journal of Management Studies***, 40(6): 1453–1476.

Mitchell, R. K., Weaver, G. R., Agle, B. R., Bailey, A. D., & Carlson, J. 2016. Stakeholder agency and social welfare: Pluralism and decision making in the multi-objective corporation. ***Academy of Management Review***, 41(2): 252–275.

Mitnick, B. M., Windsor, D., & Wood, D. 2020. CSR: Undertheorized or Essentially Contested? ***Academy of Management Review***. https://doi.org/10.5465/amr.2020.0239.

Moreau, S. 2010. What Is Discrimination? ***Philosophy & Public Affairs***, 38(2): 143–179.

Moriarty, J. 2005. On the Relevance of Political Philosophy to Business Ethics. ***Business Ethics Quarterly***, 15(3): 455–473.

Moriarty, J. 2009. How Much Compensation Can CEOs Permissibly Accept? ***Business Ethics Quarterly***, 19(2): 235–250.

Moriarty, J. 2012. Justice in compensation: A defense. ***Business Ethics: A European Review***, 21(1): 64–76.

Moriarty, J. 2014. Compensation Ethics and Organizational Commitment. ***Business Ethics Quarterly***, 24(1): 31–53.

Moriarty, J. 2016. Is "Equal Pay for Equal Work" Merely a Principle of Nondiscrimination? ***Economics and Philosophy***, 32(03): 435–461.

Moriarty, J. 2018. Against Pay Secrecy. ***Journal of Applied Philosophy***, 35(4): 689–704.

Moriarty, J. 2020a. On the Origin, Content, and Relevance of the Market Failures Approach. ***Journal of Business Ethics***, 165(1): 113–124.

Moriarty, J. 2020b. What's in a Wage? A New Approach to the Justification of Pay. ***Business Ethics Quarterly***, 30(1): 119–137.

Moriarty, J. 2021. Why online personalized pricing is unfair. ***Ethics and Information Technology***. https://doi.org/10.1007/s10676-021-09592-0.

Morrison, E. W. 2014. Employee Voice and Silence. ***Annual Review of Organizational Psychology and Organizational Behavior***, 1(1): 173–197.

Morrison, E. W., & Milliken, F. J. 2000. Organizational silence: A barrier to change and development in a pluralistic world. ***Academy of Management Review***, 25(4): 706–725.

Munro, I. 2016. Organizational resistance as a vector of deterritorialization: The case of WikiLeaks and secrecy havens. ***Organization***, 23(4): 567–587.

Nagel, T. 1989. ***The View From Nowhere***. Oxford University Press, USA.

Nayar, V. 2009, January 2. Trust Through Transparency. ***Harvard Business Review***. https://hbr.org/2009/01/trust-through-transparency.

Nelson, J. S. 2018. Disclosure-Driven Crime. ***U.C. Davis Law Review***, (3): 1487–1584.

Norman, W. 2011. Business ethics as self-regulation: Why principles that ground regulations should be used to ground beyond-compliance norms as well. ***Journal of Business Ethics***, 102(1): 43–57.

Norman, W. 2013. Business Ethics. ***International Encyclopedia of Ethics***. American Cancer Society. https://doi.org/10.1002/9781444367072.wbiee719.

Nosenzo, D. 2013. Pay Secrecy and Effort Provision. ***Economic Inquiry***, 51(3): 1779–1794.

Nozick, R. 2013. ***Anarchy, State, and Utopia*** (Reprint edition). New York: Basic Books.

O'Connell, B. J. 1979. Secrecy in Business. ***Society***, 16(4): 40–45.

Okoye, A. 2009. Theorising Corporate Social Responsibility as an Essentially Contested Concept: Is a Definition Necessary? ***Journal of Business Ethics***, 89(4): 613–627.

Oliver, R. E. 2004. ***What is Transparency?*** (1 edition). New York: McGraw-Hill.

O'Neill, O. 2006. Transparency and the ethics of communication. In C. Hood & D. Heald (Eds.), ***Transparency: The Key to Better Governance?*** Oxford University Press.

O'Neill, O. 2009. Ethics for Communication? ***European Journal of Philosophy***, 17(2): 167–180.

Orts, E. W. 2013. ***Business persons: A legal theory of the firm***. Oxford University Press.

Orts, E. W., & Sepinwall, A. 2014. Privacy and Organizational Persons. ***Minnesota Law Review***, 99: 2275.

Orts, E. W., & Strudler, A. 2009. Putting a Stake in Stakeholder Theory. ***Journal of Business Ethics***, 88: 605–615.

O'Toole, J., & Bennis, W. 2009. What's Needed Next: A Culture of Candor. ***Harvard Business Review***, 87(6): 54–61.

Otteson, J. R. 2006. ***Actual Ethics***. Cambridge University Press.

Ouchi, W. G. 1980. Markets, Bureaucracies, and Clans. ***Administrative Science Quarterly***, 25(1): 129–141.

Paine, L. S. 2000. Does Ethics Pay? ***Business Ethics Quarterly***, 10(1): 319–330.

Park, S. K. 2014. Targeted social transparency as global corporate strategy. ***Nw. J. Int'l L. & Bus.***, 35: 87.

Parmar, B. L., Freeman, R. E., Harrison, J. S., Wicks, A. C., Purnell, L., et al. 2010. Stakeholder theory: The state of the art. ***Academy of Management Annals***, 4(1): 403–445.

Parris, D. L., Dapko, J. L., Arnold, R. W., & Arnold, D. 2016. Exploring transparency: A new framework for responsible business management. ***Management Decision***, 54(1): 222–247.

Patten, T. H. 1988. ***Fair Pay: The Managerial Challenge of Comparable Job Worth and Job Evaluation***. Jossey-Bass.

Paul, E. F. 2019. ***Equity and gender***. Routledge.

Perego, P., & Kolk, A. 2012. Multinationals' accountability on sustainability: The evolution of third-party assurance of sustainability reports. ***Journal of Business Ethics***, 110(2): 173–190.

Petersen, T. 2011. Opportunities. In P. Bearman & P. Hedström (Eds.), ***The Oxford Handbook of Analytical Sociology***. Oxford University Press. https://doi.org/10.1093/oxfordhb/9780199215362.013.6.

Petersen, T., & Saporta, I. 2004. The Opportunity Structure for Discrimination. ***American Journal of Sociology***, 109(4): 852–901.

Pfeffer, J. 1981. ***Power in organizations***. Marshfield, MA: Pitman.

Pfeffer, J., & Cohen, Y. 1984. Determinants of Internal Labor Markets in Organizations. ***Administrative Science Quarterly***, 29(4): 550–572.

Pfeffer, J., & Salancik, G. R. 2003. ***The External Control of Organizations: A Resource Dependence Perspective***. Stanford University Press.

Phillips, R. A., & Margolis, J. D. 1999. Toward an Ethics of Organizations. ***Business Ethics Quarterly***, 9(4): 619–638.

Pompa, V. 1992. Managerial Secrecy: An Ethical Examination. ***Journal of Business Ethics***, 11(2): 147–156.

Porter, N. B. 2013. Women, Unions, and Negotiation Symposium: Democracy and the Workplace. ***Nevada Law Journal***, 14(2): 465–495.

Porter, N. B., & Vartanian, J. R. 2011. Debunking the Market Myth in Pay Discrimination Cases. ***Geo. J. Gender & L.***, 12: 159.

Pozen, D. E. 2018. Transparency's Ideological Drift. ***Yale Law Journal***, 128(1): 100–165.

Pozen, D. E. 2020. Seeing Transparency More Clearly. ***Public Administration Review***, 80(2): 326–331.

Preston, L. E., & Post, J. E. 1975. ***Private management and public policy: The principles of public responsibility***. Prentice-Hall.

Provis, C. 2010. The ethics of impression management. ***Business Ethics: A European Review***, 19(2): 199–212.

Quinn, D. P., & Jones, T. M. 1995. An Agent Morality View of Business Policy. ***Academy of Management Review***, 20(1): 22–42.

Quong, J. 2018. Public Reason. In E. N. Zalta (Ed.), ***The Stanford Encyclopedia of Philosophy*** (Spring 2018). Metaphysics Research Lab, Stanford University. https://plato.stanford.edu/archives/spr2018/entries/public-reason/.

Ramachandran, G. 2011. Pay Transparency. ***Penn State Law Review***, 116: 1043–1080.

Rawls, J. 1993. ***Political Liberalism***. New York: Columbia University Press.

Rawls, J. 2009. ***A Theory of Justice***. Harvard University Press.

Reich, R.-. 2018. ***Just giving: Why philanthropy is failing democracy and how it can do better***. Princeton University Press.

Reich, R. B. 2008. ***Supercapitalism: The Transformation of Business, Democracy, and Everyday Life*** (Reprint edition). New York, NY: Vintage.

Rhoads, S. E. 1994. ***Incomparable Worth: Pay Equity Meets the Market***. Cambridge University Press.

Rhodes, C., Munro, I., Thanem, T., & Pullen, A. 2020. Dissensus! Radical Democracy and Business Ethics. ***Journal of Business Ethics***, 164(4): 627–632.

Ringel, L. 2018. Boundaries of Visibility in the Age of Transparency: An Integrative Conceptualization. ***Towards Permeable Boundaries of Organizations?***, vol. 57: 55–79. Emerald Publishing Limited.

Ringel, L. 2019. Unpacking the Transparency-Secrecy Nexus: Frontstage and backstage behaviour in a political party. ***Organization Studies***, 40(5): 705–723.

Ripstein, A. 2010. ***Force and Freedom***. Harvard University Press.

Risher, H. 2014. Pay Transparency Is Coming. ***Compensation & Benefits Review***, 46(1): 3–5.

Roberts, J. 2009. No one is perfect: The limits of transparency and an ethic for 'intelligent' accountability. ***Accounting, Organizations and Society***, 34(8): 957–970.

Rodgers III, W. M. 2006. ***Handbook on the Economics of Discrimination***. Edward Elgar Publishing.

Rodin, D. 2005. The Ownership Model of Business Ethics. ***Metaphilosophy***, 36(1–2): 163–181.

Rosenfeld, J. 2017. Don't ask or tell: Pay secrecy policies in US workplaces. ***Social Science Research***, 65: 1–16.

Rosenfeld, J. 2021. ***You're Paid What You're Worth: And Other Myths of the Modern Economy***. Cambridge, Massachusetts: Belknap Press: An Imprint of Harvard University Press.

Ross, D. 2003. ***The Right and the Good***. (P. Stratton-Lake, Ed.) (2 edition). Oxford: Clarendon Press.

Sabadoz, C., & Singer, A. 2017. Talk Ain't Cheap: Political CSR and the Challenges of Corporate Deliberation. ***Business Ethics Quarterly***, 27(2): 183–211.

Sagar, R. 2015. Against Moral Absolutism: Surveillance and Disclosure After Snowden. ***Ethics & International Affairs; New York***, 29(2): 145–159.

Santoro, M. A. 2010. Post-Westphalia and Its Discontents: Business, Globalization, and Human Rights in Political and Moral Perspective. ***Business Ethics Quarterly***, 20(2): 285–297.

Sargent, G. 2021, April 14. Opinion | Inside the GOP playbook: Attack 'woke' corporations, protect their low tax rates. ***Washington Post***. https://www.washingtonpost.com/opinions/2021/04/14/republicans-woke-corporations-taxes/.

Sarkar, S. 2016. Intimate Employment. ***Harvard Journal of Law and Gender***, 39: 429–490.

Sayers, R. C. 2012. The Cost of Being Female: Critical Comment on Block. ***Journal of Business Ethics***, 106(4): 519–524.

Scanlon, T. 2000. ***What we owe to each other***. Belknap Press.

Schauer, F. 1983. Rights and the Right to Know. ***Philosophic Exchange***, 14(1): 5.

Scheller, E. M., & Harrison, W. 2018. Ignorance Is Bliss, or Is It? The Effects of Pay Transparency, Informational Justice and Distributive Justice on Pay Satisfaction and Affective Commitment. ***Compensation & Benefits Review***, 50(2): 65–81.

Scheppele, K. L. 1988. ***Legal secrets: Equality and efficiency in the common law***. University of Chicago Press.

Scherer, A. G., & Palazzo, G. 2007. Toward a Political Conception of Corporate Responsibility: Business and Society Seen from a Habermasian Perspective. ***Academy of Management Review***, 32(4): 1096–1120.

Scherer, A. G., Palazzo, G., & Matten, D. 2014. The Business Firm as a Political Actor: A New Theory of the Firm for a Globalized World. ***Business & Society***, 53(2): 143–156.

Schipper, F., & Bojé, D. 2008. Transparency, Integrity and Openness: The Nike example. (A. Scherer & G. Palazzo, Eds.)***Handbook of Research on Global Corporate Citizenship***. Edward Elgar.

Schmidtz, D. 2017. Bastiat and the Origins of Political Economy. ***Georgetown Journal of Law & Public Policy***, 15(Special Issue): 835–848.

Schnackenberg, A. K., & Tomlinson, E. C. 2016. Organizational Transparency: A New Perspective on Managing Trust in Organization-Stakeholder Relationships. ***Journal of Management***, 42(7): 1784–1810.

Schouten, G. 2013. Restricting Justice: Political Interventions in the Home and in the Market. ***Philosophy & Public Affairs***, 41(4): 357–388.

Schreck, P., van Aaken, D., & Donaldson, T. 2013. Positive economics and the normativistic fallacy: Bridging the two sides of CSR. ***Business Ethics Quarterly***, 23(2): 297–329.

Schrempf-Stirling, J. 2018. State Power: Rethinking the Role of the State in Political Corporate Social Responsibility. ***Journal of Business Ethics***, 150(1): 1–14.

Schultz, V. 2006. Sex and work. ***Yale JL & Feminism***, 18: 223.

Sepinwall, A. J. 2015. Denying Corporate Rights and Punishing Corporate Wrongs. ***Business Ethics Quarterly***, 25(04): 517–534.

Sepinwall, A. J. 2021. Conscience in Commerce: Conceptualizing Discrimination in Public Accommodations. ***Connecticut Law Review***, 53(1). https://doi.org/10.2139/ssrn.3541317.

Sepper, E. 2015. The Role of Religion in State Public Accommodations Laws—Childress Lecture. ***Saint Louis University Law Journal***, 60(4): 631–671.

Sheehy, B. 2015. Defining CSR: Problems and Solutions. ***Journal of Business Ethics***, 131(3): 625–648.

Shellenbarger, S. 2016, January 12. Open Salaries: The Good, the Bad and the Awkward. ***Wall Street Journal***. http://www.wsj.com/articles/open-salaries-the-good-the-bad-and-the-awkward-1452624480.

Shiffrin, S. 2016. ***Speech Matters: On Lying, Morality, and the Law*** (Reprint edition). Place of publication not identified: Princeton University Press.

Shu, C. 2017. Judge sides with Google in its battle with the Labor Department over employee pay data. ***TechCrunch***. https://techcrunch.com/2017/07/16/judge-sides-with-google-in-its-battle-with-the-labor-department-over-employee-pay-data/.

Sidgwick, H. 1907. ***The Methods of Ethics***. (E. E. C. Jones, Ed.). London, New York: Macmillan and co., limited.

Silver, K. 2018. Can a Corporation be Worthy of Moral Consideration? ***Journal of Business Ethics***. https://doi.org/10.1007/s10551-018-3787-4.

Simmel, G. 1906. The Sociology of Secrecy and of Secret Societies. ***American Journal of Sociology***, 11(4): 441–498.

Singer, A. 2018a. The Political Nature of the Firm and the Cost of Norms. ***The Journal of Politics***, 80(3): 831–844.

Singer, A. 2018b. Justice Failure: Efficiency and Equality in Business Ethics. ***Journal of Business Ethics***, 149(1): 97–115.

Singer, A. A. 2019. ***The Form of the Firm: A Normative Political Theory of the Corporation***. Oxford, New York: Oxford University Press.

Singer, A., & Ron, A. 2020. Prioritizing Democracy: A Commentary on Smith's Presidential Address to the Society for Business Ethics. ***Business Ethics Quarterly***, 30(1): 139–153.

Singer, D. J. 2018. How to be an Epistemic Consequentialist. ***The Philosophical Quarterly***, 68(272): 580–602.

Slote, M. 1989. ***Beyond Optimizing: A Study of Rational Choice*** (1st edition). Cambridge, Mass: Harvard University Press.

Smart, J. J. C. 1956. Extreme and restricted utilitarianism. ***The Philosophical Quarterly***, 6(25): 344–354.

Smit, B. W., & Montag-Smit, T. 2018. The role of pay secrecy policies and employee secrecy preferences in shaping job attitudes. ***Human Resource Management Journal***, 28(2): 304–324.

Smith, A. 1976. ***An inquiry into the nature and causes of the wealth of nations /***. Oxford : http://hdl.handle.net/2027/uc1.31822007254709.

Smith, D. G. 1997. The Shareholder Primacy Norm. ***Journal of Corporation Law***, 23: 277–324.

Smith, J. 2017. Why Justice Matters for Business Ethics. ***Business Ethics Journal Review***, 5(3): 15–21.

Smith, J. 2018. Efficiency and Ethically Responsible Management. ***Journal of Business Ethics***, 150(3): 603–618.

Smith, J. 2019a. Navigating Our Way Between Market and State. ***Business Ethics Quarterly***, 29(1): 127–141.

Smith, J. 2019b. Corporate responsibility and the plurality of market aims. ***Business and Society Review***, 124(2): 183–199.

Smith, J. 2019c. Navigating Our Way Between Market and State. ***Business Ethics Quarterly***, 29(1): 127–141.

Smith, J., & Dubbink, W. 2011. Understanding the Role of Moral Principles in Business Ethics: A Kantian Perspective. ***Business Ethics Quarterly***, 21(2): 205–231.

Snedegar, J. 2014. Contrastive Reasons and Promotion. ***Ethics***, 125(1): 39–63.

Solomon, R. 1991. Business ethics. In P. Singer (Ed.), ***A Companion to Ethics***: 354–365. Malden, MA: Blackwell.

Soltes, E. 2019. The frequency of corporate misconduct: Public enforcement versus private reality. ***Journal of Financial Crime***.

Sorensen, E. 2019. ***Comparable Worth: Is It a Worthy Policy?*** Princeton University Press.

Stack, M. 1984. Sissela Bok, Secrets Reviewed By. ***Philosophy in Review***, 4(6): 231–233.

Steinberg, E. 2020. Big data and personalized pricing. ***Business Ethics Quarterly***, 30(1): 97–117.

Stevenson, R. B. 1979. How Much Privacy Does Business Need? ***Business & Society Review***, (30).

Stevenson, R. B. 1980. ***Corporations and information: Secrecy, access and disclosure***. The Johns Hopkins Press.

Stiglitz, J. E. 1999, January 27. ***On Liberty, the Right to Know, and Public Discourse: The Role of Transparency in Public Life***. Oxford, U.K.

Stiglitz, J. E. 2002. Information and the Change in the Paradigm in Economics. ***American Economic Review***, 92(3): 460–501.

Stohr, K. 2014. Keeping the Shutters Closed: The Moral Value of Reserve. ***Philosopher's Imprint***, 14(23). http://hdl.handle.net/2027/spo.3521354.0014.023.

Stone, C. 1975. ***Where the Law Ends: The Social Control of Corporate Behavior***. Harper and Row, New York.

Strudler, A. 1995. On the Ethics of Deception in Negotiation. ***Business Ethics Quarterly***, 5(4): 805–822.

Strudler, A. 1997. Moral Complexity in the Law of Nondisclosure. ***UCLA Law Review***, 45(2): 337–384.

Strudler, A. 2005. Deception Unraveled. ***The Journal of Philosophy***, 102(9): 458–473.

Strudler, A. 2016. Respectful Lying. ***Ethical Theory and Moral Practice***, 19(4): 961–972.

Strudler, A. 2017. What to do with Corporate Wealth. ***Journal of Political Philosophy***, 25(1): 108–126.

Sunstein, C. R. 1991. Why Markets Don't Stop Discrimination. ***Social Philosophy and Policy***, 8(2): 22–37.

Swartz, A. 2010. When is transparency useful. ***Open Government, Sebastopol, CA, O'Reilly Media***, 267–272.

Tabibnia, R. S. and G. 2012, October 11. Why Radical Transparency Is Good Business. ***Harvard Business Review***. https://hbr.org/2012/10/why-radical-transparency-is-good-business.

Taurek, J. M. 1977. Should the Numbers Count? ***Philosophy & Public Affairs***, 6(4): 293–316.

Tavani, H. T. 2007. Philosophical Theories of Privacy: Implications for an Adequate Online Privacy Policy. ***Metaphilosophy***, 38(1): 1–22.

Tenbrunsel, A. E., & Smith-Crowe, K. 2008. Ethical Decision Making: Where We've Been and Where We're Going. ***Academy of Management Annals***, 2(1): 545–607.

Tetlock, P. E. 1983a. Accountability and the Perseverance of First Impressions. ***Social Psychology Quarterly***, 46(4): 285–292.

Tetlock, P. E. 1983b. Accountability and complexity of thought. ***Journal of Personality and Social Psychology***, 45(1): 74–83.

The Economist. 2021, April 15. The political CEO. ***The Economist***. http://www.economist.com/leaders/2021/04/15/the-political-ceo.

Toegel, I., Levy, O., & Jonsen, K. 2021. Secrecy in practice: How middle managers promote strategic initiatives behind the scenes. ***Organization Studies***.

Trotter, R. G., Zacur, S. R., & Stickney, L. T. 2017. The new age of pay transparency. ***Business Horizons***, 60(4): 529–539.

Turilli, M., & Floridi, L. 2009. The ethics of information transparency. ***Ethics and Information Technology***, 11(2): 105–112.

Van De Bunt, H. 2010. Walls of secrecy and silence: The Madoff case and cartels in the construction industry. ***Criminology & Public Policy***, 9(3): 435–453.

Van den Hoven, J. 1997. Computer ethics and moral methodology. ***Metaphilosophy***, 28(3): 234–248.

Van den Hoven, J. 2008. Moral methodology and information technology. In K. E. Himma & H. T. Tavani (Eds.), ***The Handbook of Information and Computer Ethics***: 49–68. John Wiley & Sons.

Van den Hoven, J., & Rooksby, E. 2008. Distributive justice and the Value of Information: A (Broadly) Rawlsian Approach. In J. Van den Hoven & J. Weckert (Eds.), ***Information Technology and Moral Philosophy***: 376–395.

van Oosterhout, J. (Hans), Heugens, P. P. M. A. R., & Kaptein, M. 2006. The Internal Morality of Contracting: Advancing the Contractualist Endeavor in Business Ethics. ***Academy of Management Review***, 31(3): 521–539.

Veldman, T. 2017. ***Pay transparency in the EU***. Luxembourg: Publications Office of the European Union.

Verrecchia, R. E. 2001. Essays on disclosure. ***Journal of Accounting and Economics***, 32(1–3): 97–180.

Voltaire. 1901. ***The Works of Voltaire: A Contemporary Version***. (T. Smollett & J. Morley, Eds.), vol. 19. St. Hubert Guild. https://catalog.hathitrust.org/Record/100769305.

Votaw, D. 1972. Genius becomes rare: A comment on the doctrine of social responsibility Pt. I. ***California Management Review***, 15(2): 25–31.

Vujnovic, M., & Kruckeberg, D. 2016. Pitfalls and promises of transparency in the digital age. ***Public Relations Inquiry***, 5(2): 121–143.

Wakabayashi, D. 2017, September 8. At Google, Employee-Led Effort Finds Men Are Paid More Than Women. ***The New York Times***. https://www.nytimes.com/2017/09/08/technology/google-salaries-gender-disparity.html.

Wallace, K. A. 1999. Anonymity. ***Ethics and Information Technology***, 1(1): 21–31.

Walt, S., & Laufer, W. S. 1990. Why personhood doesn't matter: Corporate criminal liability and sanctions. ***Am. J. Crim. L.***, 18: 263.

Waluchow, W. 1988. Pay Equity: Equal Value to Whom? ***Journal of Business Ethics***, 7(3): 185–189.

Walzer, M. 1984. ***Spheres Of Justice: A Defense Of Pluralism And Equality*** (Reprint edition). New York: Basic Books.

Wartick, S. L., & Cochran, P. L. 1985. The Evolution of the Corporate Social Performance Model. ***Academy of Management Review***, 10(4): 758–769.

Wasserman, D., & Strudler, A. 2003. Can a Nonconsequentialist Count Lives? ***Philosophy & Public Affairs***, 31(1): 71–94.

Wempe, B. 2005. In defense of a self-disciplined, domain-specific social contract theory of business ethics. ***Business Ethics Quarterly***, 15(1): 113–135.

Werhane, P. H. 1985. ***Persons, Rights and Corporations***. Englewood Cliffs, N.J: Prentice Hall.

Wexler, M. N. 1987. Conjectures on the Dynamics of Secrecy and the Secrets Business. ***Journal of Business Ethics***, 6(6): 469–480.

Whyte, J. 2019. The Invisible Hand of Friedrich Hayek: Submission and Spontaneous Order. ***Political Theory***, 47(2): 156–184.

Wicks, A. C., & Freeman, R. E. 1998. Organization Studies and the New Pragmatism: Positivism, Anti-positivism, and the Search for Ethics. ***Organization Science***, 9(2): 123–140.

Wicks, A. C., Gilbert, D. R., & Freeman, R. E. 1994. A Feminist Reinterpretation of the Stakeholder Concept. ***Business Ethics Quarterly***, 4(4): 475–497.

Wilkin, S. 2009. Heed the Calls for Transparency. ***Harvard Business Review***, 87(7/8): 16–17.

Willer, M. 2012. A Remark on Iffy Oughts. ***The Journal of Philosophy***, 109(7): 449–461.

Williams, B. 1981. Persons, Character, and Morality. In J. Rachels (Ed.), ***Moral Luck: Philosophical Papers 1973–1980***. Cambridge University Press.

Williams, S., & Perlow, L. 2003. Is Silence Killing Your Company? ***Harvard Business Review***, 81(4): 52–58.

Wynn, A. T., & Correll, S. J. 2018. Combating Gender Bias in Modern Workplaces. In B. J. Risman, C. M. Froyum, & W. J. Scarborough (Eds.), ***Handbook of the Sociology of Gender***: 509–521. Cham: Springer International Publishing.

Younes, D., Courpasson, D., & Jacob, M.-R. 2018. Ethics from Below: Secrecy and the Maintenance of Ethics. ***Journal of Business Ethics***. https://doi.org/10.1007/s10551-018-4029-5.

Young, C. 2019. Putting the Law in Its Place: Business Ethics and the Assumption that Illegal Implies Unethical. ***Journal of Business Ethics***, 160(1): 35–51.

Young, C. 2021. Should You Buy Local? ***Journal of Business Ethics***. https://doi.org/10.1007/s10551-020-04701-3.

Young, I. M. 2010. ***Responsibility for Justice***. Oxford University Press.

Zerubavel, E. 2006. ***The Elephant in the Room: Silence and Denial in Everyday Life***. Oxford University Press.

Zuboff, S. 1989. ***In The Age Of The Smart Machine: The Future Of Work And Power*** (Reprint edition). New York: Basic Books.

Zuboff, S. 2015. Big other: Surveillance Capitalism and the Prospects of an Information Civilization. ***Journal of Information Technology***, 30(1): 75–89.

Zuboff, S. 2019. ***The Age of Surveillance Capitalism: The Fight for a Human Future at the New Frontier of Power*** (1 edition). New York: PublicAffairs.

Zwolinski, M. 2007. Sweatshops, Choice, and Exploitation. ***Business Ethics Quarterly***, 17(4): 689–727.