

## ARTICLE

# CORPORATE SOCIAL RESPONSIBILITY, SOCIAL JUSTICE, AND THE POLITICS OF DIFFERENCE: TOWARDS A PARTICIPATORY MODEL OF THE CORPORATION

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## I. INTRODUCTION

The corporation is the most dominant economic institution in the world;<sup>1</sup> it governs society in much the same way as governments do. As Joel Bakan observes, corporations “determine what we eat, what we watch, what we wear, where we work, and what we do. We are inescapably surrounded by their culture, iconography, and ideology.”<sup>2</sup> In fact, as a result of phenomena such as privatization and commercialization, corporations may now govern our lives even more than governments themselves.<sup>3</sup> Indeed, the world’s ten biggest corporations have posted revenues exceeding the Gross National Income of 168 countries in the world.<sup>4</sup> While much good has emerged from these developments, so too has much harm: Bhopal, Exxon Valdez, Enron and Worldcom are but a few examples of the costs of living in a corporate dominated world. Such illustrious abuses have given rise to public distrust, fear and anxiety. In this context, people are increasingly demanding that corporations be held responsible for their actions.<sup>5</sup> To that end, corporate social responsibility

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1. Joel Bakan, *The Corporation: The Pathological Pursuit of Profit and Power* (Toronto: Penguin Canada, 2004), at 5.
2. *Ibid* at 6.
3. *Ibid* at 25; Young, *infra* note 12 at 67.
4. Subhabrata Bobby Banerjee, *Corporate Social Responsibility: The Good, The Bad and the Ugly* (Cheltenham, UK: Edward Elgar, 2007), at 173.
5. *Ibid* at 25.

has been advanced as a solution to such concerns.<sup>6</sup> Companies, it is argued, are accountable to society at large, in addition to their shareholders. Yet, despite these concerns, the corporation remains a perilous combination of power and unaccountability.<sup>7</sup>

The problem is that the notion of corporate social responsibility, under the current corporate law framework, is an oxymoron.<sup>8</sup> The corporation's legal mandate is to pursue its own best interests and thus to maximize the wealth of its shareholders.<sup>9</sup> Hence, corporate social responsibility is illegal and impossible to the extent that it undermines a company's bottom line. Acting out of social concern can only be justified insofar as it tends to bolster the corporation's interests.<sup>10</sup> It is not surprising then that critics have characterized corporate social responsibility as an "ideological movement" designed to legitimize the power of transnational corporations.<sup>11</sup>

In order to foster a world in which corporate decision-makers act genuinely in the interest of individuals and groups other than shareholders, the institutional nature of the corporate form must be reconceptualised. But if corporate social responsibility is an ineffective tool for evaluating corporate decisions, actions and outcomes, where should we turn? I shall argue that, as a dominant social institution, the corporation ought to be held to the same theoretical standard as other social institutions: namely, to the standard of social justice.

To evaluate the corporation in this light, I will draw on Iris Marion Young's seminal reflective discourse on social justice, *Justice and the Politics of Difference*.<sup>12</sup> Young's work provides a useful basis for challenging and changing the theoretical underpinnings of corporate law. Specifically, this paper assesses the corporation through the lens of Young's definition of injustice as domination and oppression. As I will demonstrate, the current corporate structure in North America functions in an ideological manner, which serves to generate and reinforce oppression and domination in the world. In order to surmount corporate injustice, I propose a new model of the corporation. Ultimately, my thesis is that corporate law should provide the means through which the distinct voices and perspectives of those oppressed or disadvantaged by the corporation may be recognized and represented. While my project is first and foremost a theoretical undertaking, I will offer some modest suggestions for bringing my plan to fruition.

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6. *Ibid* at 27; William W Bratton, "Never Trust a Corporation" (2002) 70 *Geo Wash L Rev* 867, at 868 ("the main issues in the current debate were identified no later than 1932 when the *Harvard Law Review* published the famous Berle-Dodd debate"); Erwin Merrick Dodd Jr's "For Whom Are Corporate Managers Trustees?" (1932) 45 *Harv L Rev* 1145; Adolf A Berle Jr, "For Whom Corporate Managers Are Trustees: A Note" (1932) 45 *Harv L Rev* 1365.

7. Bakan, *supra* note 1 at 28.

8. *Ibid* at 109; William T Allen, "Our Schizophrenic Conception of the Business Corporation" (1992) 14 *Cardozo L Rev* 261.

9. *Dodge v. Ford Motor Co*, 170 N.W. 668 (Mich. 1919) ("A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes"); *Canada Business Corporations Act*, *infra* note 24, s. 122(1)(a) ("Every director and officer of a corporation in exercising their powers and discharging their duties shall (a) act honestly and in good faith with a view to the best interests of the corporation").

10. Bakan, *supra* note 1 at 33-59; Milton Friedman, "The Social Responsibility of Business is to Increase its Profits", *The New York Times Magazine* (September 13, 1970).

11. Banerjee, *supra* note 3 at 147.

12. Iris Marion Young, *Justice and the Politics of Difference* (Princeton, Princeton University Press, 1990).

## II. WHY SOCIAL JUSTICE?

Social justice is the primary focus of political philosophy,<sup>13</sup> not of corporate law theory. Yet, the goal of social justice is to arrange society and its institutions in a way that facilitates, sustains and strengthens the values implicit in the good life.<sup>14</sup> Thus, any social institution can and should be subjected to the standard of social justice.

One might object that the corporation is not a social institution; rather, it is a private institution. For instance, Milton Friedman argues that the corporation is the private property of its owners, the shareholders. As such, the business of the corporation can only legally and ethically be conducted in accordance with the interests of those owners. The best interests of the shareholders, moreover, are generally equated with making as much money as is legally possible.<sup>15</sup> However, this narrow conception of the corporation neglects the institution's historical roots.

Historically, corporations were conceived of as public institutions with public purposes. Corporate activity in Canada was insignificant prior to the mid-1700s. During the last half of the eighteenth century, the government viewed incorporation as a political device. By 1800, however, company law started to facilitate incorporation.<sup>16</sup> By 1850, uniform patterns of incorporation had developed. As F.E. Labrie and E.E. Palmer explain, “[t]he incorporation of companies during this period was carried on in three ways: by the creation of individual companies, by special Acts of the English Parliament or the Canadian government, or under a general incorporation act passed to facilitate the incorporation of companies in certain industries.”<sup>17</sup> In all cases, determinations as to the specific powers of companies were left to Canadian legislation.<sup>18</sup>

These companies were largely seen to be instruments of government policy. As Labrie and Palmer state:

Most of these early Canadian corporations were established for quasi-public purposes, such as canals, banks, harbour companies and railroads. These often required the power to expropriate land and, therefore, lengthy provisions were necessary to protect the public interest. In addition, the average statute would contain sections regulating the rights of the corporation to expropriate property, permitting eventual transfer of the business of the company to the government, and set out the method of managing the concerns.<sup>19</sup>

The authors continue, explaining that, “the acts would usually require the making of annual statements to the legislature, their contents being set out in detail.”<sup>20</sup> The rationale underlying these onerous restrictions is clear: since corporations were established and supported by government, the public, not the shareholders, were supreme.

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13. *Ibid* at 3.

14. *Ibid* at 37.

15. Friedman, *supra* note 10.

16. FE LaBrie and EE Palmer, “The Pre-Confederation History of Corporations in Canada”, in Jacob S Ziegel ed, *Studies in Canadian Company Law* (Toronto: Butterworths, 1967) at 36-42.

17. *Ibid* at 42.

18. *Ibid* at 43.

19. *Ibid* at 44.

20. *Ibid* at 48.

Similar views were prevalent in the United States when the corporation was a fledgling institution. Morton Horowitz tracks the development of the early corporation.<sup>21</sup> Underlying the legal treatment of the corporation was the “grant” or “concession” theory, which saw the corporation as an artificial entity constituted by government and restricted by its charter of incorporation. Incorporation was a special privilege granted by the state in the pursuit of public purposes. The state was thus justified in limiting and confining the powers of corporations.<sup>22</sup> These constraints were achieved through the use of special charters of incorporation, passed by state legislatures. However, between 1850 and 1870, the grant theory was undermined by the gradual introduction of universally available incorporation.

This development created a void that prompted legal theorists in the late nineteenth century to reconceptualise the corporate form. By 1900, the natural entity theory, which assumes that the corporation is a natural being with characteristics distinct from its owners, was dominant. This shift made the radical expansion of corporate power possible. Government was no longer able to justify extraordinary regulation because corporations, as natural entities, were entitled to the same privileges as other individuals and groups.<sup>23</sup> Notwithstanding this shift, the corporation remains dependent on government to create and enable it.

The corporation is a legal institution. The existence and capacity of corporations ultimately depend on law. For example, in the federal jurisdiction in Canada, the governing law is the *Canada Business Corporations Act*.<sup>24</sup> The very existence of the corporation is made possible by section 5(1), which permits an individual who is at least eighteen years of age, of sound mind and not of bankrupt status to incorporate by signing the articles of incorporation and complying with section 7 of the Act.<sup>25</sup> On receipt of the articles, the director must generally issue a certificate of incorporation.<sup>26</sup> The effect of this certificate is that a corporation comes into existence on the date indicated in the articles of incorporation.<sup>27</sup> Once established, a firm receives its very capacities from the Act. The corporation generally enjoys the rights, powers and privileges of a natural person.<sup>28</sup> These capacities can in general be exercised throughout and outside Canada.<sup>29</sup> As mentioned in the introduction, the corporation has come to use these capacities to govern our very lives, making it a social institution, in addition to a legal institution.

It is the social aspect of the corporation that arguably offers the most compelling case for the application of social justice to an analysis of the firm. According to Young, “[r]ational reflection on justice begins in a *hearing*, in heeding a call, rather than in asserting and mastering a state of affairs, however ideal. The call to “be just” is always situated in concrete social and political practices that precede and exceed the philosopher.”<sup>30</sup> The mid-1990s saw the rise of anti-corporate activism in North America and Europe. Such activism is epitomized by the so-called “Battle in Seattle”, the massive street protests surrounding the World

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21. Morton J Horowitz, *The Transformation of American Law 1870-1960: The Crisis of Legal Orthodoxy* (New York: Oxford University Press, 1992); see also Charles Perrow, *Organizing America: Wealth, Power and the Origins of Corporate Capitalism* (Princeton: Princeton University Press, 2002).

22. *Ibid* at 72.

23. *Ibid* at 73-74.

24. RSC 1985, c. C-44.

25. *Ibid* s. 5(1).

26. *Ibid* s. 8(1).

27. *Ibid* s. 9.

28. *Ibid* s. 15(1).

29. *Ibid* ss. 15(2) & (3).

30. Young, *supra* note 12 at 5.

Trade Organization's 1999 Ministerial Conference. Rather than a single movement, this activism consists of thousands of movements that lack ideological coherence.<sup>31</sup> But there is a commonality among these and other disparate movements that stand in opposition to the corporation: all of these factions call for change.

As Young observes, “[w]hen people say a rule or practice or cultural meaning is wrong and should be changed, they are usually making a claim about social justice.”<sup>32</sup> The calls for corporations to stop, for example, supporting oppressive regimes, using child labour, or polluting, though different, are all fundamentally calls for justice. Moreover, these appeals are rooted in the view that the fundamental nature of global capitalism, in general, and corporate law, in particular, is inherently unjust. It is thus imperative that the corporation be placed under the lens of social justice. I will now examine Young's reflective account of social justice.

### III. INJUSTICE AS DOMINATION AND OPPRESSION

Rather than develop a totalizing theory, Young offers a reflective account of social justice, starting from the claims of injustice made by excluded groups. She critiques the “distributive paradigm”, typified by the work of John Rawls, which “defines social justice as the morally proper distribution of social benefits and burdens among society's members.”<sup>33</sup> A distributive focus emphasizes the equality or inequality of wealth and income, at the expense of other important aspects of social justice, including decision-making procedures, the social division of labour, and culture.<sup>34</sup> As Young explains,

The distributive paradigm implicitly assumes that social judgements are about what individual persons have, how much they have, and how that amount compares with what other persons have. This focus on possession tends to preclude thinking about what people are doing, according to what institutionalized rules, how their doings and havings are structured by institutionalized relations that constitute their positions, and how the combined effect of their doings has recursive effects on their lives.<sup>35</sup>

In other words, the distributive paradigm veils the relational and structural nature of power. It mischaracterizes power as an instrument to be held and used by a small number of powerful people and institutions because it focuses only on the limited circumstances in which power depends on the possession of certain resources. The scope of justice thus needs to be broadened beyond the realm of the distributive.<sup>36</sup>

Notwithstanding the pitfalls of the distributive paradigm, the corporate social responsibility debate has been largely framed in distributive terms. This distributive focus is unsurprising given the fact that the corporation is a vehicle for combining and accumulating capital. The shareholder wealth maximization norm is the most blatant example of this concentration. Friedman puts it nicely when he says that the only “social responsibility of

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31. Naomi Klein, “Farewell to ‘The End of History’: Organization and Vision in Anti-Corporate Movements” in *A World of Contradictions: Socialist Register* (Winnipeg: Fernwood Publishing, 2002) at 12-25.

32. Young, *supra* note 12 at 3.

33. *Ibid* at 16.

34. *Ibid* at 21-23.

35. *Ibid* at 25.

36. *Ibid* at 31-33.

business” is “to use its resources and engage in activities designed to increase its profits.”<sup>37</sup> From this perspective, a corporation that maximizes shareholder value is acting in the best interests of society.<sup>38</sup> In addition to being rationally and empirically unsubstantiated,<sup>39</sup> this assumption conflates the idea of the “good” with wealth maximization. Many critics of this model of corporate governance have also succumbed to the distributive paradigm.

For instance, the goal of Margret Blair and Lynn Stout’s “team production” model is to maximize the welfare of all corporate stakeholders, rather than the wealth of shareholders.<sup>40</sup> However, the pair defines “stakeholder” in limited, distributive terms, as those who contribute resources to corporate production.<sup>41</sup> Kent Greenfield argues for a much broader corporate purpose than Blair and Stout, proposing that the corporation ought to serve the interests of society at large.<sup>42</sup> Yet, he too maintains a distributive outlook. Greenfield argues that the best way to serve society’s broad interests is to create wealth to be distributed among those who contributed to its creation.<sup>43</sup>

The problem with delineating the debate in these terms is that injustices inherent in the corporate structure are obscured and justified. The three theories discussed above all invariably rely on a cost benefit analysis that implicitly considers a corporation to be just if the benefits it creates outweigh the costs, no matter the costs. The only difference between these models is the way in which costs and benefits are measured.

What commentators have largely failed to recognize is that, as doers and actors, people seek to promote values beyond fairness in the distribution of goods. These values can be summarized by two general goals: “(1) developing and exercising one’s capacities and expressing one’s experience ... and (2) participating in determining one’s action and the conditions of one’s action.”<sup>44</sup> Social justice, Young explains, relates to the extent to which “society contains and supports the institutional conditions necessary for the realization of these values.”<sup>45</sup> Correspondingly, there are two social conditions that characterize injustice: domination and oppression. These constraints account for matters that fall beyond the logic of distribution: decision-making procedures, division of labour and culture.<sup>46</sup>

Oppression is characterized by the institutional constraints on self-development and self-expression. Domination consists of institutional constraints on self-determination. These conditions are not mutually exclusive; though, while oppression usually entails domination, domination does not necessarily entail oppression. The reason for this asymmetrical relationship is that the hierarchical decision-making structures in society mean that most people, even relatively privileged people, are subject to domination.<sup>47</sup> To best understand the way in which domination and oppression function within the corporate context, I will explore Young’s account of these institutional constraints, and demonstrate how it helps to elucidate the injustices inherent in the corporate form.

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37. Friedman, *supra* note 10.

38. Henry Haanman and Reiner Kraakman, “The End of History for Corporate Law” (2001) 89 Geo LJ 439, at 441.

39. Greenfield, *infra* note 42 at 88.

40. Margaret M Blair & Lynn A Stout, “A Team Production Theory of Corporate Law” (1999) 85 Va L Rev 247.

41. *Ibid* at 295.

42. Kent Greenfield, “New Principles for Corporate Law” (2005) 1 Hastings Business Law Journal 87.

43. *Ibid* at 106-112.

44. Young, *supra* note 12 at 37.

45. *Ibid*.

46. *Ibid* at 37-39.

47. *Ibid*.

## IV. SOCIAL GROUPS

Young's account of oppression is rooted in her understanding of social groups. Although not all groups are oppressed, oppression happens to groups. Yet, oppression is much broader than the exercise of tyranny by a ruling group over other groups; it encompasses the systemic restraints on certain groups inherent in our economy, polity and culture. Hence, oppression does not necessarily involve the intentional exercise of power by one group over another.<sup>48</sup>

Nevertheless, oppression is relational: "for every oppressed group there is a group that is *privileged* in relation to that group."<sup>49</sup> Likewise, groups are defined relationally. According to Young "[a] social group is a collective of persons differentiated from at least one other group by cultural forms, practices, or way of life."<sup>50</sup> Groups are not constituted by shared attributes or a common nature or essence, but by similar experiences or ways of life. Through "the process of encounter", both among and within groups, group members develop an awareness of difference and a sense of group identity.<sup>51</sup> Group identities in turn, constitute individuals: "[a] person's particular sense of history, affinity, and separateness, even the person's mode of reasoning, evaluating, and expressing feeling, are constituted partly by her or his group affinities."<sup>52</sup> Even so, individuals can reject or transcend group identities.

Group identities are fluid and shifting, not static and monolithic. As Young explains, groups "come into being and fade away."<sup>53</sup> For example, although homosexual practices have existed across societies and historical periods, the social groups of gays and lesbians are products of the twentieth-century.<sup>54</sup> Additionally, group identities are multiple and cross-cutting, not unified. Blacks, for example, are not a unified group: "[l]ike other racial and ethnic groups, they are differentiated by age, gender, class, sexuality, region, and nationality, any of which in a given context may become a salient group identity."<sup>55</sup> Because group differences can cut across individual lives in a plethora of ways, a person can experience both privilege and oppression. Furthermore, different groups experience oppression in different ways.<sup>56</sup>

## V. THE FIVE FACES OF OPPRESSION

In order to capture the intrinsic nuances of group relations, Young develops a pluralistic account of oppression. Specifically, she identifies the five "faces" of oppression: exploitation, marginalization, powerlessness, cultural imperialism, and systematic violence.<sup>57</sup> Whether a group is oppressed depends on whether it is the target of one of these five conditions.<sup>58</sup> The first three categories are a function of the social division of labour, while the last two are a function of cultural meanings and relations.<sup>59</sup> While the economic factors are more

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48. *Ibid* at 40-2.

49. *Ibid* at 42.

50. *Ibid* at 43.

51. *Ibid*.

52. *Ibid* at 45.

53. *Ibid* at 47.

54. *Ibid* at 48.

55. *Ibid*.

56. *Ibid* at 42.

57. *Ibid*.

58. *Ibid* at 47 & 64.

59. *Ibid* at 58-63.

obviously applicable to corporate law, all five “faces” offer useful insights about the nature of the corporation. I will deal with each “face” in turn, making specific reference to how each functions in the institutional context of the corporation.

### A. Exploitation

The first type of oppression is exploitation, which “consists in social processes that bring about a transfer of energies from one group to another to produce unequal distributions, and in the way in which social institutions enable a few to accumulate while they constrain more”.<sup>60</sup> In a general sense, exploitation is a function of capitalist society, which occurs through transfer of the results of the labour of workers for the benefit of the capitalist class.<sup>61</sup> Thus, any employer-employee relationship is necessarily exploitative. Yet, the corporation has proven particularly adept at exploiting workers.

As Joel Bakan explains, the corporation “is programmed to exploit others for profit”.<sup>62</sup> The effectiveness of the corporate form in this regard is highlighted by the garment industry’s use of sweatshops in underdeveloped countries. As Bakan demonstrates, production calculations from the Dominican Republic emphasize the exploitative nature of sweatshops. He describes these calculations as follows:

Their purpose was to maximize the amount of profit that could be wrung out of the girls and young women who sew garments for Nike in developing-world sweatshops. Production of a shirt, to take one example, was broken down into twenty-two separate operation: five steps to cut the material, eleven steps to sew the garment, six steps to attach labels, hang tags, and put the shirt in a plastic bag, ready to be shipped. A time was allocated for each task, with units of ten thousandths of a second used for the breakdown. With all the units added together, the calculations demanded that each shirt take a maximum of 6.6 minutes to make — which translates into 8 cents’ worth of labour for a shirt Nike sells in the United States for \$22.99.<sup>63</sup>

The working conditions in these factories are equally revealing. “The typical factory”, Bakan continues,

is surrounded by barbed wire. Behind its locked doors, mainly young women workers are supervised by guards who beat and humiliate them on the slightest pretext and who fire them if a forced pregnancy test comes back positive. Each worker repeats the same action — sewing on a belt loop, stitching a sleeve — maybe two thousand times a day. They work under painfully bright lights, for twelve to fourteen hour shifts, in overheated factories, with too few bathroom breaks and restricted access to water (to refuse the need for more bathroom breaks), which is often foul and unfit for human consumption in any event... The young women ‘work to about twenty-five, at which point they’re fired because

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60. *Ibid* at 53.

61. *Ibid* at 49.

62. Bakan, *supra* note 1 at 69.

63. *Ibid* at 66.

they're used up. They're worn out. Their lives are already over. And the company has replaced them with another crop of young girls.<sup>64</sup>

The vulnerability of these workers is heightened by their age. Children as young as 10 have been found making products in these factories.<sup>65</sup>

## B. Marginalization

The second category of oppression is marginalization, where “[a] whole category of people is expelled from useful participation in social life and thus potentially subjected to severe material deprivation and even extermination”.<sup>66</sup> The marginal are those whom the labour system “cannot or will not use”.<sup>67</sup> A good example of particularly vulnerable workers in Canada is that of seasonal agricultural workers. Commonly, when these workers try to voice an opinion, farm employers either don’t call them back for the next season’s work or immediately send them back to their home countries. For example, 14 migrant workers at a greenhouse business in British Columbia were repatriated to Mexico after they applied to join a union.<sup>68</sup> Migrant workers such as these have to live with the reality that they could become one of the growing numbers of marginals in the world at the hands of corporate decision-making.

Another example arises out of the experience of three Canadian companies that, in partnership with a Chinese State enterprise, are building a railway that will connect China to Tibet. It is believed that the resulting Chinese migration to Tibet will be the final step in the cultural genocide of the Tibetan people, who are already a minority in their homeland.<sup>69</sup> A potential consequence of this venture, then, is the most severe form of marginalization: extermination.

## C. Powerlessness

The third form of oppression, powerlessness, is particular to non-professionals. As Young states, the powerless are “those over whom power is exercised without exercising it; the powerless are situated so that they take orders and rarely have the right to give them”.<sup>70</sup> People in this position have “little opportunity to develop and exercise skill”.<sup>71</sup> What is more, “[t]he powerless have little or no work autonomy, exercise little creativity or judgement in their work, have no technical expertise or authority, express themselves awkwardly, especially in public or bureaucratic settings, and do not command respect”.<sup>72</sup> An excellent example of the way in which powerlessness operates in the corporate context is that of the sweatshops discussed above.

Another scenario involves a policy of locking night workers into box stores in the United States in order to prevent robberies and employee theft. Sometimes, employees are even locked into stores without managers who have keys. One employee who had his ankle

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64. *Ibid* at 66-67.

65. Steve Boggan, “Nike Admits to Mistakes Over Child Labour” *The Independent* (October 20, 2001).

66. Young, *supra* note 12 at 53.

67. *Ibid.*

68. Vancouver Sun, “Employees want to curtail migrant workers’ right, union says” *Vancouver Sun* (October 9, 2008).

69. Tenzin Daryal, “Bombardier and Tibetan Cultural Genocide”, *The Montreal Gazette* (May 20, 2006).

70. Young, *supra* note 12 at 56.

71. *Ibid.*

72. *Ibid* at 56-57.

crushed by some heavy machinery at 3 a.m., had to wait an hour for someone to unlock the door. The employee refused to use the fire exit as employees had been told that they would lose their jobs for using the fire exit for anything but a fire. In addition to the injured, employees who finish their shifts mid way through the night are sometimes forced to wait for hours for a manager with a key to let them out.<sup>73</sup>

#### D. Cultural Imperialism

The fourth “face” of oppression, cultural imperialism, “means to experience how the dominant meanings of a society render the particular perspective of one’s own group invisible at the same time as they stereotype one’s group and mark it out as the Other”.<sup>74</sup> Consequently, the culturally imperialized develop a “double consciousness”. On the one hand, the dominant group’s experience and culture is portrayed as normal or universal. As a result, the dominant perspective is the lens through which other cultures and experiences are interpreted. By virtue of their difference, the culturally dominated are branded with an essence or nature and are represented as inferior or deviant.<sup>75</sup> On the other hand, by virtue of their status as “Others”, the culturally imperialized, recognize and develop their shared experiences and culture.<sup>76</sup>

The most obvious way in which corporate culture contributes to the phenomenon of cultural imperialism is through visual media. The television industry is accused of depicting Blacks and Arabs in unjust ways. As indicated by Young, “[m]ore often than not, Blacks are represented as criminals, hookers, maids, scheming dealers, or jiving connivers. Blacks rarely appear in roles of authority, glamour or virtue”.<sup>77</sup> Thus, corporate media portrayals of social groups can result in injustice.

#### E. Violence

The fifth and final “face” of oppression is systemic violence, which involves physical attacks, as well as “harassment, intimidation, or ridicule simply for the purpose of degrading, humiliating, or stigmatizing other group members”.<sup>78</sup> It is when violence is “directed at members of a group simply because they are members of that group” that it becomes systemic.<sup>79</sup> Corporate complicity in the use of state violence is germane to the discussion.

Under the leadership of Ken Saro-Wiwa, Nigeria’s Ogoni people began non-violent agitation against a large oil company in the early 1990s. The leaders were protesting, in particular, the ecological devastation that the oil extraction process was wreaking on their homeland. In the face of a lawsuit under the United States’ *Alien Tort Claims Act*, the company agreed to pay \$15.5M in settlement for its involvement.<sup>80</sup> Another company has likewise been accused for complicity in the murder of union members by paramilitaries at one of its plants in Colombia.<sup>81</sup>

73. Steven Greenhouse, “Workers Assail Night Lock-Ins by Wal-Mart” *The New York Times* (January 18, 2004).

74. Young, *supra* note 12 at 58-59.

75. *Ibid* at 59.

76. *Ibid* at 60.

77. *Ibid* at 20.

78. *Ibid* at 61.

79. *Ibid* at 62.

80. Ed Pilkington, “Shell pays out \$15.5M over Saro-Wiwa Killing” *The Guardian* (June 9, 2009); Oliver Balch, “Shell Shocked in the Dock” *Ethical Corporation* (June 2009).

81. Michael Blanding, “Coke: The New Nike” *The Nation* (March 24, 2005).

Corporate violence towards unions is no stranger in North America. In *U.S.W.A. v. Baron Metal Industries Inc.*,<sup>82</sup> the defendant corporation was found to have knowingly hired two gang members of Sri Lankan origins to intimidate Sri Lankan employees who supported the union in the days leading up to a certification vote. Acting on authority from management, the men threatened to kill supporters if the union won the vote.<sup>83</sup> The functioning of systemic violence extends beyond these forms of direct threats.

As per Young, “[t]he oppression of violence consists not only in direct victimization, but in the daily knowledge shared by all members of oppressed groups that they are liable to violation, solely on account of their group identity”.<sup>84</sup> Systemic violence also extends beyond direct perpetration as it can entail the encouragement, toleration and facilitation of violence against members of specific groups.<sup>85</sup> The way indirect forms of violence can manifest themselves in the corporate context is demonstrated by the debate surrounding recent amendments to the defence appropriations bill in the United States Senate.

In 2005, a woman working for the subsidiary of an American company in Iraq was allegedly drugged, raped, and locked in a storage container by seven American contractors. Upon her return to the United States, she was prevented from taking legal action by a clause in her employment contract which blocked legal action and required arbitration in the event of disputes. The woman’s lawyer maintains that this policy has encouraged a climate in which would-be attackers believe they can get away with sexual assault. In fact, as the lawyer explained, “one of the men who raped [the woman] was so confident that nothing would happen that he was lying in bed next to her the morning after”.<sup>86</sup> Clearly, corporate culture can contribute to the final “face” of oppression.

## VI. DOMINATION

As mentioned, domination is the result of systemic constraints on the ability of people to influence their own actions or the conditions of their actions.<sup>87</sup> A consequence of the hierarchical nature of decision-making in our society is that most people experience domination. Corporate workplaces themselves “are hierarchically structured, in that most workers in them are subordinate to the authority of others. If people have decision-making power, it is generally over others’ actions rather than their own”.<sup>88</sup> Yet, the reach of corporate domination does not end with this hierarchical structure.

By definition, domination is the opposite of social and political democracy. Bakan argues that, “[c]orporations have no capacity to value political systems, fascist or democratic, for reasons of principle or ideology. The only legitimate question for a corporation is whether a political system serves or impedes its self-interested purposes”.<sup>89</sup> Accordingly, corporations regularly do business with undemocratic governments. In fact, Human Rights Watch has demonstrated how China’s “Great Firewall”, the most sophisticated internet surveillance and censorship system in the world, is made possible only by extensive corporate

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82. [2001] OLRB Rep. 553, [2002] CLLC paras 220-010.

83. *Ibid* at paras 109-120.

84. Young, *supra* note 12 at 62.

85. *Ibid* at 63.

86. Chris McGreal, “Rape case to force US defence firms into the open” *The Guardian* (October 15, 2009).

87. Young, *supra* note 12 at 78.

88. *Ibid*.

89. Bakan, *supra* note 1 at 88.

participation. The companies involved actually block terms that they anticipate the Chinese government would want censored. One company has released the identity of private users to the Chinese government.<sup>90</sup>

Additionally, corporations make great efforts to influence the democratic process. In fact, the corporate strategy of political lobbying has been in use for more than 200 years.<sup>91</sup> Today, all major corporations and many industry groups, think tanks and lobby organizations have offices in Washington, DC.<sup>92</sup> The goal of corporate lobbying, according to Bakan, is to pressure government “to avoid regulation” or “to repeal, weaken, or narrow the scope of existing regulations.”<sup>93</sup> The corporate financing of elections in the United States serves the same function. For example, in 1999, the chairman of the Republican Party, asked one CEO for a \$250,000 donation, explaining that, “we must keep the lines of communication open if we want to keep passing legislation that will benefit your industry.”<sup>94</sup> In addition to political activity, corporate economic activity is itself is a source of domination.

As Bakan explains, because the corporation is designed to pursue its own self-interest, regardless of the consequences, “it is compelled to cause harm when the benefits of doing so outweigh the costs.”<sup>95</sup> This incentive to externalize costs — that is, to shift the costs of corporate activity onto outside parties — means that people who are not engaged in corporate activity are subject to the consequences of corporate decision-making. The people of Bhopal, India became deeply aware of the way in which people experience this form of corporate domination.

On the night December 2, 1984, a catastrophic gas leak occurred at the Union Carbide Corporation (UCC) pesticide plant in Bhopal. Approximately 7,000 to 10,000 people died in the first few days.<sup>96</sup> Roughly 15,000 died between 1985 and 2003. At least 120,000 people are suffering chronic and debilitating illness today.<sup>97</sup> The contamination site has never been cleaned up; it continues to pollute the groundwater used by those who live around the plant.<sup>98</sup> In addition to the health consequences, the leak has “radically altered the social fabric and economics of everyday life, and entrenched existing poverty and social disempowerment.”<sup>99</sup> Amnesty International has discussed UCC’s actions in the gas leak.

According to Amnesty International, the company chose to bulk store methyl isocyanate (MIC), even though the plant did not have the safety mechanisms to deal with accidents. Management was aware of safety problems at Bhopal prior to the chemical leak. Moreover, beginning in 1983, the company introduced a series of cost-cutting measures that further undermined the plant’s safety.<sup>100</sup>

Corporate domination also operates in more covert ways. Young makes clear that people can experience domination “as clients and consumers subject to rules they have had no part in making, which are designed largely to convenience the provider or agency rather

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90. Human Rights Watch, “China: Internet Companies Aid Censorship” (August, 10, 2006).

91. Banerjee, *supra* note 2 at 13.

92. Bakan, *supra* note 1 at 103.

93. *Ibid* at 102.

94. Jim Nicholson (quoted in Bakan, *supra* note 1 at 105).

95. Bakan, *supra* note 1 at 61.

96. Amnesty International, “Clouds of Injustice: Bhopal Disaster 20 Years On” (2004) at 10.

97. *Ibid* at 12.

98. *Ibid* at 22.

99. *Ibid* at 18.

100. *Ibid* at 41-45.

than the consumer”.<sup>101</sup> Domination in this context can take the guise of commercialization.

According to Bakan, commercialization “involves corporations infiltrating areas of society from which, until recently, they were excluded”.<sup>102</sup> A particularly stealthy technique is the so-called “Nag Factor”, which involves targeting advertisements at children in ways that “[get] them to nag their parents to buy things”.<sup>103</sup> This advertising model “allows advertisers to bypass media savvy parents and engage the considerable persuasive power children wield over their parents”.<sup>104</sup> In employing such techniques, corporations are undermining people’s ability to freely choose what goods and services they buy. In so doing, corporations are subjecting people to yet another, albeit concealed, form of domination.

## VII. DEMOCRACY AS A CONDITION OF SOCIAL JUSTICE

Implicit in the call to eliminate domination and oppression is the need for democracy. Young thus maintains that, “[d]emocracy is both an element and a condition of social justice”.<sup>105</sup> Democratic decision-making is the most effective way in which to undermine domination in that it allows people to voice their own interests and experiences.<sup>106</sup> Allowing people to participate in democratic processes in turn promotes justice “because it is most likely to introduce standards of justice into decision making processes and because it maximizes social knowledge and perspectives that contribute to reasoning about policy”, as Young explains.<sup>107</sup>

## VIII. THE LOGIC OF IDENTITY

Democracy cannot, however, be based on notions such as the ideal of impartiality, the general interest, the civic public, the common good or the community. These concepts express “a logic of identity that seeks to reduce difference to unity”.<sup>108</sup> In effect, this thought pattern “denies or represses difference”.<sup>109</sup> Indeed, “the logic of identity shoves difference into dichotomous hierarchical oppositions: essence/accident, good/bad, normal/deviant”.<sup>110</sup> In this way, unity is achieved only “at the expense of an expelled”.<sup>111</sup> As Young states, “a desire for political unity will suppress difference, and tend to exclude some voices and perspectives from the public, because their greater privilege and dominant positions allows some groups to articulate the ‘common good’ in terms influenced by their particular perspective and interests”.<sup>112</sup> Corporate law theory has not been immune to this exclusionary logic.

Indeed, the shareholder primacy model of the corporation explicitly excludes every point of view, save that of the shareholders. Milton Friedman puts it best:

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101. Young, *supra* note 12 at 78.

102. Bakan, *supra* note 1 at 118.

103. *Ibid* at 119.

104. *Ibid* at 122.

105. Young, *supra* note 12 at 91.

106. *Ibid* at 92.

107. *Ibid* at 93.

108. *Ibid* at 97.

109. *Ibid* at 98.

110. *Ibid* at 99.

111. *Ibid*.

112. *Ibid* at 115.

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.<sup>113</sup>

Further, Friedman casts the corporation as a value neutral institution. “Only people can have responsibilities”, he remarks.<sup>114</sup> Variations of this discourse, which justify shareholder primacy in terms of social good, rather than impartiality, prove equally problematic.

Henry Hansmann and Reinier Kraakman assume that serving the interests of shareholders serves the interests of society as a whole.<sup>115</sup> As we have seen, notions of the general interest espouse the logic of identity. But the logic underlying Hansmann and Kraakman’s shareholder-oriented model is more subtle. As indicated by Young, “[i]deas function ideologically... when they represent the institutional context in which they arise as natural or necessary”.<sup>116</sup> From this perspective, Hansmann and Kraakman’s work functions ideologically. The authors speak of the “broad normative consensus”, the “triumph of the shareholder-oriented model” and the resulting “end of history for corporate law”.<sup>117</sup> The problem with such assertions, per Young, is that “they... forestall criticism of relations of domination and oppression and obscure possible more emancipatory and social arrangements”.<sup>118</sup> In so doing, the authors reinforce the exclusionary tendencies of the logic inherent in the shareholder maximization norm.

Similarly, stakeholder models of the firm, which broaden the focus of corporate law theory to include corporate actors other than shareholders, replicate this logic. Margaret Blair and Lynn Stout argue that the directors of publicly traded companies should maximize the joint interests of those stakeholders who contribute to the corporation’s production.<sup>119</sup> Edward Freeman presents a broader notion of stakeholders, which includes all those affected by corporate action.<sup>120</sup> Unlike Young, who seeks to represent the interests of social groups, stakeholder theorists try to promote the perspective of interest groups. Young defines interest groups as “any aggregate or association of persons who seek a particular goal, or desire the same policy, or are similarly situated with respect to some social effect”.<sup>121</sup> Corporate stakeholder groups are interest groups insofar as they are constituted vis-à-vis the corporation. Accordingly, even socially conscious shareholders, who some view as potential ve-

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113. Friedman, *supra* note 10; while other scholars formulate the shareholder primacy model in terms of a nexus of contracts, rather than in terms of the property of shareholders, the model continues to place a duty on corporate managers to act in the best interests of shareholders: see Steven M Bainsbridge, “In Defence of the Shareholder Wealth Maximization Norm” (1993) 50 Wash & Lee L Rev 1423 (arguing that the justification for the shareholder wealth maximization norm ought to come from a contractarian approach to corporate governance); approaches which try to use existing corporate law mechanisms as tools for change prove equally problematic: Cynthia A Williams, “The Securities and Exchange Commission and Corporate Social Transparency” (1999) 12 Harv L Rev 1199 (arguing that the SEC ought to expand social disclosure of public companies); Kelley Y Testy, “Linking Progressive Corporate Law with Progressive Social Movements” (2002) 76 Tul L Rev 1227 at 1236 (arguing that corporate accountability models, such as that of Williams, ultimately maintain a shareholder focus).

114. *Ibid.*

115. Haansman and Kraakman, *supra* note 38 at 441.

116. Young, *supra* note 12 at 74.

117. Haansman and Kraakman, *supra* note 38.

118. Young, *supra* note 12 at 74; Banjeree, *supra* note 4 at 9 (“God did not come down to earth to tell us that corporations should maximize shareholder value”).

119. Blair & Stout, *supra* note 40.

120. Edward Freeman, *Strategic Management: A Stakeholder Approach* (Boston: Pitman, 1984).

121. Young, *supra* note 12 at 186.

hicles for facilitating the debate on human rights issues in the corporate context,<sup>122</sup> represent a corporate interest group. The problem is that interest group bargaining forces factions to compete with each other for power and resources in order to maximize their own interests. Groups do not need to listen to the interests of others. Consequently, the process of interest group bargaining invariably excludes the claims of the needy or oppressed.<sup>123</sup>

Yet moving to a unified public realm does little in terms of evading the logic of identity. Kent Greenfield presents an approach that sees the corporation servicing the interests of society as a whole.<sup>124</sup> In using “society’s” interests as his foundational principle, Greenfield presupposes the existence of a mythical “common good”. Again, this desire for unity represents the voices and perspectives of the privileged and dominant at the expense of the oppressed.

## IX. THE HETEROGENEOUS PUBLIC AND DEMOCRATIC PARTICIPATION

The only way to truly overcome the exclusionary bias of corporate law theory is to introduce decision-making structures that recognize and affirm difference. What those, like Greenfield, who assume the existence of a common good fail to recognize is that, “[i]n a society differentiated by social groups, occupations, political positions, differences of privilege and oppression, regions, and so on, the perception of anything like a common good can only be an outcome of public interaction that expresses rather than submerges particularities.”<sup>125</sup> Rather than conceive of the public in universal terms, we need to conceptualize the public in heterogeneous ways. Per Young, the notion of the heterogeneous public entails two principles: “(a) no persons, actions, or aspects of a person’s life should be forced into privacy; and (b) no social institutions or practices should be excluded a priori from being a proper subject for public discussion and expression.”<sup>126</sup> These principles point to the need to introduce elements of participatory democracy into corporate decision-making.

Democratic participation involves recognizing and representing the experiences, perspectives and interests of oppressed or disadvantaged social groups. According to Young,

Such group representation implies institutional mechanisms and public resources supporting (1) self-organization of group members so that they achieve collective empowerment and a reflective understanding of their collective experience and interests in the context of society; (2) group analysis and group generation of policy proposals in institutionalized contexts where decision-makers are obliged to show that their deliberations have taken group perspectives into consideration; and (3) group veto power regarding specific policies that affect a group directly.<sup>127</sup>

122. See e.g. Aaron A Dhir, “Realigning the Corporate Building Blocks: Shareholder Proposals as a Vehicle for Achieving Corporate Social and Human Rights Accountability” (2006) 43 Am Bus LJ 365; and Aaron A Dhir, “The Politics of Knowledge Dissemination: Corporate Reporting, Shareholder Voice and Human Rights” (2009) 47 Osgoode Hall LJ 47.

123. Young, *supra* note 12, at 119; Banerjee, *supra* note 4 at 31 (“corporations tend to focus on stakeholders with higher levels of power, legitimacy and urgency”); Haansman and Kraakman, *supra* note 38 at 448 (“managers’ own interests will come to have disproportionate prominence in their decisionmaking, with costs to some interest groups”).

124. Greenfield, *supra* note 42; see also Abigail McWilliams and Donald S Siegel, “Corporate Social Responsibility: A Theory of the Firm” (2001) *Academy of Management Review*, 117 (similarly characterizing corporate social responsibility in terms of “social good”).

125. Young, *supra* note 12 at 119.

126. *Ibid* at 120.

127. *Ibid* at 184.

These mechanisms are designed to help root out oppression and enhance accountability.<sup>128</sup> While the goal of this paper is to shift the theoretical perspective from which we view the corporate form, it may be useful if I provide some practical suggestions for implementing this framework.

Oppressed and disadvantaged social groups need space in which they may organize and express themselves. If we are to satisfy this need, government must, first of all, formally recognize such groups. In my view, in order for a group to establish that it is in fact a disadvantaged social group, it should be required to show that it suffers from one of the five “faces” of oppression. Alternatively, where a social group is pointing to a new form of oppression, it must demonstrate that the self-development of group members is constrained in a systematic way. In addition to distinguishing among groups, government needs to facilitate the creation of independent organizations that speak on behalf of such groups. A system of government funded, though politically independent, formal caucuses could serve this function.<sup>129</sup> Formal caucuses should be responsible for developing group analysis and policy proposals.

In order to ensure that these caucuses are heard, corporate law should require that corporate decision-makers consider caucus analysis and policy proposals. The law should also mandate that corporations demonstrate that their deliberations have considered group perspectives. To that end, “the best interests of the corporation” principle needs to be modified and the “business judgement” rule needs to be scrapped.

The Supreme Court of Canada’s *BCE Inc. v. 1976 Debentureholders*<sup>130</sup> decision illuminates this point. In assessing a claim for relief under the *Canada Business Corporations Act* oppression remedy,<sup>131</sup> the court stated: “[i]n considering what is in the best interests of the corporation, directors *may* look to the interests of, *inter alia*, shareholders, employees, creditors, consumers, governments and the environment to inform their decisions.”<sup>132</sup> According to the court, “[t]his is what we mean when we speak of a director being required to act in the best interests of the corporation viewed as a good corporate citizen.”<sup>133</sup> Using these comments as a spring board, the “best interests of the corporation” principle should be modified further.

In acting in the best interests of the corporation, directors *must* be obliged to consider the perspective of government-recognized oppressed and disadvantaged social groups who are potentially impacted by corporate decision-making. Furthermore, directors *must* illustrate that these perspectives have been considered in reaching impugned business decisions. Additionally, to give this modified fiduciary duty force, the “business judgment” rule should be eliminated.

The court in *BCE* affirmed that “[c]ourts should give appropriate deference to the business judgment of directors who take into account these ancillary interests, as reflected by the business judgment rule.”<sup>134</sup> However, in introducing the analysis and policy suggestions of

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128. *Ibid* at 185.

129. *Ibid* at 188 (Young discusses the role that group caucuses have played in decision-making bodies).

130. [2008] 3 S.C.R. 560, 2008 SCC 69 [*BCE*]; Robert E Milnes, “Acting in the Best Interests of the Corporation: To Whom is This Duty Owed by Canadian Directors? The Supreme Court of Canada in the *BCE* Case Clarifies the Duty” (2009) 24 BFLR 601.

131. *Supra* note 24, s. 241.

132. *BCE*, *supra* note 13 at para. 40 [emphasis added].

133. *Ibid* at para 66.

134. *Ibid* at para 40.

oppressed groups, the rationale for such deference, that directors are better suited to weigh competing information, weakens. Moreover, as we have seen, such deference to corporate decision-making contributes to the phenomena of oppression and domination. Even further, as part of government's obligation to facilitate group organizations, it must ensure that such organizations have the funding to litigate these decision-making matters.

Even if proposals for greater diversity on corporate boards of directors<sup>135</sup> were implemented, social justice would still require these radical changes to the way in which corporate decisions are made. As Lisa Fairfax demonstrates, the argument that director's belonging to socially oppressed and dominated groups are better situated to identify and understand the needs of these groups is misguided because there are often significant class differences at play.<sup>136</sup> In other words, directors, regardless of their backgrounds, invariably occupy a privileged social position that, at least to some extent, disassociates them from such groups. Further, a limited number of diverse directors could not possibly account for the multiplicity of perspectives encompassed by Young's model. These shortcomings highlight the importance of constraining corporate decision-making in fundamental ways.

Notwithstanding the introduction of a modified "best interests of the corporation" principle and the abolition of the "business judgement" rule, directors and officers would still be able to make decisions that adversely affect oppressed groups. Thus, it is imperative that the final mechanism, a group veto power vis-à-vis corporate decisions that affect a group directly, be implemented. Accordingly, a government system of monitoring and enforcing the group veto power is necessary. Where a corporation disregards a group veto, government needs to intervene and forbid the corporation from continuing with its actions. Where a corporation pays no heed to the government order, severe repercussions must ensue. Given that the ultimate goal of the veto is to eliminate corporate injustices, corporations that ignore the veto must be subjected to the harshest of penalties, such as charter revocation, for reasons of both denunciation and deterrence.<sup>137</sup>

Looking beyond corporate decision-making, existing corporate law mechanisms that have been touted as tools for change do not adequately address the standard of social justice. Specifically, the shareholder proposal<sup>138</sup> and mandatory social disclosure<sup>139</sup> instruments have been presented as tools for raising awareness of human rights issues vis-à-vis corporations. However, these instruments are investor-centric: they are designed to give a voice to shareholders in particular. While both tools offer methods for raising human rights issues in the corporate context,<sup>140</sup> they do not necessarily advance the perspective of those oppressed and dominated by corporate decision-making.

Consider, for example, Goldcorp Inc.'s dealings in Guatemala. In the face of criticism over the environmental and human rights impacts of the company's mining operations, share-

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135. See e.g. Bill S-206. *An Act to Establish Gender Parity on the Board of Directors of Certain Corporations, Financial Institutions and Parent Crown Corporations*, 3<sup>rd</sup> Sess, 40<sup>th</sup> Parl, 2010; formerly Bill S-238, 1<sup>st</sup> Sess, 40<sup>th</sup> Parl, 2009.

136. Lisa M Fairfax, "The Bottom Line on Board Diversity: A Cost Benefit Analysis of the Business Rationales for Diversity on Corporate Boards" (2003) *Wis L Rev* 795 at 842.

137. For a proposal for bringing corporate charter revocations back into corporate law, see Gil Yaron, *Awakening Sleeping Beauty: Reviving Lost Memories and Discourses to Revoke Corporate Charters* (LLM Thesis, University of British Columbia Faculty of Law, 2000) [unpublished].

138. See Dhir, "Realigning the Corporate Building Blocks: Shareholder Proposals as a Vehicle for Achieving Corporate Social and Human Rights Accountability", *supra* note 122.

139. See Dhir, "The Politics of Knowledge Dissemination: Corporate Reporting, Shareholder Voice and Human Rights", *supra* note 122.

140. *Ibid.*

holders brought forward a proposal asking the company to produce an independent human rights assessment of its activities in Guatemala.<sup>141</sup> In response, the company agreed to a peer reviewed assessment of its mining operations in the country.<sup>142</sup> While this move was unprecedented in Canadian history,<sup>143</sup> it still proved inadequate from the perspective of the indigenous farmers who were being impacted by the environmental and human rights consequences of the mining activities. The focus in conducting the assessment was on the perspective of the shareholders themselves, to the exclusion of the standpoint of the farmers. Indeed, the indigenous farmers were not asking for a human rights impact assessment. Rather, the farmers opposed the mine altogether.<sup>144</sup> Hence, by failing to directly give a voice to groups oppressed and dominated by corporations, shareholder-centric mechanisms can actually serve to mask the perspectives of those groups. To avoid these pitfalls, it is imperative to directly involve these groups in corporate decision-making, and empower them to resist such decision-making, to adequately address concrete calls for social justice.

## X. OBJECTIONS CONSIDERED

### A. An Incomplete Conception of Oppression

An objection to my argument is that Young's account of oppression is incomplete. A number of philosophers have criticized Young for failing to adequately account for the psychological or psychic nature of oppression. Her notion of cultural imperialism, they argue, fails to account for the fact that the oppressed often internalize negative cultural images.<sup>145</sup> However, Young notes that the five "faces" of oppression, "function as criteria for determining whether individuals and groups are oppressed, rather than as a full theory of oppression".<sup>146</sup> Thus, whether or not Young's articulation of oppression is complete, her work remains useful. For my purposes, the "faces" are best thought of as starting points for a group-based conception of the corporation.

In Young's words, the five categories offer "a means of evaluating claims that a group is oppressed, or adjudicating disputes about whether and how a group is oppressed".<sup>147</sup> I would add that the criteria provide a basis for identifying new conceptions of oppression, as evidenced by the philosophers who have pointed to the omission of psychic oppression in Young's work. Moreover, it must be remembered that the starting point of Young's account is the call of the oppressed themselves. The democratic mechanisms discussed above will enable oppressed groups to articulate new forms of oppression.

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141. "Produce a human rights impact assessment" in Shareholder Association for Research and Education (SHARE), "Shareholder Resolution Database", online: <<http://www.share.ca/en/node/1461>> [SHARE, Goldcorp proposal].

142. Goldcorp, "Marlin Human Rights Impact Assessment of Marlin Mine", online: <<http://www.goldcorp.com/operations/marlin/hria/>>.

143. Dhir, "The Politics of Knowledge Dissemination: Corporate Reporting, Shareholder Voice and Human Rights", *supra* note 122 at 73.

144. Ecojustice, "Goldcorp's Guatemala Shenanigans" (2 February 2007), online: <<http://www.ecojustice.ca/media-centre/press-clips/goldcorps-guatemala-shenanigans>>.

145. Amy Allen, "Power and the Politics of Difference: Oppression, Empowerment, and Transnational Justice", (2008) 23 *Hypatia* 156, at 162; TL Zutlevics, "Towards a Theory of Oppression", (2002) 15 *Ratio* 80, at 82; and Nancy Fraser, *Justice Interruptus: Critical Reflections on the "Postsocialist" Condition* (New York: Routledge, 1997).

146. Young, *supra* note 12 at 64.

147. *Ibid.*

## B. Difficulties with Moving to Transnational Justice

In the epilogue to *Justice and the Politics of Difference*, Young acknowledges that, “[t]he five criteria of oppression that I have developed may be useful starting points for asking what oppression means in Asian, Latin America, or Africa, but serious revision of some of these criteria, or even their wholesale replacement, may be required”.<sup>148</sup> Indeed, Amy Allen argues that the dyadic model of oppressor/oppressed that Young rejects for societies such as the United States may be appropriate for countries such as Afghanistan under Taliban rule where there is an, “identifiable oppressor group capable of imposing its will on an oppressed group”.<sup>149</sup> What is more, Allen maintains that Young, “did not herself work out an account of the complex relationship between state domination and the other forms of domination and oppression with which the former are intertwined”.<sup>150</sup> Nevertheless, she agrees that Young’s work provides a helpful starting point for describing oppression and domination in the international context. Again, for my purposes, Young’s work is satisfactory because, in the context of the democratic framework argued for, it offers a springboard for identifying and recognizing oppressed groups and developing group-based analysis and policy.<sup>151</sup>

## C. Violating the Principle of Corporate Neutrality

Since my model of the corporation clearly makes moral and political claims, it will undoubtedly be accused of violating the principle of corporate neutrality presupposed by the shareholder-oriented model. Such an objection is dubious. The corporate form is partial because value-neutrality is impossible. All substantive positions are historically and socially situated.<sup>152</sup> The shareholder primacy model is no different than any other theoretical model in this regard. As we have seen, the model elevates the perspective of the shareholders at the expense of all others. Moreover, the model valorises material wealth above everything. Propounding the virtues of maximizing shareholder wealth hardly seems value-neutral. Thus, in presenting this perspective as impartial, its proponents justify the suppression of other perspectives. To avoid this pitfall, a theory of the corporation ought to overtly engage with moral and political issues.

## D. Inefficiencies, Costs and Impracticalities

The last objection is as follows: making corporate decision-makers beholden to the interests of oppressed and disadvantaged groups will make corporations inefficient, costly and, ultimately, unworkable. Managers do not have the time or resources to consider the claims and interests of all groups impacted by their decisions. Moreover, offering these groups a veto power over corporate decisions will result in the loss of profit-generating opportunities for companies. Accordingly, the wealth generating ability of companies will be compromised. The harm created by these developments will result in net damage to society.

148. *Ibid* at 258.

149. Amy Allen, *supra* note 145 at 168.

150. *Ibid* at 170.

151. While beyond the scope of this paper, I would like to note that beyond the conceptual difficulties discussed here, a practical difficulty for any alternative vision of the corporation is the issue of how to mandate such a vision on an international level. For a solution, see, for example, Steven R Ratner, “Corporations and Human Rights: A Theory of Responsibility” (2001) 111 Yale LJ 443 (arguing that international legal duties should be imposed directly on corporations).

152. Young, *supra* note 12 at 102-104; Sandra Harding, “Rethinking Standpoint Epistemology: What is Strong Objectivity” in K Brad Wray ed., *Knowledge & Inquiry: Readings in Epistemology* (Toronto: Broadview Press, 2002).

I see two issues with this objection. First, added decision-making costs and lost opportunities do not necessarily render a corporation unprofitable. The corporation, throughout its short-lived history, has proven to be a tremendous vehicle for pooling and accumulating resources. Corporations have also proven extremely adaptive, as exhibited by the historical evolution of the firm discussed briefly above. While I agree that my model may temper corporate profits, I am unconvinced that it will preclude them.

Second, assuming that my approach would destroy the corporation, the shareholder primacy model should still not be maintained. Shareholder oriented models conflate justice and the good life with material wealth. As I have demonstrated, such an outlook tends to obscure the structural injustices inherent in the current corporate form. Corporations have proven to be an effective tool for generating wealth for society. However, if corporations are unable to generate wealth for society in socially just ways, then maybe we should imagine an institution that can.

## XI. CONCLUSION

This paper has critiqued and reconceptualised the corporation in light of Iris Marion Young's reflective discourse on social justice. The corporation ought to be held to the standard of social justice for a number of reasons. Historically, corporations were public purpose institutions; today, they remain legal institutions in that they rely on legislation to create and enable them. Under this legal framework, corporations have come to govern virtually every aspect of our daily lives, despite the fact that they lack the democratic accountability of governments. This fusion of power and unaccountability has given rise to claims that the corporate form is inherently unjust and should be changed.

However, to date, a thorough account of corporate injustice has not been offered, largely because of the distributive focus of the corporate social responsibility debate. This emphasis has obscured and justified the two relational and structural social conditions that characterize injustice: oppression and domination. To correct this omission, I have, following Young, developed a conception of the corporation rooted in the institution's inbuilt tendency to create and strengthen injustices. In the relentless pursuit of profit, the corporation often gives rise to and facilitates the five "faces" of oppression: exploitation, marginalization, powerlessness, cultural imperialism and systemic violence. Corporations are, likewise, a source of domination.

The corporation's propensity to cause and reinforce domination and oppression highlight the need to build democratic decision-making structures into the corporate form. To achieve this goal, corporate law theory needs to abandon its desire for political unity, which tends to exclude the perspectives of the oppressed and disadvantaged. Rather, a theory of the firm ought to be based on a heterogeneous notion of the public which gives voice to those who are systematically excluded from corporate decision-making. Hence, corporate law ought to provide the means through which the distinct voices and perspectives of those who are oppressed and disadvantaged by the corporation may be recognized and represented. If the corporation proves unable to serve this goal in addition to its primary goal of accumulating and generating wealth then it may be time to conceptualize an institution that can.