Part II
The Role of the Corporation in Society

This part takes as its premise the conclusion from Part I, namely that the corporation is not a moral agent. The first section of this part is titled: “The Role of the Corporation in Society: The Descriptive View”. This section aims to show that the corporation is primarily a legal agent; a creation and manifestation of law. I explore the development of the corporate legal form in the English and American common law systems, which parallel the economic growth of the corporation as a dominant institution in society. In this context we get a chance to survey the influence of the legal debate over the nature of the corporation, which overlaps with the metaphysical debate over corporate moral agency. By exploring the development of the corporate legal form together with the economic effects of legislation we obtain a description of the role of the corporation in society. I maintain that corporations are primarily legal agents and that the role of the corporate legal form serves as an instrument to further the socio-economic ends of the state, while the goal of actual corporations is to be instruments to further the ends of the incorporating parties.

Having analysed the descriptive role of the corporate legal form the second section, which is titled: “The Role of the Corporation in Society: The Prescriptive View”, aims to explore what role the corporation ought to have in society. First, I consider if the corporate legal form ought to be used as an instrument of the state and secondly whether actual corporations ought to primarily be the instruments of the incorporators. That is to say, given that the corporation is a legal instrument, to what use should this instrument be put? I defend the normative assumptions that underlie the use of the corporate legal form as a socio-economic instrument against libertarian objections based on absolute property rights of shareholders.

Having argued that the libertarian position based on absolute property rights is weak and having concluded that the corporate legal form ought to be an instrument of the state, I then explore whether actual corporations ought to primarily serve the interests of incorporators. This will involve a collision between Shareholder Theory and the moral prescriptions of the Corporate Social Responsibility movement. I argue in favour of an idealized version of Shareholder Theory whereby stakeholder concerns are explicitly accounted for in legislation. I maintain that the prescriptions of CSR are difficult to uphold without an illegitimate reliance on corporate moral
agency. I suggest that the issues that CSR wishes to tackle are better addressed through public initiatives and legal enactments by governments.

Finally, I discuss the division of role responsibilities between the state and private corporations. I come to suggest that the public/private divide falls neatly into the distinction between the corporate legal form on the one hand and actual corporations on the other hand. In other words the public realm consists of the corporate legal form, the role of which is regulated by the state, while the private realm consists of actual corporations that are free to decide on the best means to realize their private goals within the boundaries of the law. I also maintain that the market is a zone of moral exception where it is acceptable to act purely out of self-interest while playing within the rules of the law. In fact the underlying market justifications of competition and efficiency demand this zone of moral exception.

The normative force of my argument is that society should primarily enact in law the responsibilities it wants corporate legal entities to be held accountable for in accordance with citizen’s normative preferences. Actual corporations can then pursue the interests of incorporators within the constraints of the law.

The structure of the argument is as follows: The corporation is not a moral agent. Because the corporation is not a moral agent it is not an end in itself with moral rights that we need to take into consideration. The corporate form is as a matter of description a legal fiction created by the state that has a role to further its socio-economic ends. In a democracy the ends of the state are a reflection of the desires of its citizens. Legislation is the primary means by which the state manifests the public’s preferences regarding public policy; thus if the public desires that corporate legal entities behave in a certain manner then the state ought to enact legislation that regulates corporate behaviour in such a manner. Actual corporations can then focus on pursuing the goals for which they were created under the constraints of the law while contributing to social welfare as a producers, employers, and tax payers.