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Corporate Social Responsibility and the "Game of Catallaxy": The Perspective of Constitutional Economics*

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1. Introduction

Corporate Social Responsibility (CSR) has become not only a growing subject in business schools and in academic as well as public discourse more generally, the CSR-movement has grown into a major industry providing a profitable niche for a variety of non-profit organizations.[1] The literature devoted to CSR can fill libraries, and sorting out the variety of arguments that academic researchers on, and political advocates of, corporate social responsibility have advanced is a Sisyphean task.[2] The purpose of this paper is to identify and examine some of the more fundamental arguments by approaching the matter from the perspective of constitutional economics.

The focus of my analysis will be on the issue that Milton Friedman (1970) has raised in a famous essay that has become a catalyst in the debate on CSR and by far the most often quoted paper in this debate. Restating an argument made earlier in his *Capitalism and Freedom*[3] Friedman noted in this essay: "In a free-enterprise, private-property system a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom." At the heart of the debate on CSR is the issue of whether the responsibility of business in a market economy can be confined, as Friedman claims, to seeking profits *within the rules of*

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[1] Economist 2005: 3. – One example is he London-based *Ethical Corporation* (www.ethicalcorp.com) which regularly organizes two day "networking conferences" with corporate rates of £ 995+VAT and non-profit rates of £ 595+VAT.

[2] For a detailed review see D. Henderson 2001.

[3] Commenting on the notion of "social responsibility of business" Friedman stated there: "This view shows a fundamental misconception of the character and nature of a free economy. In such an economy, there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud" (Friedman 1962: 133).

law and ethical custom or whether it must include an explicitly 'social' component in the sense of a direct pursuit of 'socially desirable aims'. My ambition with this paper is to clarify ambiguities that seem to me to have clouded this issue.

2. The Perspective of Constitutional Economics

Constitutional economics starts from the fact that human social life in its social, economic and political dimensions always proceeds under certain explicit or implicit, formally or informally enforced rules. Its focus is twofold. It is on studying the ways in which the nature of the rules affects the nature of the processes that unfold within the constraints defined by the rules. And it is on studying how the processes by which rules are generated and changed affect the nature of the rules. Stated in terms of the game metaphor, the research-perspective of constitutional economics can be said to focus, on the one hand, on the issue of how the *rules of the game* affect the *playing of the game*, and, on the other hand, on how the nature of these rules is, in turn, affected by the *(meta-) rules* according to which they are chosen. The following scheme illustrates the two different levels of analysis:

Rules / procedures for choosing the rules of the game

⇓

Rules of the game

⇓

Playing of the game

From the agents' or players' perspective the two levels of analysis are related to two fundamentally different questions. This is, firstly, the question of how they can play a given game, i.e. a game under defined rules, most successfully. And this is, secondly, the question of how they, together with the other players involved, may come to play a better game, i.e. a game defined by better rules. The first question concerns the choice of strategies within the constraints defined by the existing rules of the game. The second question concerns the very choice of the rules of the game. It is about what kind of game the players wish to play with each other.

The outcomes of a game result from the combined effects of the players' separate efforts to play the game successfully. Rational agents will voluntarily choose to participate in a game only if they expect to benefit from doing so. That participating in a game offers overall more advantages than not participating does not rule out, though, that in the course of

playing the game every now and then players will have to cope with undesired outcomes. Whether or not playing a game is worthwhile from an individual participant's perspective cannot be judged in terms of the desirability of the outcomes in particular rounds of play. It depends on whether or not the *pattern of outcomes* that players experience over the course of time is more attractive than the outcome-pattern that they could expect from not participating or from participating in a potential alternative game. If a game systematically produces outcome-patterns that the participants consider unsatisfactory there is reason for them to examine whether there might be possibilities for improving the quality of the game. Such improvement of the game in the sense of a systematic correction in outcome-patterns can only be achieved by suitable changes in the rules of the game. It can clearly not be expected from asking the players to choose different strategies if, under the existing rules, the strategies they have chosen, and that resulted in the undesirable overall outcome, are from their perspective the preferred strategies for playing the game successfully. Asking players to help to avoid collectively undesirable outcomes of a game by giving up their interest in playing the game successfully defeats the very purpose of playing a game in the first place. The point in playing a game is, after all, to seek to play it successfully, subject, of course, to the requirement to do so within the rules of the game. Apart from making the whole exercise pointless, asking the players to give up this ambition would have the perverse effect that, without a change in the rules, the players who are most receptive to such requests would be at a systematic disadvantage compared to those who are less so, allowing the latter more and more to dominate the game. – As will become apparent below, this issue plays a central role in a constitutional economics outlook at the role of CSR in a market economy.

As a theoretical-explanatory science constitutional economics advances conjectures on how changes in the rules of the game lead to changes in the choices the players make and, thereby, affect the outcome-patterns that will result. And it advances conjectures about the difference that changes in the procedures or (meta-) rules for choosing the rules of the game will make for the kind of rules that are adopted. As an applied science constitutional economics seeks to provide advice on what kinds of rules should be adopted if they are supposed to exhibit certain working properties. And it seeks to provide advice on how the procedures for choosing rules should be organized if they are supposed to generate rules with certain desirable properties. Stated differently, in its applied role constitutional economics concentrates, on the first level of analysis, on exploring the issue of what rules members of a rule-choosing community should adopt if they wish to realize *mutual gains*. Such rules can be said to be in the participants' *common constitutional interests*, by contrast to rules that would

benefit some but be of disadvantage for other participants. On the second level of analysis applied constitutional economics concentrates on the issue of what procedures or (meta-) rules for choosing rules are more likely than others to lead to the adoption of rules that make for a better game for all participants, i.e. rules that serve their common constitutional interests.

3. The Market as the "Game of Catallaxy"

With his characterization of the market as the "game of catallaxy"[4] F.A. Hayek has provided an instructive metaphor for how a market economy can be looked at from a constitutional economics perspective. As he suggests, the working of the market can be understood best by looking at it as an "exchange game," a game that "proceeds, like all games, according to rules guiding the actions of individual participants" (Hayek 1976: 71).[5] From such perspective the market can be defined as an institutionalized arena for exchange, an arena framed by rules and institutions that serve two related functions. Firstly, they serve to exclude coercion and fraud as strategies enrichment and to assure that, as far as this can be achieved under worldly conditions, transactions carried out in this arena are based on voluntary and informed agreement among the participants.[6] Secondly, they serve to maintain, again, as far as this can be achieved under worldly conditions, competition among the economic agents by preventing collusion and the acquisition of monopoly power. The reason for the participants to play the market game is, as Hayek emphasizes, that it is a wealth-creating or positive-sum game.[7] Participants can expect to realize overall better outcomes than they could expect from feasible alternative games, even if in the course of playing the game they may find themselves

[4] On the term "catallaxy" Hayek (1976: 108f.) notes: "Since the name 'catallactics' has long ago been suggested for the science which deals with the market order …, it would seem appropriate to adopt a corresponding term for the market order itself. The term 'catalactics' was derived from the Greek verb *katallatein* (or *katallassein*) which meant, significantly, not only 'to exchange' but also 'to admit into the community' and 'to change from enemy into friend'. From it the adjective 'catallactic' has been derived to serve in the place of 'economic' to describe the kind of phenomena with which the science of catallactics deals. The ancient Greeks new neither this term nor had a corresponding noun; if they had formed one it would probably have been *katallaxia*. From this we can form an English term catallaxy which we shall use to describe the order brought about by the mutual adjustment of many individual economies in a market. A catallaxy is thus the special kind of spontaneous order produced by the market through people acting within the rules of the law of property, tort and contract."

[5] Hayek (1976: 115): "The best way to understand how the operation of the market system leads not only to the creation of an order, but also to a great increase of the returns which men receive from their efforts, is to think of it … as a game which we may now call the game of catallaxy."

[6] Friedman (1962: 13): "The possibility of co-ordination through voluntary co-operation rests on the elementary – yet frequently denied – proposition that both parties to an economic transaction benefit from it, *provided the transaction is bi-laterally voluntary and informed*. … A working model of a society organized through voluntary exchange is a *free enterprise exchange economy* – what we have been calling competitive capitalism."

[7] Hayek (1976: 115): "It is a wealth-creating game (and not what game theory calls a zero-sum game), that is, one that leads to an increase of the stream of goods and of the prospects of all participants to satisfy their needs, but which retains the character of a game in the sense in which the term is defined by the *Oxford English Dictionary*: 'a contest played according to rules and decided by superior skill, strength or good fortune'."

occasionally on the 'loosing side', by strategic moves of their competitors or other events that run against their interests.[8]

To look at the market, as Hayek suggests, as a "game" that is played according to certain rules helps to direct out attention to three issues that are of particular relevance in the present context, issues that I shall discuss here under the labels "markets and profit-seeking," "the effects of different rules," and "divided responsibility." To start with the issue of "markets and profit-seeking," the essential feature of the market as an 'exchange game' is that playing the game successfully means to be able to provide goods or services for which others are willing to pay a price that covers the costs of producing them. Since what economists call *profit* is nothing other than the difference between the revenue earned from selling goods or services and the costs incurred in producing them,[9] profit can be said to be the measure of success in the game of catallaxy. The very point of the market game is to use competition in order to serve the participants' interests as consumers by disciplining their interests as producers. It is the discipline that this game imposes on producers that tends to assure that resources are used in ways that contribute most to the satisfaction of human wants.[10] The market game induces the participants, on the one side, to seek to provide to others goods or services that are most valuable to them and for which they are, therefore, willing to pay, and, on the other side, to seek to provide these goods and services at the lowest possible costs. To the extent that participants are able to do so they play the game of catallaxy successfully, and the indication of their success is nothing other than their ability to earn profits.

Profit-seeking is, in the sense explained, inherent in the very logic of the game of catallaxy. Yet, profit-seeking in markets is, of course, not unconditional or unconstrained profit-seeking. It is profit-seeking within the constraints defined by the 'rules of the game', i.e. the rules of law and morals, and the constraints imposed on the market-players by

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[8] Hayek (1978: 137): "The individuals have reason to agree to play this game because it makes the pool from which the individual shares are drawn larger than it can be made by any other method. But at the same time it makes the share of each individual subject to all kinds of accidents and certainly does not secure that it always corresponds to the subjective merits or to the esteem by others of the individual efforts."

[9] I leave aside here the difference between 'accounting profit', i.e. the difference between revenue and explicit costs, and 'pure economic profit', i.e. the difference between revenue and opportunity costs. The more intense market competition is the more speedily it will tend to erode pure economic profits while still allowing producers to earn accounting profits.

[10] Individuals are involved in the market game in both capacities, as consumers as well as producers (i.e. as entrepreneurs, as investors, as employees etc.). The question may be raised, therefore, why they should opt for the market game that favors consumer- over producer-interests. A. Smith considered the answer to this question to be self-evident: "Consumption is the sole end and purpose of production; and the interest of the producer ought to be attended to only so far as it may be necessary for promoting that of the consumer. The maxim is so perfectly self-evident, that it would be absurd to attempt to prove it" (Smith 1981:660). – From a constitutional economics perspective one could, nevertheless, answer this question by pointing out that an economic constitution that gives preference to consumer interests in competition is preferable for all persons involved over an economic constitution that accommodates protectionist interests of producers (Vanberg 2005:39ff.).

competition.[11] The point that Adam Smith makes in one of the most often quoted passages in *The Nature and the Causes of the Wealth of Nations*, if the baker, the butcher and the brewer are operating under the "rules of justice" and under the constraints of competition, we can trust that their profit-earning interests will induce them to be eager to provide us with what we need for dinner (Smith 1981:26f.). If, by contrast, they enjoyed the privilege of a legally protected monopoly, their profit-seeking would surely not induce them to be equally eager to serve us.

It was Smith's important discovery that the market game solves the problem of inducing people to care for the needs of others in a much more effective way than all appeals to humans' altruistic inclinations have ever done. The 'social technology' by which the market game achieves this, is not to ask people to pursue other than their own interests, i.e. to act self-sacrificially, but to require them to pursue their own interests within what Smith called the "rules of justice" and under the constraints of competition. It is because of the constraints that it imposes on the participants that the market game turns their profit-seeking efforts into services for other people's needs, which must not be the needs of their immediate neighbors, but are often the needs of persons of whom they have no direct knowledge and with whom they are connected only through the extended nexus of market exchanges.

"The effects of different rules" is an issue that Hayek addresses when he emphasizes the inherent connection between the working properties of market processes and the nature of the legal-institutional framework within which they operate. As he puts it: "How well the market will function depends on the character of the particular rules. The decision to rely on voluntary contracts as the main instrument for organizing the relations between individuals does not determine what the specific content of the law of contract ought to be; and the recognition of the right of private property does not determine what exactly should be the content of this right in order that the market mechanism will work as effectively and beneficially as possible" (Hayek 1960: 229).[12] As noted above, it is not profit-seeking per se, operating under any kind of conditions that can be expected to make an economy function to the mutual benefit of all participants, but profit-seeking under appropriate rules. How

[11] This perspective on profit-seeking is in line, for instance, with such approaches in modern moral philosophy as D. Gauthier's (1986) theory of morality as "constrained maximization." According to Gauthier, moral conduct is about pursuing one's self-interest within moral constraints, not about acting against one's own interests.

[12] Hayek (1948: 110f.): "That a functioning market presupposes not only prevention of violence and fraud but the protection of certain rights, such as property, and the enforcement of contract, is always taken for granted. Where the traditional discussion becomes unsatisfactory is where it is suggested that, with the recognition of the principles of private property and freedom of contract … all the issues were settled, as if the law of property and contract were given once and for all in its final and most appropriate form, i.e. in the form which will make the market economy work at its best. It is only after we have agreed on these principles that the real problem begins."

effectively self-interest and the common interest are aligned depends on the "quality" of the rules of the market game and their enforcement. Should market processes under given rules of the game systematically produce patterns of outcomes that the participants find undesirable,[13] there is reason to examine whether and how such undesirable outcome patterns could possibly be avoided by suitable changes in the rules of the game. To seek to correct for such 'defects' in the market game by asking market participants to limit their strife for profits beyond what the formal and informal rules of the game require cannot be a sensible strategy. If one chooses to play the market game for its overall beneficial working properties it can make no sense to ask the players in the course of the game not to aim at what indicates successful play, namely the earning of profits.

As important as it is to recognize the variability of the rules according to which the market game is played and the need to adapt them to changing technological and other relevant conditions, it is no less important to carefully distinguish demands for changing the rules that constrain profit-seeking in the market game from demands for changes that would transform the market game into an economic game of an entirely different nature, The difference between the two kinds of demands has to be kept in mind, for instance, in cases in which profit-seeking as such is the target of criticism and other criteria than profit are suggested as the proper criteria that should guide allocational choices.[14] To be sure, as citizens of political communities people may collectively choose whether they wish to play the market game or prefer to organize their economic activities on other principles than voluntary exchange, voluntary contracting and competition. Yet, when making choices on how to organize their economy they should always be aware of the categorical difference between changing the rules for playing the market game and opting for changes that would transform the 'game of catallaxy' into a game of an entirely different nature. They should not under the pretext of modifying its rules unwittingly replace the game of catallexy by a fundamentally different economic game, a game that they might not at all opt for if they were asked to choose it as an explicit alternative to the market game.

Finally, looking at the market in the spirit of Hayek's metaphor as an exchange game that is played under certain rules can help to direct our attention to the third of the three issues that I listed above and for which I chose the label "divided responsibility." This issue – upon which I already implicitly touched in the preceding remarks – concerns the need to clearly

[13] "Systematically" produced undesirable outcome patterns are to be distinguished from the occasional undesired outcomes that players must unavoidably cope with in any game.
[14] To this issue I shall return below when I examine more closely the different kinds of demands that are voiced under the CSR label.

distinguish between the players' *individual and separate responsibility* in playing the game, namely to abide by the legal and moral rules of the game, and their *joint responsibilities* in defining and enforcing suitable rules of the game. The rules of the market game do not fall from heaven and they are not, at least not all of them, self-enforcing. They need to be defined and adapted to changing circumstances, and they need to be enforced. This is a task that the individual players are neither authorized nor capable of performing. It is a task that they can fulfill only collectively, as an organized community through the political process.[15] While in playing the game they are fully legitimized to concentrate on playing the game successfully, within the constraints defined by the rules, as members of the relevant political community they jointly share the responsibility for the quality of the rules under which they are playing or, in other terms, for the quality of the game they are playing. They exercise this joint responsibility through elected governments and legislatures. In more practical terms we can say, therefore, that it is the market players' responsibility to seek their advantage within the (formal and informal) rules of the game, and that it is the government' and the legislature's responsibility to establish and enforce formal rules that guide the players' advantage-seeking behavior in ways that result in desirable overall patterns of outcomes for all involved.

The joint responsibility that the participants face as members of a politically organized community is to define and enforce rules of the game that allow the market to work as effectively as possible as a wealth-increasing game to their mutual benefit. Rules that work out in mutually beneficial ways for all involved can be said to be in the participants' *common constitutional interests*. Such common constitutional interests do not per se guarantee that they all will strive to get the respective rules adopted, nor does it automatically generate an interest in complying with these rules. There is, on the one hand, the conflict between *common constitutional interests* and *interests in privileges*. Their ambition to see rules adopted that favor their special interests or, in short, their privilege-seeking, may prevent the members of a group from reaching an agreement on rules that would serve their common constitutional interests and work to their mutual benefit. And there is, on the other hand, the difference between *constitutional interests* and *compliance interests*. Constitutional interests

[15] Since Milton Friedman's argument on the issue of CSR is the reference point for my reasoning in this paper it may be useful to quote what he has to say on the role of government in the market economy: "The existence of a free market does not of course eliminate the need for government. On the contrary, government is essential both as a forum for determining the 'rules of the game' and as an umpire to interpret and to enforce the rules decided on" (Friedman 1962: 15). "It is important to distinguish the day-to-day activities of people from the general customary and legal framework within which these take place. The day-to-day activities are like the actions of the participants in a game when they are playing it; the framework, like the rules of the game they play. And just as a good game requires acceptance of the players both of the rules and of the umpire to interpret and endorse them, so a good society requires that its members agree on the general conditions that will govern the relations among them, on some means of arbitrating different interpretations of these conditions, and on some device for enforcing compliance with the generally accepted rules" (ibid.: 25).

are about the rules by which one would like to play a game. Compliance interests are about whether in the course of playing the game there are incentives for players to deviate from the rules. Only in the case of self-enforcing rules does a constitutional interest automatically generate a compliance interest, i.e. an interest in acting in conformity with the rules by which one wishes the game to be played. In other cases the members of a community need to arrange for enforcement measures that bring their compliance interests in line with their common constitutional interests.

4. The Market Game and the Corporation as a Constitutional System

If the players in the market game were all natural persons it would clearly be inconsistent for them to collectively decide to opt for the game of catallaxy rather than some other 'economic game' because they expect it to generate more benefits than its potential alternatives, but then to demand that in playing the game the participants should not seek what indicates success in this game, namely to realize profits. The players in modern market economies are, however, by no means all natural persons. They include enterprises of various sizes and, in particular, big corporations, some of which are in fact, in terms of their budgets, bigger than many of the national governments that define and enforce the rules for how the economic game may be played within the territory over which they have jurisdiction. Quite obviously, with their demands advocates of CSR have primarily such big corporations in mind, specifically the behavior of their top management. It may, therefore, be questioned whether what I have said above about the nature of the game of catallaxy, in particular in regard to the function of profit-seeking and on 'divided responsibility', still applies when the role that big corporations play in the market economy is taken into account.

Corporations are organized units of cooperation that *internally* coordinate the activities of the participants not, as in markets, in a decentralized manner by voluntary exchange but in a centralized fashion on the basis of authority relations that define who is entitled to give order on what to whom, and who is to follow such orders.[16] Like organizations in general corporations can be looked at as *constitutional systems* in that they are based de facto on a 'constitution' that defines the terms under which the various parties participate in the joint corporate enterprise as well as the rules and procedures by which their activities are coordinated.[17] Since by their decision to join the corporate enterprise the parties agree to the terms of the constitution, the latter can be interpreted as a *social contract* entered into by all participants. In a paper on *Corporate Social Responsibility (CSR) as a Model of 'Extended'*

[16] The classic contribution on this is R. Coase 1937.
[17] For a more detailed discussion of this concept see Vanberg 1992.

Corporate Governance L. Sacconi (2004) has applied such a contractarian outlook at corporations as constitutional systems to the CSR issue. As he puts it, he seeks to give "a contractarian foundation to the concept of Corporate Social Responsibility" by interpreting the firm's "system of corporate governance" as the product of a "rational agreement" or a "social contract" among "all the firm's stakeholders" (Sacconi 2004: 1f.). The purpose of "the constitutional contract of the firm," Sacconi (ibid.: 32) argues, is to define "the institutional governance structure of the firm: that is, the complex set of rights which establishes legitimate claims (of various kinds) of both the stakeholders with ownership and control and the other stakeholders that in various ways participate in the firm or exchange with it" (ibid.: 32).

The contractarian-constitutionalist outlook at the corporation that Sacconi suggests has apparent affinities to the constitutional economics perspective from which I approach the issue of CSR. Yet, my interpretation of the contractual foundations of the corporation is somewhat different from his. In particular, I do not consider the constitutional contract on which the corporation is based to be as inclusive as Sacconi seems to suggest when he describes it as a social contract among "all the firm's stakeholders," an understanding that leads him to define CSR as "a model of extended corporate governance whereby who runs a firm (entrepreneurs, directors, managers) has responsibilities that range from fulfillment of the fiduciary duties towards the owners to fulfillment of analogous fiduciary duties towards all the firm's stakeholders" (ibid.: 6). In the broad sense in which Sacconi uses the term, "stakeholders" include everyone who, in whatever capacity, participates in the operation of a corporation, interacts with it, or is affected by the its activities.[18] While I agree that all these relations can be usefully analyzed from a contractarian-constitutionalist perspective, I put more emphasis than Sacconi does on the differences in the contractual relations between the various categories of 'stakeholders'.

If confusion is to be avoided in applying a contractarian-constitutionalist perspective to the issue of CSR one must clearly distinguish between two kinds or two levels of "social contracts." This is, on the one side, the social contract among all members of a polity that establishes the rules of the 'economic game' to which all persons are subject who do business in the respective jurisdiction. And it is, on the other side, the various social contracts into which persons enter who, in the course of playing the 'economic game', establish, or

[18] "Stakeholders in the broad sense" include, in Sacconi's (2004: 7) understanding, not only individuals "who have an interest at stake because they have made specific investments in the firm", but also "those individuals or groups whose interest is involved because they undergo the 'external effects', positive or negative, of the transactions performed by the firm, even if they do not directly participate in the transaction, so that they do not contribute to, nor directly receive value from the firm."

participate in a corporation or any other joint enterprise.[19] The social contract at the societal level defines the rules according to which the economic game is to be played in a jurisdiction. It has systematic priority over social contracts of the second kind since it defines the constraints within which the latter may be concluded. If at the societal level the market-game has been chosen for a polity this has implications for the kinds of 'constitutional contracts of the firm' that may be and will be chosen within the respective jurisdiction. The rules of the market game define the constraints under which potential alternative 'corporate governance systems' or corporate constitutions compete with each other in the sense that they may be found to be more or less conducive in helping players to play the game successfully.

As soon as proper recognition is paid to the fundamental distinction between the two levels or kinds of 'social contracts', namely the social contract that defines the rules of the market and the 'social contracts' by which corporations are constituted that operate within the market, it should become apparent that the way in which the term 'stakeholder' is commonly used tends to obfuscate significant differences in the contractual relations between firms and various groups of persons that are classified as 'stakeholders'. In the context of the CSR debate the term is typically used to play down the difference between shareholders, i.e. the owners of a corporation, and various other parties related to the corporation (Preston and Sapienza 1990). What such use of the concept is supposed to suggest is, of course, that the responsibility of corporate executives or managers vis-à-vis the shareholders is just one among a number of 'responsibilities' that they owe to various other parties, including employees, customers, suppliers, the political community or the general public. That is, it is meant to support the claim that such views of CSR as Milton Friedman's represent too narrow conceptions of what 'socially responsible business' is about. As one inspects the stakeholder language more closely, though, this claim turns out to be based on little more than an ambiguous use of the term 'responsibility'. To be sure, if the term is used in a sufficiently diffuse sense, managers may well be said to have 'responsibility' not only vis-à-vis the owners of a corporation but to various other parties as well. Yet, using the term in such manner is to gloss over significant differences in what 'responsibility' means *in substance* when managers' relations to shareholders, employees, suppliers, customers, and other parties are concerned.

[19] Sacconi (2004: 13) appears to conflate these two kinds of social contracts when, in discussing the ethical criterion that he applies to "the 'social contract' among the stakeholders of the firm," he speaks of this contract as "the agreement that would be reached by the representatives of all the firm's stakeholders in a hypothetical situation of impartial choice." – Sacconi (ibid.: 14f.) draws a distinction between a "first social contract" and a "second social contract," but this distinction is different from the one I want to emphasize here.

In terms of their relations to the corporation the various groups commonly subsumed under the 'stakeholder' label can be classified into three principal categories. There are, first, those parties who are with parts of their resources subject to the authority system of the corporation. These include, in particular, the shareholders who have put parts of their financial resources into a common pool where they are subject to collective decisions and no longer under their individual and separate disposal. And it includes the employees who submit their labor, within defined limits, to the decision making authority within the corporation. What is common to both groups is that, together with corporate executives or managers, they are parties to the 'social' or 'constitutional' contract that constitutes the corporation as an organized, corporate actor, i.e. as a team-production unit that allocates pooled resources under centralized direction.[20] Understood in this sense, the "constitutional contract of the firm" (Sacconi 2004: 32) defines the terms under which the contributors of resources to the corporation's common resource pool participate in the joint enterprise. What is different between shareholders and employees is that the former, as owners and residual claimants, appoint the managers to direct the enterprise on their behalf, while the employees, as recipients of contractual income, are hired by the managers. That is to say, the managers are the agents of the shareholders, they are not the agents of the employees.[21] While they owe 'responsibility' to both groups as defined in the implicit and explicit 'constitutional contract of the firm', their responsibility as agents vis-à-vis the shareholders is surely different from their responsibility as employers vis-à-vis the employees.

The second principal category of 'stakeholders' includes those parties who entertain market-exchange relations with the firm, such as the customers and the suppliers. Even if in cases of long-term contractual relations between a firm and its suppliers or customers the distinction may be less pronounced, there is a systematic difference between such market-exchange relations and the relations that exist between the participants in the firm's team-production process. Accordingly, the contractual foundation of the 'responsibility' that the managers owe the respective parties is different. In the case of customers and suppliers responsibility is defined by the implicit and explicit rules of the market-game and the specific contracts between the firm and its suppliers or customers, in the case of shareholders, employees and other participants in the team-production process it is the 'constitutional contract of the firm' that defines specific responsibilities. Finally, the third category of

[20] For a more detailed explanation of this outlook at the firm as a 'corporate actor' see Vanberg 1992.
[21] That would be different, of course, in a workers' cooperative in which the managers would be the agents of the workers and where contributors of financial capital would be hired as recipients of contractual income by the managers.

'stakeholders' includes the political community and, in a sense, the general public. The political community in its capacity as the political authority over the jurisdiction within which the corporation operates is not a party to the 'constitutional contract of the firm' nor is it in a market-exchange to the firm.[22] It is the agency that is authorized to define the rules of the game that the firm must comply with when operating in the respective jurisdiction. Accordingly, the relation between the political community and the corporation is of a *political nature*. That is to say, the responsibility that the corporation or its managers owe to the political community are defined by the political constitution of the respective jurisdiction, i.e. by the 'social contract' that defines the rules according to which political authority is constituted and exercised in the jurisdiction. The relation between the corporation and the general public can be looked at as a part of this political nexus. How a corporation's conduct is perceived and judged by the public will indirectly impact on the political decision making process, beyond the direct effects it may have on people's choices as consumers, employees or investors.

5. Corporate Social Responsibility and Profit-Seeking in the 'Game of Catallaxy'

In case of an owner-operated firm the owner-operator clearly has 'responsibilities' vis-à-vis his employees, his customers, his suppliers, and the political community, where the substance of the respective responsibilities is defined by the different kinds of implicit or explicit contractual relations that exist between the owner-operator and the various groups. Yet, the owner surely operates the business not as an agent on behalf of his employees, his suppliers, his customers or the political community, but on his own behalf and in pursuit of his own interests. The measure of his success in the market game is his ability to earn a profit, where 'profit' is nothing other than the residual income that is left for him after he has paid the salaries to his employees, the bills of his suppliers and the taxes to the political community. It is difficult to see why there should be any relevant changes in the fundamental scheme of responsibilities as we move from the owner-operated firm to the manager-operated large corporation. What changes in the transition from owner-operated to manager-operated firms is that the owners appoint managers as agents to operate the business on their behalf, thereby adding a specific agency relation to the scheme of responsibilities. And the extent to which they can expect the managers actually to run the enterprise in ways that serve their, the

[22] A political community may, of course, be a shareholder or co-owner of a corporation and it may also purchase products or services from a corporation. But in this capacity its relation to the corporation is that of a shareholders or customer. What is of interest here is the relation between a political community *in its capacity as political authority* and a corporation.

owners' interests will largely depend on how well the overall rules of the market game and the terms of the corporate constitution allow them and motivate them effectively to control the management.[23] What surely does not change as we move from owner-operated to manager-operated firms is the fact that the measure of the firm's successful performance in the market game is its ability to earn a profit, and that the profit earned is nothing other than the residual that is left as compensation for the owners after the contractual obligations to other parties have been met.

As indicated above the argument that in a market economy the managers' task is to earn profits can be looked at from two angles that I propose to distinguish as the *system-aspect* and as the *agency-aspect* of profit-seeking. The system-aspect pertains to the fact that, according to the logic of the market game, profit is the measure of successful performance in this game and that, accordingly, the ability to earn profits is the measuring rod for managerial performance. The agency-aspect pertains to the fact that managers are employed by the firm's owners in order to run the firm in the service of their interest as *residual claimants*, i.e. as those participants in the joint enterprise who are compensated by the profits earned. While the agency-aspect of profit-seeking is mostly at issue among advocates and critics of CSR it is in fact secondary or subordinate to the more fundamental system perspective that emphasizes the social advantages of the market game and the implications that follow as a matter of consistency if one chooses to play this game. The agency-aspect is about the ownership structures established by the 'constitutional contract of the firm' which in turn, as noted above, derives its rationale from the logic of the market game. While the immediate reason for managers' profit-seeking is their contractual obligation as agents vis-à-vis the owners of the corporation, the more fundamental reason is the role that profits play as signposts in the game of catallaxy and the fact that the market game promises to produce more advantages for all participants than potential alternative 'economic games'.

[23] The issue of how effectively the owners of large corporations actually control management has long been discussed, but it can be left aside here because what is of principal interest in the present context is not how well managers can be expected to serve the profit-earning interests of shareholders but whether 'social responsibility' requires them to pursue other ends than to earn profits. – It may be worth quoting, though, the *Economist*'s and G.S. Becker's comments on the issue of managers' accountability to shareholders. The Economist (Economist 2005: 17) notes: "In many of the corporate scandals of recent years, it has seemed that managers have acted as though they were accountable to nobody – not even, and in some cases least of all, to the firms' owners. This has been rightly recognized as a problem, and a lot of time and effort has been spent on trying to make accountability to shareholders – on matters such as executive pay – more effective. Muddled thinking on CSR, and on supposed accountability to non-owners, only makes it harder to put this right." – In a similar spirit G.S. Becker (Becker and Posner 2005) notes: "But surely an important goal of any reform in corporate management is to reduce entrenchment of management, and inject more competition into the market for CEO's and other top corporate leaders. … Entrenched managers do not have to fully consider stockholder interests in their decisions … . Perhaps they will be 'socially responsible', but surely we do not want to rely on entrenched management to set the standards for corporate behavior? Entrenched and powerful management was at the heart of the problem with World Com, Enron, and most other companies that had corrupt leadership."

Insisting on the systematic distinction between the shareholders as the owners and residual claimants and other groups of 'stakeholders' associated with or related to the firm is by no means the same as saying that managers may safely neglect the interests of other 'stakeholders' in favor of the owners' interests. It is quite obvious that managers can not run a business successfully for long if they do not pay due attention to the interests of their customers, their employees, their suppliers or the political community within which they operate. Nevertheless, just as there are, in the sense explained above, differences in the nature of the 'responsibilities' that they owe different groups of 'stakeholders', there are differences in the reasons why, and in the ways in which, managers have to take the interests of the different groups into account. In particular, there is a difference between their contractual obligation to serve the interests of the owners on whose behalf they manage the firm, and the kinds of constraints that induce them to take the interests of customers, suppliers, employees or the political community into account. Serving the profit interests of the owners is what managers are hired to do as the owners' agents, and it is the direct criterion against which their performance is judged in a market economy. Paying due attention to the interests of the other parties is required of them not as a "fiduciary duty"[24] but as a constraint imposed on them by the nature of the market game, a constraint that they have to meet in order to be successful in serving the owners' profit interests.

Where the interests of the different groups are in conflict with each other – e.g. consumer interests in low prices and employees' interests in high wages, or suppliers' interests in high prices for their inputs and owners' interests in profits – it is not the managers who are called upon to act as 'fair arbitrators', no more, anyhow, than the owner-operator of a firm is called upon to impartially arbitrate between his own profit-interests and the interest of other 'stakeholders'. Instead, it is the function of market competition to bring about a balance among these interests in ways that improve the prospects of all parties involved to benefit from this 'economic game' more than they could from an a feasible alternative economic regime. It is the very point of the game of catallaxy that the owners of firms or their managers can concentrate on running the enterprise in a profit-generating manner, while the rules of the game and of the forces of competition function as constraints that guide their profit-seeking ambitions in directions that serve the interests of others. It is not because they act as their 'fiduciaries' that the owners or managers of firms heed the interests of customers and

[24] That such "fiduciary duties" exist is implied by L. Sacconi (2006: 6) when he proposes to define CSR as "a model of extended corporate governance whereby who runs a firm (entrepreneurs, directors, managers) have responsibilities that range from fulfillment of their fiduciary duties towards the owners to fulfillment of analogous fiduciary duties towards all of the firm's stakeholders."

suppliers, but because the constraints of the market game make it advisable for them to do so if they wish to successfully pursue their own interests. And the same is true in essence for the interests of employees as well, even though, as noted above, there are significant differences between the nature of the employment relation and the market exchange relations between the corporation and its customers or suppliers.

The virtue of the market game is not only that it economizes on people's benevolence by mobilizing the forces of self-interest in order to motivate people to care for the interests of others. It also relieves the participants of a task that would overcharge their limited cognitive capacities, namely to know how they may best contribute to the 'common good'. As F.A. Hayek has emphasized throughout much of his work, because of the limits of our knowledge and reason it is impossible for us to know all the direct and indirect consequences that result from our actions in a highly complex system such as an extended economy. It is therefore impossible for us to reliably judge on a case-by-case basis by which particular actions we may contribute most to the 'common good'.[25] If we wish our interdependent actions to result overall in a desirable social order we must, so Hayek argues, rely on rules that guide our choices in ways that produce desirable patterns of outcomes, even if they cannot guarantee the 'optimal' result in each and every case. Rules are adaptations to our "inescapable ignorance of most of the particular circumstances which determine the effects of our actions" (Hayek 1976: 20). They simplify our choice problems by reducing to manageable dimensions what we are required to take into account in making our choices.[26] In this sense the legal and ethical rules of the market game relieve the participants from the responsibility to consider all circumstances that might possibly be taken into account and all the consequences that might possibly follow from their actions – a responsibility that would be impossible to meet in a complex world – by focusing their attention on those consequences for which the rules of the game hold them accountable.

Of course, not just any kind of rules can be expected to work to the common benefit of the parties involved, and to know which rules will create a desirable overall order surely is for humans with limited cognitive capabilities a problem of no lesser magnitude than knowing all

[25] M. Friedman (Reason Online 2005) alludes to this 'knowledge problem' when he notes in regard to 'charitable giving' of managers: "But what reason is there to suppose that the stream of profit distributed in this way would do more good for society than investing that stream of profit in the enterprise itself or paying it out as dividends and letting the stockholders dispose it?" – Commenting on the role that tax laws play in this context Friedman (ibid.) adds: "The practice makes sense only because of our obscene tax laws, whereby a stockholder can make a larger gift for a given after-tax cost if the corporation makes the gift on his behalf than if he makes the gift directly. That is good reason for eliminating the corporate tax or for eliminating the deductibility of corporate charity, but it is not a justification for corporate charity."

[26] Rules, as Hayek (1964: 11) argues, "abbreviate the list of circumstances which we need to take into account in the particular instances, singling out certain classes of facts as alone determining the general kind of action which we should take."

the effects of particular actions. The critical difference, though, is that with regard to the working properties of rules systematic learning from experience over time is possible. As different groups and societies have experimented throughout human history with different kinds of rules, experience with the kinds of outcome patterns that they tend to produce has been accumulated over time. In this sense the constitutive rules of the market game can be looked at as the product of an evolutionary process in which they have come to embody the experience of countless generations. It is not because we were intelligent enough the design them, but because we have the historical and contemporary record of how they work, compared to potential alternative systems of rules, that we have reason to trust in the capacity of the rules of the game of catallaxy to serve the common interest of the participants, allowing them to focus their attention on playing the game successfully within the constraints of rules, instead of burdening them with the unmanageable task of directly seeking the 'common good'.

The principal conclusion that follows from the foregoing discussion for the issue of CSR is that the very point of playing the market game is to dispense the participants from the responsibility to consider, in the course of playing the game, all the consequences that their actions may possibly have for the 'common good', and to allow them, instead, to concentrate their attention on playing the game successfully within the constraints defined by its legal and moral rules. The social responsibility for a well functioning market game is 'divided' in the sense that there is a categorical distinction between the participants' individual and separate responsibility *in playing the game* and their joint responsibility *for the game*. Their social responsibility *in playing the game* is to pursue their ambitions in a fair, rule-abiding manner. Their social responsibility *for the game* is the responsibility they share as member of the respective political community and that they exercise through their government. It is their joint social responsibility to take care of the rules by which they play the game, and to see to it that rules are adopted and enforced that work out to their common benefit.

6. Varieties of Corporate Social Responsibility

From the constitutional economics outlook at the market economy that I have discussed in the previous sections I shall examine some of the major demands on corporate behavior that have been made under the CSR rubric. As I shall seek to show such demands can be classified into three major categories which I distinguish as the *soft*, the *hard*, and the *radical* version.

The distinction between the varieties of CSR demands that I wish to draw attention to is related to the distinction between the following three questions. This is, first, the question of whether or not the citizens of a polity wish to adopt the 'game of catallaxy' or some feasible alternative regime as the 'economic constitution' for their jurisdiction. This choice is to be made on prudential grounds, informed by the predictable working properties of the alternatives considered and in light of the informed common constitutional interests of the constituents. If the citizens have opted in favor of the market game, they have to decide on the second question, namely under what specific rules they wish to play the market game. This is again a matter that they should decide on prudential grounds, in light of the predictable working properties of potential alternative rules. And there is, finally, the question of how the participants are supposed to behave in playing the market game, after they have opted for this game and have defined the specifics of the rules according to which they wish to play it. As I shall seek to show, what I call the *soft* version of CSR is concerned with the issue of how the participants should play the market game within given rules. The *hard* version is about the issue of how the rules of the market game should be defined. And the *radical* version is about the issue of whether it is the market game that should be played or some alternative economic game.

Like the other two versions of CSR the soft version suggests that for a corporation to act in a socially responsible manner means to "work more consciously for the common good",[27] to do things not because they help to earn profits but because they serve broader 'social' purposes. What distinguishes advocates of the soft version from other CSR-advocates is that they do see a *fundamental* conflict between profit seeking and social responsibility. They do not recommend abandoning the market game, nor do they call for a change in the legal rules of the game. They argue, instead, that by taking the interests of non-owning stakeholders properly into account managers promote the long-term success of the corporation and, thus, act in the interest of the shareholder.[28] The slogan that captures the spirit of their view is: "Corporate social responsibility is good business!"[29] The business practice that they

[27] I am paraphrasing here John Mackey, the founder and CEO of Whole Foods who (in Reason Online 2005) says about his vision of CSR: "The business model that Whole Foods has embraced could represent a new form of capitalism, one that more consciously works for the common good instead of depending solely on the 'invisible hand' to generate positive results for society." – In commenting on his "business model" Mackey (ibid.) expresses his conviction that it "is simply good business and works for the long-term benefit of the investors."

[28] For a discussion of this view of CSR see e.g. L.E. Preston and H.J. Sapienza (1990) who conclude from their survey of empirical evidence: "Moreover, most of these indicators of stakeholder performance are also associated with conventional measures of corporate profitability and growth. Thus, there is not in this data any significant evidence of strong trade-offs among stakeholder objectives."

[29] Kirk O. Hanson (Stanford Business 2000c): "I would say that most business ethicists in the United States spend their time trying to convince people that being ethical actually will help you win in the long run."

target with their calls for CSR is, in effect, short-sighted, narrow-minded profit-seeking, and what they recommend as socially responsible business behavior is, in their view, nothing other than far-sighted, enlightened profit-seeking. CSR, so understood, is a matter of entrepreneurial prudence. It amounts to a business strategy that does not only look at immediate, short.-term returns but takes proper account of the long-term consequences that result from the ways in which customers and suppliers, employees and the community are treated.[30]

If they wish to achieve long-run business success managers are surely well advised to take into account the interests of the various parties on whose good will they depend, and to pay attention to the constraints that not only the formal rules of the game but also the ethical views that prevail in their relevant environment impose on their profit-seeking ambitions.[31] Yet, if – given the factual constraints of market competition and provided the rules of the game are effectively enforced - there are prudential reasons for managers to do the things that advocates of the soft version of CSR call for, it is not clear at all what the CSR-philosophy is supposed to add to an appropriate understanding of how markets work. After all, the market game endogenously creates the incentives for the participants to learn how to play the game successfully. It punishes short-sighted profit-seeking strategies that harm a firm's long-term profitability and it rewards prudent, enlightened profit-seeking that keeps an eye on the firm's prospect to survive and prosper over time. If it aims at no more than reminding managers that prudent, far-sighted profit-seeking is better business than its narrow-minded, short-sighted counterpart CSR should properly be considered part of the ordinary job of business consultants. There would be little that an advocate of Friedman's view on CSR would have reason to disagree with. And there would be little justification for dressing CSR up as a moral or ethical doctrine that is needed in order to civilize an otherwise deficient market economy.

CSR becomes a more controversial matter where it amounts to demands for business practices that are in genuine conflict not only with short-sighted profit-seeking but with enlightened and far-sighted profit-seeking as well.[32] It is such demands that belong to what I

[30] T.J. Rodgers (Reason Online 2005): "It is simply good business for a company to cater to its customers, train and retrain its employees, build long-term relationships with its suppliers, and become a good citizen in its community."

[31] Playing the market game in a 'fair' manner involves, in this sense, clearly more "than mere obedience to the law's minimal demands" (McCann 2000: 111).

[32] The EU Commission seems to come close to voicing demands of this kind when, in its Green Paper *Promoting a European Framework for Corporate Social Responsibility*, Brussels, July 18, 2001, it defines CSR as follows: "By stating their social responsibility and voluntarily taking on commitments which go beyond common regulatory and conventional requirements, which they would have to respect in any case, companies endeavor to raise the standards of social development, environmental protection and respect of fundamental rights and embrace an open governance, reconciling interests of various stakeholders in an overall approach of quality and sustainability" (quoted from Sacconi 2004: 6).

call the 'hard' version of CSR. They are based on the diagnosis that profit-interests, even in their enlightened form, either induce corporate practices that are in conflict with the 'common interest' or prevent corporations from doing things that would be in the 'common interest'. In the matrix below the boxes A and B represent the cases that advocates of the hard version of CSR target with their demands for a more 'socially responsible' corporate conduct. They want corporate practices that belong in box A to be discouraged and those that belong in box B to be encouraged, opposed to the direction in which profit-incentives work. The 'uncontroversial cases' represent the cases that were discussed above under the rubric of the soft version of CSR. They are uncontroversial in the sense that in regard to them there is no conflict between Friedman's maxim and the demands of corporate social responsibility.

Corporate practices	In agreement with CSR–demands	In conflict with CSR-demands
In accord with 'enlightened' profit-seeking	**Uncontroversial case**	**A**
In conflict with 'enlightened' profit-seeking	**B**	**Uncontroversial case**

The hard version of CSR raises two issues that need to be examined. The first has to do with the question of whether CSR-demands can actually be presumed to reflect the common interest of the citizens of a polity; the second with the question of what the citizens should prudently do in those cases in which CSR-demands are found to be in their common interest.

The corporate practices that CSR-demands call for (or oppose) are typically claimed, either explicitly or implicitly, to serve (or to harm) the 'common good' or the 'public interest'. This claim can be interpreted, I suppose, as the conjecture that the respective corporate practices serve the *common interests* of the individuals concerned, such as, for instance, the citizens of a polity who collectively choose the rules to which corporations operating in their jurisdiction are subject.[33] It would surely be naïve to presume this conjecture to be actually true for each and every demand that may be voiced in the name of CSR. Rather, whether the

[33] The 'group' for which CSR-demands are claimed to be in the 'common interest' may, of course, be more inclusively defined to include not only a particular polity, but several polities or, in the limit, the world community.

corporate practices that CSR-demands call for can reasonably be expected to advance the common interest or not, needs to be examined, and the relevant test should be whether the practice could be considered desirable if adopted as a general rule. In other words, it needs to be examined whether demands voiced in the name of CSR may not in fact be 'inappropriate' moral demands. The matrix below represents the four constellations that may exist in the relation between CSR-demands and the common interest.

Corporate practices	Called for by CSR-demands	Rejected by CSR-demands
Serve the common interest	**A**	**B**
In conflict with common interest	**C**	**D**

Box A represents cases in which CSR-demands call for corporate practices that, under the given rules of the market game, would harm the profit-interests of firms adopting them, but would serve the participants' common interests. Box D represents the reverse case in which CSR-demands reject corporate practices that, again under the given rules of the market game, serve the profit-interests of firms adopting them, but are in conflict with the participants' common interests. In cases represented by boxes A and D citizens should pay attention to the respective CSR-demands and should look for ways to rectify the conflict between profit-interests and common interests that these demands identify. By contrast, boxes B and C represent cases in which following the advice that CSR-demands entail would be harmful to the common interest and in which citizens would be well-advised to discard such demands.[34] The critical question is, of course, how they should go about deciding on the merits or demerits of particular CSR-demands, an issue to which I will return below.

What should be done in cases in which there are good reasons to consider CSR-demands as 'appropriate' moral demands, i.e. as demands that point to actual conflicts between profit-interests and common interests. Calling on the players in the market game to behave in ways that systematically harm their profit-interests would mean to ask them

[34] Corporate Social Responsibility Watch (http://www.csrwatch.com/) looks out for cases of CSR-demands that would fall into this category.

deliberately not to seek to play the game successfully, an appeal that, as I have discussed above, cannot make sense if one wishes to continue to play the market game. To be sure, where the market game produces patterns of outcomes that the participants consider undesirable, they have reason to look for a remedy. Yet, as I have argued above in my comments on the principle of 'divided responsibility', the remedy must be sought in a suitable adjustment of the rules of the game. That is to say, the rules of the game must be so (re-) defined that the conflict between profit-interests and common interests is avoided or eliminated. The remedy cannot be found in calling upon the players to sacrifice their own ambitions to play the game successfully in order to compensate for deficiencies in its rules.[35] Apart from its questionably effectiveness, the perverse effect of the attempt to correct for undesirable outcomes of the market game by such 'moral appeals' would be that those among the participants who are most receptive to such appeals would systematically loose out in market competition to those who are less so, in the end aggravating the problem rather than solving it.

As noted above, the very point of playing the market game in the first place is that the participants in their separate capacities can concentrate on playing the game successfully, in compliance with its legal and moral rules, while it is their joint responsibility to see to it that rules of the game are defined and enforced that produce overall desirable patterns of outcomes. As far as the legal rules are concerned this joint responsibility is exercised through government and legislature who are in charge of defining and enforcing an adequate legal framework, and who should adopt appropriate reforms in the rules of the game if the existing rules fail to do the task. As far as the informal rules of proper business conduct are concerned, the 'private' sanctions that the market participants impose on each other in playing the market game must provide sufficient incentives for compliance. In cases where these incentives turn out to be of insufficient force, and where the harmful consequences of non-compliance weigh heavily enough, the necessity may arise to formalize previously informal rules in legal terms and to give them the backing of the enforcement apparatus of the state. This leaves the question of what role demands on business to act in 'socially responsible' ways are supposed to play in this scheme, beyond what the legal and informally enforced rules of ethical conduct do. One possible answer could be that the very point of the CSR-movement is to create, e.g. by public campaigns, incentives for corporate executives to act for the 'common good',

[35] This issue has been explicitly discussed by Walter Eucken, the founder of the Freiburg school of law and economics (Vanberg 1998). He emphasized that reconciling individual self-interest and common interest is the task of "Ordnungspolitik", i.e. a policy that takes care of the institutional framework within which the market game is played. As he put it, "the individuals should not be required to do what only the economic constitution can accomplish, namely to reconcile individual self-interest and common interest" (Eucken 1990: 368).

incentives that are supposed to work as supplementary force exactly in those cases in which the constraints imposed by the legal apparatus and the informal rules of proper business conduct fail to guide the actions of the market-players in ways that reconcile profit-interests and common interests.[36] The problem with this answer is, however, exactly the problem that I referred to above when I raised the issue of how the merits or demerits of particular CSR-demands are to be judged, i.e. how citizens are to know whether demands that are voiced in the name of CSR are actually conducive rather than harmful to the 'common good'.

To be sure, through their activities NGOs or other advocacy groups may well be able to create factual constraints for corporations that make it advisable for them to act in the ways that such groups define as 'socially responsible' corporate behavior.[37] They may, for instance, succeed – as Greenpeace did in the Brent Spa case – in mobilizing the pressure of public opinion to force corporations into compliance with their demands. For corporations to adopt the respective, supposedly 'socially responsible', practices becomes under such conditions a matter of entrepreneurial prudence. Yet, whether the practices 'enforced' in such manner actually serve the 'common good' can hardly be assured by the supposedly good intentions of the groups organizing the campaigns.[38] This depends on the consequences that will in fact result from the supposedly 'socially responsible' corporate practices, and these consequences may well be harmful. It is exactly the purpose of the elaborate legislative procedures that political communities employ for choosing the 'rules of the game' to assure that rule-proposals are carefully examined in regard to their predictable impact before they are adopted, and to grant legitimacy to the rules that the members of the legislative assembly decide upon on behalf of the citizenry. As a rule, CSR-demands have not passed a comparable process of systematic examination, nor do they come with the legitimacy provided by a democratic

[36] McCann (2000: 110): "(S)takeholder groups … can easily mimic the ICCR's (Interfaith Center for Corporate Responsibility, V.V.) successful strategy of mobilizing religious communities to use their investment portfolios for leveraging various corporate social responsibility agendas through proxy battles and other insurgencies at annual shareholders' meetings. … Top management is usually willing to negotiate with those who organize such efforts precisely because the one thing they abhor above all is bad publicity."

[37] As D. Doane (2005: 24), chair of the CORE (Corporate Responsibility) coalition of NGOs in the U:K. notes: "(T)here are some strong business incentives that have either pushed or pulled companies onto the CSR band-wagon. For example, companies confronted with boycott threats, as Nike was in the 1990s …, may see CSR as a strategy for presenting a friendlier face to the public."

[38] As the Economist (Economist 2005: 9f.) comments: "Companies under NGO scrutiny have been dissuaded from investing in manufacturing operations in developing countries such as India or Bangladesh, or have decided to end such operations, faced with charges that they are employing 'sweatshop labour'. … Many development NGOs are pushing for labour standards that would mandate this kind of 'best practice', and want these standards written into future trade agreements. The evidence clearly shows that policies of this kind … are not in the interests of the workers they purport to help. … Capitulating to the ill-judged demands of the NGOs may be rational, profit-seeking behaviour on their (the companies', V.V.) part. But in this case, what is good for profits is bad for welfare."

legislative process or the legitimacy of the implicit consensus on which the commonly accepted informal rules of ethical conduct are based.[39]

To be sure, there is no reason to object as long as CSR-demands are advanced as contributions to the political discourse on which rules of the game a political community should adopt, and are subject to the same process of public examination to which all other legislative proposals are subject. Serious problems of 'constitutional prudence' and democratic legitimacy arise, however, where CSR-demands become a competing force to, and a substitute for, the formal legislative process by creating factual constraints that 'channel' corporate conduct in ways that CSR-advocates define as 'socially responsible' but that may well harm the common interests of the parties concerned. Citizen would be well-advised to set more trust in the ability of their established legislative procedures to define the rules of the game, and to improve these procedures where possible, rather than allowing self-appointed guardians of 'social responsibility' to set the standards against which corporate behavior is to be judged.

The two versions of CSR that I have discussed so far are about the role that profit-seeking should be allowed to play in the market economy. The 'soft' version is about prudence in profit-seeking, it calls for far-sighted, enlightened by contrast to short-sighted, narrow-minded profit-seeking. The 'hard' version is about how profit-seeking should be constrained. It wants corporate behavior to be subject to constraints that go beyond the demands of current legal and ethical rules. The third, 'radical' version of CSR, by contrast to the first two, is about whether profit-seeking should be allowed to play a role at all. It amounts to an outright rejection of profit as a proper guide for economic activities and, thus, calls in effect for abandoning the market game in favor of a different kind of 'economic game', - even if advocates of the 'hard' version typically neither explicitly say so nor explicitly state how their envisaged alternative to the market game is supposed to function.

[39] In his 1970 article M. Friedman noted on the claim that "the exercise of social responsibility by businessmen is a quicker and surer way to solve pressing current problems": "We have established elaborate constitutional, parliamentary and judicial provisions to … assure that taxes are imposed so far as possible in accordance with the preferences and desires of the public … . What it (the above claim, V.V.) amounts to is an assertion that those who favor the taxes and expenditures in question have failed to persuade a majority of their fellow citizens to be of the like mind, and that they are seeking to attain by undemocratic procedures what they cannot attain by democratic procedures." – In the same spirit the *Economist* (Economist 2005: 18) writes: "(B)usinesses should not try to do the work of governments, just as governments should not try to do the work of businesses. … Managers, acting in their professional capacity, ought not to concern themselves with the public good: they are not competent to do it, they lack the democratic credential for it, and their day jobs should leave them no time to think about it. If they merely concentrate on discharging their responsibility to the owners of the firms, acting ethically as they do so, they will usually serve the public good in any case. … The proper guardians of the public interest are governments, which are accountable to all citizens. It is the job of elected politicians to set goals for regulators, to deal with externalities, to mediate among different interests, to attend to the demands of social justice, to provide public goods and collect taxes to pay for them."

It is, in particular, the 'hard' version of CSR that is subject to M. Friedman's (1963: 135) charge of being a "fundamentally subversive doctrine".[40] This charge is surely not meant to deny that it is up to the citizens of a democratic polity to decide whether or not they wish to adopt the rules of the market as their economic constitution, and that advocates of the 'hard' version are free to make their case against the market game in the debate on where the decision should go. Rather, I understand Friedman's charge to be meant as a warning against an erosion of the market economy that occurs in a tacit, concealed way. If citizens decide to adopt the market game, they cannot at the same time reject profit as the signal that guides economic activities. And the decision whether or not to adopt the market game should be explicitly made under due consideration of the overall working properties and merits of the market game compared to feasible alternative regimes. It should not be implicitly made under the false pretext of just requiring corporations to be more 'socially responsible'. CSR-demands that amount to a call for abandoning profit as the guiding signal in the economic game should be openly and explicitly presented as what in effect they are, namely calls to replace the market game by an economic regime of a different nature. And their advocates should be required to specify the nature of the economic regime that they wish to suggest as alternative so that one can critically examine and rationally discuss whether the envisioned alternative can be expected, in light of our theoretical and empirical knowledge, to possess more desirable working properties than the market.

7. Conclusion: CSR as Constitutional Responsibility

The principal conclusion of the constitutional economic outlook from which I have approached the CSR issue can be briefly summarized as follows. There are good reasons for the citizens of a political community to decide to adopt the rules of the game of catallaxy as their economic constitution. If that decision is made this has straightforward implications for the CSR issue, namely the implications that I have discussed under the title 'divided responsibility'. *In playing the game* of catallaxy the participants are not responsible for advancing the 'common good' directly. They are, instead, allowed to concentrate on playing the game successfully, within the constraints set by the formally enforced legal and the informally enforced ethical rules of the game. In their individual and separate capacities they are responsible for honoring these rules. It is their joint responsibility as members of the rule-

[40] In her above (fn. 36) quoted article, an article that appeared in a Review published by the Stanford Graduate School of Business, D. Doane appears to advocate the 'hard' version of CSR when she notes: "(U)ltimately, trade-offs must be made between the financial health of the company and ethical outcomes. … Currently in Western legal systems, companies have primary duty of care to their shareholders, … profit-maximization is the norm. So, companies effectively choose financial benefit over social ones" (Doane 2005: 24, 28).

choosing and -enforcing political community to see to it that rules of the game are defined and enforced that guide their individual and separate success-seeking efforts in ways that serve their common interests. In other words, they share a joint responsibility with regard to the cultivation and maintenance of an appropriate constitutional framework, a responsibility that one may call *constitutional responsibility*.

Just as individual citizens share in the constitutional responsibility for cultivating and maintaining a legal framework and an ethical climate in their respective jurisdictions that serves their common constitutional interests, corporations as 'corporate citizens' share in the constitutional responsibility for the legal and ethical rules within which they operate as well. In fact, it is this constitutional responsibility that, I suppose, can truly be called corporate social responsibility. Corporations must always operate within some jurisdiction, and to the extent that they are not perfectly mobile between jurisdictions but, because of sunk investments or other reasons, are 'attached' to a particular jurisdiction, their longer run business-prospects there will depend on the quality of the prevailing legal and ethical framework. The quality of this framework will depend, however, on how well it is cultivated and maintained by the participants in the system. It will depend, in other words, on how seriously they observe their constitutional responsibility. Meeting their constitutional responsibility requires corporations not only to conduct their own business in ways that helps to sustain the existing legal and ethical framework, but also to contribute to the public-political discourse on how the rules of the game may be modified to better serve the common interests of all participants. To help to sustain the existing legal and ethical framework by their own conduct would mean, for instance, that corporations do not only in a minimalist sense follow just the letter of the law, looking for loopholes that may be exploited, but act according to the spirit of the law, and to encourage their business partners to do likewise. To contribute to a public-political discourse that serves the common interests of all participants would mean, for instance, that corporations abstain from lobbying for special privileges and, instead, support efforts that educate the general public about the factual working properties of alternative rules and regulations in order to improve the prospects that better informed political choices will be made.

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