Saving for Retirement without Harming Others

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ABSTACT. This paper discusses moral issues raised by defined contribution retirement plans, specifically 401(k) plans in the United States. The primary aim is to defend the claim that the federal government ought to require 401(k) plans to include a range of socially responsible investment (SRI) options. The analysis begins with the minimal assumption that corporations engage in behavior that imposes morally impermissible harms on others with sufficient regularity to warrant attention. After motivating this assumption, I argue that individual investors typically share in the responsibility for the harms imposed by corporations in which they invest, and that they therefore have a moral obligation to incorporate considerations of social responsibility into their investment decisions, when possible, in order to avoid being complicit in morally impermissible corporate behavior. I further argue that individuals are subject to substantial institutional and structural pressures that create a powerful incentive to invest in 401(k) plans, even though such plans typically lack any SRI options. In order to eliminate this pressure to commit indirect harm in the process of saving for retirement, I recommend that the federal

government require 401(k) plans to incorporate a range of SRI options, and I defend this proposal from several possible objections.

KEY WORDS: socially responsible investment; retirement savings; 401(k); mutual funds; ethical investing; defined contribution

ABBREVIATIONS: SRI: Socially responsible investment

This paper explores issues of ethical investment that arise in the context of saving for retirement. I focus in particular on stock ownership in 401(k) retirement savings plans in the United States, but my analysis also applies to other defined contribution retirement plans in the U.S., such as 403(b) and 457 plans. The extent to which the argument generalizes to cover the increasingly prevalent defined contribution retirement schemes in other countries depends on the extent to which those schemes are embedded in background economic conditions that resemble the ones I discuss in the U.S. case. Although I do not systematically assess those similarities, the features of the U.S. case on which I rely are ones that I suspect are broadly replicated.

My primary aim is to defend the claim that the U.S. government ought to require 401(k) plans to include a range of socially responsible investment (SRI) options. My analysis is not grounded in any particular moral theory or ethical

framework, but instead begins with a minimal normative assumption and explores its significance. The grounding assumption, which I explain and motivate in Section 1, is that corporations engage in morally impermissible behavior that imposes harm on others with sufficient regularity that the resulting harm warrants attention. I take this to be a very plausible assumption, at least as plausible as the assumptions necessary to support any moral theory I might instead adopt as a foundation for my analysis. In Section 2, I argue that individual investors typically share in the responsibility for the harms imposed by corporations in which they invest, and that they therefore have a moral obligation to incorporate considerations of social responsibility into their investment decisions, when possible, in order to avoid being complicit in morally impermissible corporate behavior. In Section 3, I identify three structural pressures that create a powerful incentive for individuals to save for their retirement in 401(k) plans, when such plans are available. I also point out that most 401(k) plans lack any SRI options, which means that these structural pressures induce investors to contribute indirectly to morally objectionable harms. In Section 4, I propose a federal regulation requiring that 401(k) plans incorporate a range of SRI options, in order to eliminate the pressure to commit indirect harm in the process of saving for retirement. In Section 5, I consider and respond to several possible objections to such regulation, and, in Section 6, I explore the obligations of corporations and individual 401(k) account holders that follow from my analysis.

1. Corporate harm

As indicated above, my analysis in this paper will be grounded in a basic assumption about the possibility and existence of harms committed by corporations. I will assume that some forms of corporate behavior can impose morally objectionable harms, and that actual corporations engage in such behavior on a sufficiently regular basis that the resulting harm merits attention. I readily concede that the identification of specific forms of corporate behavior as harmful can be legitimately controversial, as can the identification of specific corporate actions as instantiating these forms of behavior. In fact, the existence of such controversy will play a role in my analysis in Sections 4 and 5. I will not, however, attempt to resolve these controversies, because my argument will not depend on the claim that any particular corporation or any particular type of corporate action is morally objectionable.

Nonetheless, in order to make plausible the assumption that corporate behavior can and often does impose morally objectionable harms, and in order to give a sense of what I have in mind when I talk about harmful corporate behavior, I will briefly discuss some possible cases of corporate harm. One possible set of such cases involves the operation of what are called "sweatshops" in developing nations. Admittedly, whether or not all sweatshops are in fact harmful rather than beneficial to their employees depends on what exactly one counts as a sweatshop.

Nonetheless, it seems clear that it is at least possible for something like a sweatshop to be harmful, and thereby morally objectionable, which is to say that it is possible for a corporation to operate a manufacturing plant with sufficiently low wages and sufficiently unsafe labor conditions, perhaps including concealed hazards, such that the corporation is genuinely harming or exploiting its employees. I take that to be relatively uncontroversial, even if there is significant controversy over precisely what standards a corporation must meet in order to avoid objectionably harming its employees.[1]

Another possible category of harmful corporate behavior is environmental harm. As in the case of sweatshops, my analysis does not require settling controversial debates about what counts as morally objectionable environmental harm as opposed to morally permissible levels of pollution, nor debates about whether a particular corporation has committed objectionable environmental harm in any particular case. Rather, my assumption is that corporations can, and sometimes do, commit environmental harm. Perhaps more strongly, my analysis is motivated by the thought that corporate environmental harm is a fairly common occurrence, especially for corporations operating in developing nations. We should expect this sort of behavior because commission of environmental harms is a way of externalizing costs, thereby increasing profits, and environmental protections limiting these harms are typically very weak in such nations.[2]

It is, I think, easy to generate additional examples here. There is, for instance, the possibility of harm done to customers that stems from false advertising or from the provision of unsafe products, as well as the possibility of indirect harm that results from corporate activities that provide financial or military support to oppressive regimes which themselves directly harm their citizens. In each such case, there is room for debate over where to draw the line between morally permissible and morally impermissible corporate behavior. As I have been emphasizing, however, what matters for the argument of this paper is neither where to draw these lines nor whether any particular action comes down on the wrong side of the appropriate line. Instead, my analysis requires only the minimal claim that, for any plausible view of where to draw the relevant lines, at least some corporations engage in morally impermissible behavior with sufficient regularity that the relevant harms are worth worrying about. I see only two ways to deny this assumption. Either one could endorse an implausibly nihilistic or amoral account of interaction on which virtually no harms to others count as morally impermissible, or one could commit to a naïve, utopian view of corporations on which they always confine their behavior to the bounds of morality. I suspect that very few will be willing or able to adopt either of these alternatives sincerely, and will instead endorse the assumption I take as a starting point.

2. Individual responsibility

As others have recognized, actions performed by representatives of corporations are in an important sense done on behalf of the owners of the corporation.[3] In most cases it would, of course, be inappropriate to treat a stockholder as fully responsible for all actions done on his or her behalf, and it is important to acknowledge the responsibility of the individual actor or decision maker as well as the responsibility of the corporation on whose behalf the individual acts. Nonetheless, investing in the stock of a corporation puts one at risk of indirectly committing harm through potentially harmful corporate activities. After all, stockholders invest in corporations with the intention of benefitting from corporate profits. Insofar as the corporation engages in harmful actions that contribute to corporate profits, and especially when those actions are motivated by the goal of maximizing profits, it is therefore appropriate to hold the investor partially responsible for those harms.

To be clear, I am not asserting that investors should typically be punished for crimes committed by corporations in which they invest. Instead, I am making the more modest claim that when corporations engage in morally objectionable behavior, the resulting moral guilt threatens to stain shareholders. In other words, being a shareholder in a corporation that immorally harms others involves oneself in the commission of those harms.

It might be natural to think that shareholders are largely ignorant of corporate harms, and that this ignorance shields them from any guilt or responsibility. But such ignorance can itself be culpable or negligent, and if so it is not an effective shield. In assessing the significance of shareholder ignorance, the important point is that licensing me to act on your behalf gives you an obligation to make at least some effort to ensure that I do not act immorally as your agent. Failure to do this makes you complicit in whatever harms I might commit in your name, even if you are unaware of the particular actions I take to achieve the goal you have set for me. This is particularly true when there is good reason to suspect that the most effective way for me to achieve the assigned goal involves immoral or harmful activities.

Given the substantial media attention in the past several decades to immoral corporate behavior, particularly in the form of inadequate labor standards and excessively toxic pollution, typical investors cannot legitimately claim to be surprised at the possibility that the corporations in which they invest might impose morally impermissible harms on others. An investor who makes an effort to avoid investing in companies that behave in this way may be able to claim innocence-preserving ignorance of unanticipated, and perhaps unforeseeable, corporate harms. On the other hand, and this is the important point, when one fails to make any such effort, the resulting ignorance will not ensure innocence. What matters is what one should have known.

One might, at this point, object that it is exceedingly difficult for individual investors to research potential investments and avoid investing in corporations that seem likely to engage in morally impermissible behavior on their behalf. This difficulty might seem to limit the extent to which one can reasonably assert that an investor should have known about the morally objectionable activities of the corporations in which she invests, thereby allowing the investor to claim innocence through ignorance. This line of thought is undermined, however, by the existence of SRI funds, and especially by the rapid propagation of such funds over the past several decades.[4] Insofar as these funds are managed in such a way as to avoid investing in corporations that impose morally impermissible harms on others, SRI funds provide investors with an opportunity to shield themselves from complicity in morally objectionable corporate behavior without themselves having to engage in the prohibitively time-consuming and perhaps expensive research required to assess corporate behavior. And, although I have characterized this as an opportunity, the "cost" of such an opportunity is that investors no longer have the option of justifying socially indiscriminate investment with the claim that there is no practical alternative.

Of course, one might wonder whether SRI funds actually do accomplish the goal of avoiding commission of the indirect harms of stock ownership. As it stands, such funds employ a wide variety of strategies. The most common of these include negative screens that rule out investment in certain categories of

companies, positive screens that seek out investment in companies engaged in what are deemed socially desirable activities, shareholder activism in which the fund seeks to modify the behavior of its underlying investments, and a "best in class" approach in which a diversified portfolio is constructed out of corporations that are judged to be more socially responsible than others in their business sector.[5] No doubt, some of these strategies are more effective at minimizing the indirect harms of stock ownership than others. For instance, de Colle and York (2009) convincingly argue that excessive reliance on broad negative screens deployed against industry sectors can often lead to both false negatives, which rule out investment in relatively harmless corporations, and false positives, which permit investment in harmful ones.[6] Nonetheless, there is good reason to believe that SRI funds can be, and sometimes are, designed in ways that actually do minimize the indirect harms of stock ownership, and also that continued innovation in the techniques used by such mutual funds, together with the ongoing growth in their market share, will increase their effectiveness.[7] Most importantly, even if SRI funds do not perfectly shield investors from the commission of indirect harms, they certainly provide better protection than funds that make no effort to evaluate their underlying investments by anything other than financial criteria. As a result, acknowledgement of the fact that corporations can and sometimes do impose significant morally impermissible harms on others leads to the conclusion that investors have a moral obligation to invest in SRI

funds, or else to engage in other investment strategies that are designed to avoid investing in corporations that commit such harms.

One might, perhaps, concede some minimal moral obligation to invest in SRI funds, and yet insist that this obligation is outweighed by legitimate competing financial considerations. If SRI investments are less profitable than socially indiscriminate investments, especially if they are significantly less profitable, then this may seem like a plausible view. As it turns out, however, recent studies indicate that SRI funds perform on par with, or perhaps even better than, counterpart funds lacking social criteria.[8] Moreover, it is important to recognize that the weight of the obligation to invest in SRI funds derives from the severity of the harmful corporate behavior in which one is thereby avoiding complicity. As the examples in Section 1 suggest, the relevant harms are in many cases quite significant, which indicates that the moral obligation to avoid complicity will be overridden only by a substantial difference in performance between SRI funds and socially indiscriminate ones.

3. 401(k) plans

I have, to this point, argued that the possibility that socially indiscriminate investment will make one complicit in the morally impermissible imposition of harm generates an obligation for individual investors to take advantage of SRI options. On this analysis, 401(k) plans present a problem because such plans tend

to offer a limited range of possible investments, and this typically does not include an adequate selection of SRI options: as of 2007, only 19 percent of such plans included even a single SRI fund as an investment option (Social Investment Forum, 2007).

What makes this problem significant is the fact that there are several powerful structural forces that strongly encourage participation in 401(k) plans. To begin with, the basic structure of the economy in the United States leaves individuals responsible for amassing significant savings prior to retirement. Programs such as Social Security and Medicare offer substantial assistance to those over the age of retirement, but the network of social support for retirees in the U.S. is intentionally and explicitly designed to meet basic needs, not to provide full financial support in retirement. The expectation is that most individuals will have additional financial resources to provide for themselves when they leave the workforce.

This general fact about the structure of the American economy creates significant incentive to save for one's own retirement, incentive which is channeled by both government and corporate policies involving 401(k) plans. As a matter of public policy, 401(k) plans are promoted by giving them a tax-advantaged status, which can lead to substantial increases in effective savings. In addition, corporations frequently provide matching contributions to 401(k) plans, in many cases doubling the savings impact of an employee's own contribution.[9]

From a purely economic standpoint, it is almost always a good idea to contribute enough to one's 401(k) plan to secure the greatest possible matching contribution. Failure to do so is effectively giving money away.

Overall, then, there are three significant factors that provide substantial incentive for employees to participate in 401(k) plans: the relatively limited public provision of support for retirees, the tax-advantaged status of the plans, and the availability of matching contributions from employers. The combined effect of these factors makes it reasonable to conclude that the basic institutional structure in the United States assumes that individuals will save privately for their retirement and strongly encourages them to do so through 401(k) plans. The fact that these institutional pressures exist is borne out by the vast, and rapidly increasing, participation in such programs. In the ten year period from 1999 to 2009, assets held in 401(k) plans rose 55 percent, from $1.8 trillion to $2.8 trillion, which constituted 25% of all retirement savings in the U.S. at the end of 2009 (Brady et al., 2010). As of 2007, the most recent Survey of Consumer Finances, 39 percent of all workers were covered by 401(k) plans, with nearly 80 percent of eligible workers participating (Center for Retirement Research at Boston College, 2009).

Moreover, insofar as the funds held in 401(k) accounts are expected to provide for retirement support, most account holders will need to adopt a long-term perspective in evaluating possible investments. The conventional wisdom of

financial management dictates that maximizing long-term expected savings requires investing in stock. As a result, the pressure to support one's own retirement through a 401(k) plan amounts to pressure to own stock in one's 401(k) account. This, too, is borne out by the fact that over half of the money held in 401(k) plans is invested in mutual funds, primarily equity-based mutual funds (Brady et al., 2010).

Together with the lack of SRI options in 401(k) plans, these structural pressures create a system in which exposing oneself to commission of the indirect harms of stock ownership is the norm. If we acknowledge that corporations can and do engage in significant morally impermissible behavior, this is a troubling situation.

4. Federal regulation of 401(k) plans

In order to eliminate the pressure towards complicity in morally objectionable corporate behavior, I contend that the federal government ought to require 401(k) plans to include a range of SRI options. Before defending the appropriateness of federal regulation, let me explain why a single SRI option is inadequate and a range of such options is necessary. There are two reasons for this. First, as indicated earlier, SRI funds employ a variety of strategies for avoiding or reducing the indirect harms of stock ownership. Moreover, different funds embody competing conceptions of those harms. Some focus primarily on one

particular area, such as environmental harm, labor relations, human rights, or animal welfare. Most incorporate a range of possible sources of harm, but differ from one another in how they understand these harms, or what they count as morally impermissible harm. The upshot of all this variety is that offering a range of SRI vehicles gives account holders the opportunity to choose both between competing conceptions of the morally impermissible corporate harm that needs to be avoided and between competing strategies for avoiding them. Such choice creates a market in which investment management companies compete to develop the most appealing and effective SRI options, and it gives investors the opportunity to invest in ways that reflect their own divergent views of how to understand and avoid the indirect harms of stock ownership.

Moreover, it seems likely that the issues involved here are ones over which there is room for reasonable disagreement. We may never settle on a single authoritative account of precisely which corporate activities generate morally impermissible harm, or threaten to generate such harm. Similarly, we may never settle on a single ideal strategy or technique for avoiding investments in these corporations or minimizing the harm they cause. As a result narrowing down to a single best SRI fund may not even be an appropriate goal.

The second reason for 401(k) plans to incorporate a range of SRI options stems from the fact that the primary aim of 401(k) account holders is to realize returns on their investments. There are many competing views of how to

accomplish this, and it is widely recognized that different investment strategies are appropriate for different individuals given their own set of goals, obligations and resources. As a result, 401(k) plans routinely offer a range of mutual funds representing a variety of investment strategies. For each such strategy there is room for a fund that adds in considerations of social responsibility. If, prior to any concern with the indirect harms of stock ownership, it made sense to offer 401(k) account holders a range of investment options, recognition of these harms makes it appropriate to include a similar range of socially responsible options.

To see why it makes sense to endorse federal regulation requiring these options, it is important to keep in mind that 401(k) plans are already a consequence of federal regulation. The primary allure of such plans lies in their tax-advantaged status, which is presumably justified by appeal to the public interest in promoting private retirement savings. But surely it is not in the public interest to promote retirement savings in a way that provides incentives to commit harm, even indirect harm. Continuing to do so makes the federal government, and by extension the citizens of the United States, complicit in the commission of these indirect harms.

Admittedly, in cases of corporate wrongdoing, investors are already one step removed from the direct imposition of harm. By allowing 401(k) plans without adequate SRI options the federal government is therefore two steps removed from the harm, and the citizens represented by elected officials who

allow 401(k) plans without adequate SRI options are three steps removed. No doubt each step in this chain lessens the significance of the harm. But it would be a mistake to suppose that any of these steps render the harm insignificant. If corporations can and do engage in morally impermissible behavior, then it is wrong for the federal government to set up a system in which individual investors face significant, perhaps overwhelming, institutional pressure to invest indiscriminately rather than shielding themselves from complicity in these corporate harms. Similarly, it is wrong for citizens to allow their representatives to create such a system or permit it to persist. It may be true that some, perhaps many, individual citizens can claim innocence out of impotence in this case, and perhaps some individual members of Congress can offer a similar defense, but such a defense cannot generalize to all elected officials or to the government as a whole.

5. Objections to the proposed regulation

Recommendations for federal regulation are inevitably subject to a variety of objections, often centered on the idea that they constitute an illegitimate government intrusion into the labor market or an inappropriate interference with individual liberties. In this case, the core objection would presumably look something like the following. Suppose, one might say, that an employer and an employee are negotiating compensation. If the employer offers a 401(k) plan

without any SRI options, and the employee agrees to the offer, on what possible grounds could the government step in and deny them the ability to make such a contract?

This sort of objection is routinely offered against labor market regulations, such as minimum wage laws, workplace safety requirements, restrictions on at-will employment contracts, and so on. Although objections along these lines may have merit in some cases, such an objection is fundamentally misplaced in the present context, given that 401(k) plans are themselves a consequence of federal regulation. Changing the rules governing such plans is not an instance of regulating an otherwise free market, but instead a case of optimizing an existing market regulation. One might argue that 401(k) plans should be eliminated altogether, perhaps in conjunction with a radical overhaul of the tax code and the system of retirement support, but within the existing framework it is simply a mistake to count the proposed revision to the rules governing 401(k) plans as an instance of government restriction of the free labor market.

Moreover, insofar as one is concerned with promoting meaningful liberty, it is important to keep in mind that the suggestion I am making is not that all 401(k) investment options be required to satisfy criteria of social responsibility. Rather, the suggestion is that all 401(k) plans be required to offer sufficient SRI options for individual account holders to reap the tax advantages of such plans without being forced to ignore considerations of social responsibility. Rather than

imposing a restriction on the liberty of the individual, this actually serves to protect such liberty. And it is not just any liberty being protected but the liberty to avoid harming others while providing effectively for one's own retirement.

In other words, the current structure of the retirement support system, including laws creating and governing 401(k) plans, drives a wedge between considerations of self-interest and morality. Requiring that 401(k) plans incorporate a range of SRI options would provide individuals with an avenue for pursuing their own interests without thereby flouting demands of morality. It should be uncontroversial that there is a substantial public interest in maintaining alignment between the demands of self-interest and the demands of morality. This may not justify government intervention aimed at forcing such alignment, but surely it counts heavily against government intervention that inhibits alignment, which is what current tax law does by advantaging 401(k) plans without ensuring the opportunity for SRI options within such plans.

Even if I am correct that requiring 401(k) plans to include a range of SRI options would not illegitimately restrict individual liberty, one might object that it would nonetheless require an inappropriate expansion of government activities. After all, a requirement that 401(k) plans include SRI options can only be implemented if there is an official mechanism for identifying particular investment options as SRI. In practice, this seems to require a government body charged with evaluating mutual funds' socially responsible credentials, and

perhaps settling on an official list of approved SRI funds for inclusion in 401(k) plans. One possible objection is that this labeling of funds as SRI (or not SRI) would constitute excessive government involvement in the investment market, even if the general idea of requiring 401(k) plans to include SRI funds is not itself objectionable.[10] Relatedly, one might worry that a government agency tasked with identifying a list of SRI funds would be subject to regulatory capture. That is to say, it might seem likely that large, powerful investment management companies would be able to gain undue influence over the decisions of such an agency.

In response, I would argue that these sorts of objections can be addressed by developing a thin, relatively mechanical test for whether a fund counts as SRI. One possibility would be to allow all funds that can demonstrate usage of any non-financial criteria to qualify as SRI. That would avoid any official judgments between competing conceptions of social responsibility. Alternatively, the procedure could be that any fund that publicly self-identifies as SRI would qualify. Either of these, or both together, would be sufficiently minimal requirements with sufficiently clear application that potentially legitimate concerns about excessive government involvement in the investment market or about regulatory capture would not arise.

These solutions do come at a cost, which is that they are likely to be overly permissive and count as SRI some funds that actually do very little to

shield investors from commission of the indirect harms of stock ownership. But I would argue that this permissiveness is not overly problematic, for two reasons. First, having a requirement to include SRI options with an overly broad conception of such options is better than having no requirement at all. It may be that some 401(k) plans would still include no funds that make any real effort to shield investors from the indirect harms of stock ownership, but it is reasonable to expect that even if there are ways for companies offering 401(k) plans to evade the spirit of the requirement some would nonetheless comply both in letter and spirit.

Second, and perhaps more importantly, even an overly permissive requirement would have valuable indirect effects. To begin with, it would give additional leverage to employees advocating for inclusion of genuinely SRI options. Compare the following two cases. In the first, suppose there is a requirement that 401(k) plans incorporate SRI alternatives, and imagine an employee complaining that even though her company's 401(k) plan technically meets the requirement, the putative SRI options it includes do not actually incorporate principles of SRI. In the second case, suppose there is no requirement for 401(k) plans to incorporate SRI options, and imagine that the same employee complains about the lack of SRI alternatives in her company's 401(k) plan. It seems clear that in the first case the employee's complaint has more rhetorical force, and is more likely to engender change.[11] Moreover, even an overly

permissive requirement would give mutual fund companies incentive to develop more funds that genuinely incorporate considerations of social responsibility, thereby allowing them to provide 401(k) plans that meet the requirement in good faith rather than evading it.[12] Overall, then, the effect of the requirement goes beyond the minimal set of changes needed to satisfy it.

An additional objection to a federal requirement that 401(k) plans provide a range of SRI options might arise out of concerns regarding the financial cost of meeting such a requirement. But given the recent proliferation of SRI funds outside of 401(k) plans, it is reasonable to expect the financial cost associated with including SRI options in 401(k) plans to be negligible. Plan administration fees might increase slightly as a result of including a wider range of total investment alternatives, but this effect could be offset by editing out some of the existing options. It might seem that the burden of the proposed requirement would fall most heavily on smaller plans with fewer pre-existing investment options, but this too could be mitigated by formulating the requirement for inclusion of SRI funds as a percentage of available investment alternatives rather than as a fixed number. Moreover, insofar as the inclusion of SRI options does generate higher plan fees, those fees could legitimately be passed along directly to only those plan members who invest in the SRI alternatives. I suspect this would be unnecessary, but if necessary it would be a way to avoid possible objections about the cost of including SRI options.

Up to this point, I have been discussing objections according to which my proposal goes too far by demanding too much federal regulation. One might instead wonder whether the regulations I am proposing are too weak, or perhaps misplaced. Rather than ensuring that investors have the ability to opt out of investing in harmful corporations, why not simply prevent corporations from engaging in harmful behavior, or require them to compensate those harmed?[13]

My response to this line of thought is twofold. First, it is important to notice that direct regulation of corporate behavior faces significant practical difficulties that do not beset a requirement that 401(k) plans incorporate SRI options. These problems arise in part from the fact that large corporations have operations that cross jurisdictional boundaries. It would require a great deal of coordination between independent legislative bodies to develop a consistent set of global regulations. The difficulty of directly regulating harmful corporate behavior is exacerbated by the fact that such direct regulation requires developing an official account of what constitutes corporate harm. Substantive agreement regarding what precisely constitutes morally impermissible corporate harm would be much more difficult to achieve than an agreement that individual investors should have the opportunity to avoid investments in corporations they regard as harmful or immoral. Moreover, SRI has the potential itself to promote corporate social responsibility, without requiring regulation that is politically more difficult to achieve, because corporations have an incentive to meet the standards set by

SRI funds (Sethi, 2005). In addition, pushing for direct regulation rather than attempting to increase the availability of SRI options may be a tactical error: an increasingly widespread practice of SRI has the potential to make politicians more receptive to recognizing the importance of corporate harm, which means that even those who see direct regulation as a long-term goal should endorse promoting the availability of SRI options.

So far I have identified several practical problems with attempting directly to prevent corporations from imposing morally impermissible harms rather than ensuring that investors have the opportunity to avoid complicity in those harms. I take these practical considerations to be compelling, but it is worth noticing that there is a theoretical difficulty as well. The problem is that in some cases it may be impossible, even in theory, to develop perfect regulations that would make SRI obsolete. As indicated in Section 1, corporate harms typically involve things like sweatshops or environmental degradation. But questions about appropriate labor standards or permissible levels of pollution are not only extremely difficult to settle, but may ultimately be subject to reasonable disagreement. If that is the case, there will be instances in which it is perfectly reasonable for one to demand the opportunity to avoid investing in corporations that engage in certain practices even though it is unreasonable to insist upon regulations that outlaw such practices.

6. Obligations of corporations and individuals

If the federal government were to adopt my proposal and require 401(k) plans to include a range of SRI options, the obligations of corporations offering such plans would be straightforward: comply with the requirement. In addition, even in the absence of such a requirement, I contend that corporations have direct obligations of their own to ensure that their 401(k) plans offer an appropriate range of SRI options. After all, a corporation has the authority to determine whether SRI options are included in its 401(k) plan, which amounts to the ability to channel the incentive generated by the retirement support system and the tax-advantaged status of 401(k) plans either in a way that generates pressure to invest indiscriminately or in a way that allows investors to shield themselves from commission of the indirect harms of stock ownership. Corporations that offer 401(k) plans without adequate SRI options are therefore complicit in the commission of those harms. Moreover, as indicated in Section 3, most corporations not only channel existing incentives but augment those incentives by contributing matching funds to their employees' 401(k) accounts. In such cases, the corporations have even greater obligations to ensure that their 401(k) plans include an adequate range of SRI options.

One might object that this analysis fails to consider the fiduciary duties companies offering 401(k) plans owe to their employees. Focusing on these obligations might lead one to conclude that the only appropriate consideration in

choosing a 401(k) plan is the extent to which it will promote the financial well-being of its participants. Insofar as there are any additional plan costs associated with incorporating SRI options, these costs might therefore seem to preclude their inclusion.

As indicated above, I am skeptical that incorporating SRI options actually would raise overall plan costs, but even if we suppose for the sake of argument that it would, we should still reject this objection. Fiduciary obligations have limits. They do not entitle trustees to commit morally impermissible harms on behalf of their beneficiaries, nor to pressure others to commit such harms. As a result, corporations cannot justify failure to include SRI options in their 401(k) plans by appealing to their fiduciary obligations.[14]

What of individual 401(k) account holders? Attention to the indirect harms of stock ownership suggests that they, like all investors, have an obligation to take advantage of SRI options when available. The force of this obligation depends to some extent on the range of SRI alternatives available, and the extent to which choosing such options involves sacrificing expected return on investment, but if one's 401(k) plan offers an adequate range of SRI options, and if such options continue to perform comparably to funds lacking social criteria, the obligation to choose SRI options will be decisive.

When 401(k) plans offer only investments that are blind to the indirect harms that can follow from stock ownership, individuals may nonetheless need to

take advantage of the employer match and tax-advantaged status that go along with 401(k) plans. In such cases, one way to attempt to compensate for potential complicity in morally objectionable behavior is to donate a portion of one's gains towards organizations that assist those harmed. In addition, in such a situation individuals have an obligation to pressure their employers to incorporate SRI options into their 401(k) plans. Given that matching contributions to 401(k) plans are an important tool employers use to recruit and retain employees, it is reasonable to think that employee lobbying could have a real impact on the plans offered.[15]

Conclusion

My analysis began with an assumption, which was that corporations engage in morally objectionable behavior with sufficient regularity that the harm imposed by such behavior warrants attention. Although I did attempt to motivate that assumption, I have not argued for it, and my analysis will admittedly have no power to sway those who sincerely reject it. I am skeptical, however, that very many fall in that category, and I doubt there is an alternative argumentative strategy that could broaden the target audience.

Taking this assumption as a starting point, I have argued that investors typically have a moral obligation to invest in ways that shield them from complicity in morally objectionable corporate behavior. I have then argued that

the level of public support for retirement in the U.S., together with the existence of tax-advantaged 401(k) retirement savings plans, creates substantial pressure to take advantage of such plans, and that this pressure is further augmented by the widespread existence of corporate matching contributions. The problem is that 401(k) plans rarely include investment options that allow investors to avoid commission of the indirect harms of stock ownership, which means that the institutional pressure to invest in 401(k) plans constitutes pressure to commit those harms. I have recommended addressing this problem by enacting a federal regulation requiring 401(k) plans to incorporate a range of SRI options, and I have defended the view that a federal regulation of this sort is an appropriate solution to the problem. I have further argued that corporations ought to provide such options regardless of whether they are federally mandated, and that individual 401(k) investors ought to advocate for them if they are unavailable, and, like all investors, take advantage of them if they are.

Throughout, my analysis has been focused on a particular category of defined contribution retirement plans in the U.S. This was necessary to develop the details of the analysis, but it does not mean that the argument has no bearing on other types of defined contribution retirement plans that are increasingly common worldwide. In the case of 401(k) plans in the U.S., it was important that the public retirement support system is designed in such a way as to incorporate an expectation that individuals will save privately to contribute to their own

support in retirement, that 401(k) plans are tax-advantaged, and that corporations frequently provide matching contributions. When all three conditions are replicated, a parallel argument should lead to comparable conclusions. Some care will be needed in cases of partial replication, although it seems likely that the second condition is sufficient for at least some imperative to adopt a government regulation requiring the relevant plans to include SRI options, although perhaps not as strong an imperative as in the 401(k) case. In any such analysis, the key will be determining the extent to which the requirement of adequate SRI options is necessary to avoid pressuring investors to be complicit in morally objectionable corporate behavior.[16]

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[1] For discussion of the issue of where to draw the line between morally acceptable and unacceptable wages and working conditions, see Maitland (1997), Arnold and Bowie (2003), and Rivoli (2003a).

[2] Consider, as a possible example, the activities of Texaco (now owned by Chevron) in Ecuador, as discussed in Kimerling (2006).

[3] For discussion of some of the issues involved in assigning responsibility for corporate behavior, and of the relationship between shareholders and corporate action, see Velasquez (2003) and Boatright (2006).

[4] For a brief history of SRI that highlights the recent growth of SRI options, see Guay et al. (2004).

[5] For discussion of these strategies, see Schueth (2003) and Sparkes and Cowton (2004).

[6] For additional discussion of false negatives, see Schwartz (2003) and Strudler (2003).

[7] For evidence of the effectiveness of SRI at not only avoiding investment in corporations that engage in harmful behavior but also inducing corporations to reduce the harms they cause, see Sethi (2005). For a theoretical explanation of how SRI funds are able to effect such changes, in spite of their relatively meager resources relative to the overall investment market, see Rivoli (2003b). In contrast, Haigh and Hazelton (2004) raise some doubts about the efficacy of SRI funds, given their size, but their discussion does not directly address Rivoli's analysis.

[8] For surveys of research on the financial performance of SRI funds, see Juravle and Lewis (2008) and Hellsten and Mallin (2006). Of course, as mutual fund prospecti are required to stipulate, past performance is not an indication of future performance. What really matters is whether there is a good reason to think that socially indiscriminate funds will substantially outperform SRI funds in the future. But the recent data on the performance of SRI funds casts doubt on the general presumption that investing in SRI funds involves a significant financial opportunity cost.

[9] As of 2010, 80% of 401(k) plans tracked by Fidelity offered an employee match, and the most common form was a 100% match of the employee's contributions, capped at 3% of the employee's salary (Fidelity Investments, 2010).

[10] Thanks to [identity withheld for anonymity] for pressing me to address this concern.

[11] This is of course not meant to suggest that complaints of the first type will always be effective. Rather, the point is that it is reasonable to expect such complaints to be more effective than those of the second type.

[12] This claim may seem to be assuming an overly progressive set of motivations for investment management companies, but even if this incentive would not arise directly it would manifest as a result of the ability of 401(k) investors to make increasingly compelling demands for genuine SRI options.

[13] Thanks to [identity withheld for anonymity] for suggesting that I address this question.

[14] For an extended development of an argument along these lines, see Pogge (1992).

[15] As indicated earlier, I believe this impact would be magnified significantly if employees were in the position of lobbying for more meaningful ways of meeting a requirement to include SRI options rather than being in the position of lobbying for the inclusion of such options in the absence of any requirement.

[16] [Acknowledgements withheld to preserve anonymity].

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