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Which Duties of Beneficence Should Agents Discharge on Behalf of Principals? (A Reflection Through Shareholder Primacy).

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Abstract

Scholars who favor shareholder primacy usually claim either that managers should not fulfill corporate duties of beneficence or that, if required to fulfill them, they should do so by going against their obligations to shareholders.

Distinguishing between structurally different types of duties of beneficence and recognizing the full force of the normative demands imposed on managers reveals that this view needs to be qualified. While it is correct to think that managers, when acting on behalf of shareholders, are not required to fulfill wide duties of charity, the scholarship has missed that managers are nevertheless required to fulfill a wide variety of narrow duties of beneficence and that the obligation to fulfill these duties arises precisely *because* they are acting on behalf of shareholders.

As such, this article refines our understanding of the duties of corporate beneficence, and helps to identify which of those duties should managers fulfill when acting on behalf of shareholders.

KEYWORDS: agency ethics, beneficence, charity, imperfect duties, duties of rescue, shareholder primacy.

Framing the Problem

There has been an important impetus in the field of business ethics to justify why companies should pursue corporate beneficence (Bowie 1999, 2010; Buchanan 1996; Dubbink 2018; Dunfee 2006; Hsieh 2004, 2017a; Lea 2004; Mansell 2013, 2015; Ohreen and Petry 2012; Strudler 2017). However, it has been typical to conceptualize initiatives concerning corporate beneficence as conflicting with the obligations that managers have towards its shareholders (Arnold 2003; Beauchamp 2019; Bowie 1999; Friedman 1970; Friedman et al. 2005; Heath 2014b; Hsieh 2009a, 2017a; Rodin 2005; Sternberg 2010; Strudler 2017). In this article, I intend to show that you do not need to go beyond the paradigm of shareholder primacy to ground a good deal of the duties of beneficence that scholars in the field expect managers to fulfill in their corporate roles.

There have been two conceptual roadblocks that have prevented scholars in the field of business ethics from recognizing this. First, there has been a lack of clarity about the different varieties of beneficence and, second, there has been a failure to recognize that the mandate to increase shareholder value, a mandate that does not have any explicit reference to morality, nevertheless imposes significant moral constraints on what managers are supposed to do on shareholders' behalf. Let me briefly expand on each.

The discussion on the topic of beneficence in the literature of business ethics has suffered from what Wittgenstein called "a one-sided diet of examples" (Wittgenstein 1967, §593.). Discussions on corporate beneficence usually focus only on one specific type of the duty of beneficence (typically the wide duty of charity). However, as I will show in this article, there are structurally different types of duties of beneficence, and each of these imposes different demands. This fact has been obscured by the assumption that all duties of beneficence are "imperfect." At the heart of the idea that a duty is imperfect is that it offers a certain amount of leeway. However, I will argue that to properly understand the demands imposed by duties of beneficence one needs to distinguish between two different notions of "leeway" that are almost always conflated: *discretion* concerning *whether* to fulfill it or not, and *latitude* in *how* one may fulfill it. Distinguishing between these two senses of leeway is critical to properly understand the demands imposed by beneficence on shareholders and managers.

Scholars committed to shareholder primacy, in particular to the view that managers act on behalf of shareholders, often claim that managerial duties are exempt from duties of beneficence (Friedman 1970; Rodin 2005; Sternberg 2000). Within this perspective, corporate beneficence has often been presented as a violation of the manager's fiduciary duties to shareholders, even a form of (altruistically motivated) theft (Friedman 1970; Minow 1999; Rodin 2005; Sternberg 2000; Strudler 2017). I will argue that there is some truth to this view: to the extent that managers act on behalf of shareholders, they are not required to fulfill (and may sometimes be prohibited from fulfilling) "wide duties of beneficence," that is to say, duties of beneficence that afford discretion and latitude. However, what these scholars miss is that such managers are nevertheless required to fulfill "narrow duties of beneficence," i.e., duties of beneficence that do not afford latitude. Furthermore, because some of these narrow duties do not afford discretion, they should actually be conceptualized as perfect duties of beneficence.

As such, this article makes two important contributions to the field: (1) it refines our understanding of the duty of beneficence (and, by way of this, of imperfect duties more generally) and (2) it sheds light on the duties of beneficence that are imposed on managers who act on behalf of shareholders.

Caveats

The article contributes to our understanding of the moral duties that apply to managers in their corporate capacity. It is not concerned with legal questions concerning whether duties of beneficence are required or forbidden by law or prudential questions concerning the way in which beneficence affects the company's bottom line or its long-term success.

There are many different ways in which one may justify duties of corporate beneficence. My aim here is not to offer a definitive or superior justification but to show that the agency relationship between managers and shareholders is sufficient to ground a wide variety of duties of corporate beneficence that business ethicists expect managers to discharge.

Finally, when one discusses perfect and imperfect duties, audiences typically assume that one's theoretical background is Kantian. This is unwarranted. While Kant is the most prominent scholar associated with this distinction, such a distinction predates him (Schneewind 1990). The arguments put forth in this article do not depend on the Kantian theoretical apparatus but rely, instead, on a strong pre-theoretical intuition that belongs to what one may call "ordinary morality." As such, the article is meant to operate within a thin normative framework that is compatible with the views held by most moral philosophers.

Structure of the Article

The first two sections of the article provide the article's theoretical framework. Section 1 describes the normative principles that should guide one to identify the obligations that bind managers who act on behalf of shareholders. Section 2 discusses the most important features of the duty of beneficence, explains why it has been typically conceptualized as an "imperfect duty," and explores a variety of misconceptions in the literature about its nature. This section concludes by distinguishing two types of leeway associated with its "imperfect" nature: discretion and latitude.

Section 3 focuses on the wide duty of charity, the paradigmatic duty of beneficence, a duty that offers both latitude and discretion. I argue that the manager is not required to fulfill (and may actually be forbidden from fulfilling) duties that allow for discretion and latitude.[1] Section 4 discusses duties of rescue that offer no discretion and no latitude and which, I argue, should be recognized as perfect duties of beneficence. Finally, section 5 discusses duties of beneficence that afford discretion but don't offer much latitude. I argue that the manager is required to fulfill narrow duties of beneficence (without discretion in the former case and with discretion in the latter). Table 1 illustrates this taxonomy.

	Affords discretion	**Does not afford discretion**
Affords latitude	Duties of charity (wide and discretionary) Manager not required to fulfill (section 3)	—
Does not afford latitude	Narrow and Discretionary duties of beneficence Manager required to fulfill (but has discretion) (section 5)	Perfect duties of rescue (Narrow and not discretionary) Manager required to fulfill (without discretion). (section 4)

Discretion:	allows the agent to determine *whether or not* to fulfill the duty in a particular occasion.
Latitude:	allows for latitude in terms of *how* the duty is to be fulfilled and *whom* it should benefi.t

Table 1: Latitude and discretion in duties of beneficence

[1] The duties discussed here arise from the fact that the manager is acting on behalf of shareholders.

1 Managers Acting on Behalf of Shareholders: a Normative Approach

1.1 Managers Acting on Behalf of Shareholders

The view that managers are meant to act on behalf of shareholders has been defended by numerous scholars (Friedman 1962, 1970; Goodpaster 1991; Hansmann and Kraakman 2001, 2012; Heath 2011, 2014b; Hessen 1979; Jensen and Meckling 1976; Kaler 2003; Langtry 1994; Mansell 2013, 2015; Marcoux 2003; McMahon 1981; Sternberg 2000, 2010; Von Kriegstein 2015).[2] There are two main ways in which scholars spell out this idea.[3] The first, often favored by economists and some moral philosophers, is to conceptualize the managers as the agent of shareholders. The second, often favored by legal scholars and some moral philosophers who defend shareholder primacy, conceives of managers as fiduciaries, stewards, or trustees of shareholders. In the first, the manager is meant to be directly answerable to shareholders. In the second, the manager administers the company in their interest even if she is not directly answerable to them. What is common to both perspectives is that the manager has been delegated authority to act on behalf of the principal. In what follows, I will use the term "agent" in a broad sense to refer to a person who acts on behalf of another, a broad usage that encompasses the case where the agent is directly answerable to shareholders or where she acts as their fiduciary/trustee.[4]

[2]This view has been challenged by academics on both moral and legal grounds. Some have argued that that managers have a fiduciary obligation to the corporation, not to shareholders (Blair and Stout 1999; Bower and Paine 2017; Ireland 1999; Stout 2012). Others have argued that managers are meant to serve the interest of a variety of corporate stakeholders (Evan and Freeman 1993; Freeman 2007; Freeman et al. 2010; Pirson 2017), and others have suggested that the manager should manage the corporation to promote the public or the common good (Ciepley 2013; Sison and Fontrodona 2012).

It is beyond the limits of this article to weigh in on this debate. My aim here is not to defend the view that managers should act on behalf of shareholders, but to examine the duties of beneficence that are imposed on managers within such a perspective. The fact that such a perspective is endorsed by most business practitioners, economists, and legal scholars warrants such examination. Among other things, it helps us (and them) to recognize that such a perspective is much more morally demanding than they typically acknowledge.

[3]I am indebted to the audience of Georgetown's GISME workshop, especially to Peter Jaworski, John Hasnas, and Luke Semrau, for helping me sort out my account here.

[4]I will use the term "manager" to refer to those who make business decisions on behalf of shareholders. This means that "managers" refer not just to the firm's highest executives but also to middle managers and committees who make decisions on behalf of shareholders. I will also assume that the company's "shareholders" are ordinary human beings. This assumption is justified by the fact that, even though institutional investors are the major shareholders in many companies, the

1.2 Normative Managers and Shareholders

To the extent that managers are meant to administer the company on behalf of shareholders, the managerial decision-making process should be guided by the question: "is this what shareholders would want the manager to do on their behalf?"[5] Because our investigation in this article is normative, this question should be addressed from a normative perspective. From such a perspective, the claim that managers are required to do "what shareholders would want" should not be construed as an empirical question of what actual shareholders effectively want. It is a normative question that that implies moral scrutiny of, and in turn, possible limits upon, "what shareholders are entitled to want."[6]

Failing to recognize this leads to an untenable moral view of the agency relationship. When a manager acts on behalf of a shareholder, she is guided by the fundamental principle: *qui facit per alium* ("he who acts through another acts himself"). Among the implications of it is that the obligations of the manager do not override the moral obligations of shareholders or allow behavior by managers that would be prohibited to shareholders (Goodpaster 1991; Von Kriegstein 2016). Built into any agency relationship is the fact that there are moral limits on what principals can demand from their agents. An agent is not allowed to pursue an action on behalf of a principal that would be morally prohibited for the principal to pursue on her own. Consequently, to think of shareholders in normative terms involves thinking that, even if their overriding motivations may be driven by self-interest, such motivations need to be constrained by morality. Thus, from a normative perspective, the decision-making process of managers should be guided by:

Guiding managerial question: Is this what moral shareholders would want the manager to do on their behalf?

ultimate investor is typically an ordinary human being (cf. Hart and Zingales 2017a; Mejia 2019).

[5] If managers are conceived as trustees of shareholders, the question they should ask is "is this what would be in the interest of shareholders?" Alternatively, and this is what I will assume hereafter, one can continue to think that managers are guided by the question "is this what shareholders would want the manager to do on their behalf?" but assume that shareholders would want what is in their interest.

[6] This section follows the framework developed in Mejia (2019). I would like to thank Gaston de los Reyes and David Silver as well as the associate editor and one anonymous reviewer for helping me clarify some crucial elements in it.

1.3 Caveats and objections

One may worry that my account is unrealistic because it assumes that all shareholders abide by moral norms. This worry is displaced because my aim here is not empirical but normative. My goal is not to identify how individuals effectively act but to articulate how they *should* act.[7]

One may also have worries of whether this normative approach is consistent with principles of fiduciary law which appears to forbid fiduciaries from (i) imposing any normative views (of their own) on their managerial practices, and (ii) favoring the interests of one group of shareholders (normative or otherwise) over that of another group of shareholders. This objection misses that the requirement to "pursue what shareholders want" is valid only when this is morally permissible. It is a misunderstanding of the nature of morality to think that when the manager acts within moral constraints, the manager is imposing *her own* views on shareholders. It is a similar misunderstanding to think that "normative shareholders" are a special kind of "interest group." What differentiates normative shareholders from all the others is that they want the manager to act as morality dictates. A group constituted by shareholders who are not "normative shareholders" is a group who wants the manager to pursue immoral business practices. If fiduciary law forbids favoring the interest of normative shareholders over the interests of other shareholders, such a law would encourage immoral behavior and should, thereby, be reformed.

2 Beneficence

In this section, I provide a basic sketch of the most important features of the duty of beneficence, explain why it has been typically conceptualized as an "imperfect duty," and discuss a variety of misconceptions in the literature about its nature. I conclude by offering two main distinctions, latitude and discretion, that will help us identify the duties of beneficence that bind managers who act on behalf of shareholders.

2.1 An Overview

The duty of beneficence is concerned with norms, actions, and dispositions whose ultimate aims are to promote the good of others, quite often in the form of alleviating

[7] There are, of course, important moral questions that arise when shareholders press managers to pursue immoral activities. However, to properly determine how managers ought to deal with these sort of dilemmas, one first needs to get clear on what are the managerial obligations absent these dilemmas.

their suffering (Beauchamp 2019; Smith 2012). Beneficence, however, is not merely "wishing well"; it involves "active practical" steps to further the benefit of others (Dubbink 2018, 6). Not all activities where we promote the good of another person are instances of beneficence. For my action to be grounded on the duty of beneficence *my ultimate goal* has to be the promotion of this person's good or the alleviation of her suffering. Helping a person in need with the ultimate aim to make a good impression is not an instance of beneficence. "Corporate beneficence" aimed at increasing the financial returns of shareholders or the company's reputation are also not instances of beneficence (Dubbink 2018, 3–4; Dunfee 2006, 200–1; Rodin 2005, 175).[8]

While there is considerable disagreement in the scholarship about the magnitude of the sacrifices that beneficence requires of us,[9] there is widespread agreement that (1) a moral agent ought to be beneficent, (2) but the demands of beneficence should not be overly demanding (Beauchamp 2019; Buchanan 1996; Dubbink 2018; Hill 1971; Hsieh 2017a; Miller 2004; Schmitz 2000). The first claim is often grounded on the fact that our shared humanity requires us to not be indifferent to the suffering of others (Herman 1993; Smith 2012; Stohr 2011). The second is grounded on the acknowledgment that each of us is entitled to a certain degree of partiality toward ourselves, to give our own projects and well-being a certain priority (Dubbink 2018; Schmitz 2000; Smith 2012).

2.2 Imperfect Duties of Beneficence

There are conceptual difficulties to offer a satisfactory characterization of the duty of beneficence, difficulties that have led to numerous confusions in the literature of business ethics. At the heart of these difficulties is the fact that while beneficence is a duty (and therefore obligatory), it allows for discretion (so that we can pursue our own personal projects and well-being). These two commitments appear to be

[8] In an influential paper, Hsieh (2009b) argues that large-scale multinational enterprises (MNEs) have a responsibility to provide assistance (in the form of promoting just institutions) in the community in which they operate. As conceptualized by Hsieh, this duty of assistance is not a duty of beneficence but a duty of justice. The reason? This duty is grounded on the recognition that the company wronged the citizens of a country. It is not motivated by the desire to promote the good of others but by a commitment to repair a damage that the company has caused and from which it has profited. As such, it should not be understood as grounded on beneficence, the desire to help others, but on justice, on the commitment to right a wrong committed (cf. Herman 2019, 205).

[9] On one side of the spectrum, one finds scholars with a Utilitarian orientation, such as Singer (1972), who tend to "demand severe sacrifices and extreme generosity" (Beauchamp 2019). On the other end of the spectrum, one finds scholars with libertarian inclinations who tend to think that the demands of beneficence are minimal. Mainstream of moral philosophy has tended to lie somewhere in the middle (Beauchamp 2019).

in tension; the duty's discretion appears to undermine its mandatoriness (cf. Smith 2012, 61–2).

Scholars have usually appealed to the distinction between "perfect" and "imperfect" duties to address this tension (Beauchamp 2019; Bowie 1999, 2010; Buchanan 1996; Cummiskey 1996; Donaldson 1992; Dubbink 2018; Herman 1993; Hill 1971; Hsieh 2017b; Kaler 2003; Lea 2004; Mansell 2013, 2015; Ohreen and Petry 2012; Rainbolt 2000; Schroeder 2014; Smith 2012; Stohr 2011; White 2019). Their shared use of terminology may suggest a certain uniformity in their approach, but this uniformity is merely apparent. The labels "perfect" and "imperfect" occlude a wide variety of (often inconsistent) uses of the terms.

When applied to duties that one party has to another, the labels "perfect" and "imperfect" have been used to distinguish whether the duty is negative or positive (Buchanan 1996; Ross 1954); whether it requires concrete and specific actions or the adoption of general ends, principles, or maxims (de los Reyes 2019; Dubbink 2018; Hill 1971; Kant 1998; Mansell 2013; Ohreen and Petry 2012; Stohr 2011); whether the other party is (or is not) owed the duty and has (or does not have) a right to demand that the duty is discharged (Dubbink 2018; Kaler 2003; Lea 2004; Pufendorf 1964); whether the duty's violation requires us to "think a contradiction" or merely to "will a contradiction" (Bowie 1999; Herman 1993; Kant 1998; Lea 2004) whether the duty can (or cannot) be the basis for state legislation (Lea 2004; Mansell 2013; Smith 2012); whether the duty allows (or not) to excuse one from fulfilling it by appealing to one's inclinations (de los Reyes 2019; Herman 1993; Hill 1971; Kant 1998); and whether the duty's fulfillment is stringent or whether it allows for latitude concerning how, when, and whom to benefit (Buchanan 1996; de los Reyes 2019; Donaldson 1992; Dubbink 2018; Hill 1971; Hsieh 2017a; Kant 1998; Lea 2004; Mansell 2013; Ohreen and Petry 2012; Rainbolt 2000; Schroeder 2014; Smith 2012; Stohr 2011).

A cursory look at the variety of these distinctions shows that they do not all carve conceptual space in the same way and, therefore, that they don't all track the same distinctions.[10] To clarify the nature of duties of beneficence, I will start by discussing two important confusions in the scholarship of business ethics concerning their "imperfect" nature.

The first confusion concerns their obligatoriness. It has been argued that because

[10] As I mentioned in the introduction, while the distinction between perfect and imperfect duties is typically associated with Kant, my characterization is not Kantian and does not rely on the Kantian theoretical framework. I cash out this distinction by relying on a strong intuition that predates Kant (Schneewind 1990) and which is recognized by what is often dubbed "ordinary morality" (Beauchamp 2019). Such intuition, as I suggested above, is that while beneficence should be an obligatory duty, it should allow for sufficient leeway to allow us to pursue our projects and well-being.

duties of beneficence allow for discretion, they are merely optional and, therefore, should not be considered a duty at all (Dunfee 2006; Ohreen and Petry 2012; Ross 1954). This argument is mistaken; it is attempting to shoehorn all duties into the mold of perfect duties. As such, this argument fails to see that there is more than one way in which duties can be obligatory. Even if the duty of beneficence allows for discretion about how to fulfill it, it is nevertheless obligatory (cf. Dubbink 2018, 7). The distinction between types (i.e., classes) and tokens (i.e. particular instances of that class) helps to shed light on the issue. As a type, both perfect and imperfect duties are obligatory. Moreover, any token of a perfect duty is also obligatory. But one has discretion to determine whether to fulfill a token of an imperfect duty; when faced with a specific situation where you have an opportunity to discharge an imperfect duty, you are not necessarily required to discharge it.

This does not entail that discretionary duties are optional or involve minimal commitment. While we are not required to "act on the duty of beneficence all the time," (Dubbink 2018, 7) we would be failing to fulfill this duty if we never acted on it or if our willingness to fulfill it were lukewarm (cf. Herman 1993). Beneficence is a duty because it demands a *serious and continuous* commitment to promoting the good of others (Dubbink 2018, 11; Smith 2012). It follows, *contra* Ohreen and Petry (2012, 369), that beneficence is not optional and that the extent of one's beneficient commitment matters; doing too little or failing to identify the duty's demands on different circumstances shows that one is not fulfilling this duty.

A second important confusion in the literature on business ethics associated with imperfect duties has resulted from an influential characterization by Buchanan (1996). In an otherwise excellent paper, Buchanan (1996) suggests that to combat the moral laxity which imperfect duties open us to, we should "perfect" them by taking determinate steps to make sure that one fulfills them (Buchanan 1996, 31–2). This phrasing has led to a conceptual confusion among several scholars in the field (such as Lea 2004 and Ohreen and Petry 2012). While we should agree with Buchanan in the importance of taking definite steps to ensure that one fulfills one's imperfect duties, it is a conceptual mistake to think that, when one does this, imperfect duties become perfect. The fact that one has taken determinate steps to fulfill, say, the duty of charity, does not mean that the structural way in which this duty requires us to fulfill it has changed. To use "perfect" and "imperfect" to carve out whether one has (or does not have) a specific plan of action to fulfill a duty is to confuse the distinction between perfect and imperfect duties with the distinction between having a clear plan of action or not.

2.3 Discretion and Latitude

While business ethicists have recognized that duties of beneficence allow for leeway (Buchanan 1996; Donaldson 1992; Dubbink 2018; Hsieh 2017a; Lea 2004; Mansell 2013; Mejia 2019; Ohreen and Petry 2012; Rainbolt 2000; Schroeder 2014), they haven't distinguished between two important and structurally different types of leeway that I will label "discretion" and "latitude."

Discretion: While the duty of beneficence makes demands on us, these demands are meant to be sufficiently lenient to allow us to pursue our personal projects and well-being. In allowing for such leniency, the duty is meant to make room, not merely to my fundamental needs and rights, but also to my inclinations, passions, and sensibilities. As Hill remarks, we are justified to "sometimes pass over an opportunity to make others happy simply because we would rather do something else" (Hill 1971, 59 cf. White 2019).

I will say that a duty of beneficence offers discretion if it allows the agent to appeal to her inclinations, passions, and sensibilities in determining whether to fulfill the duty or not on a particular occasion. I will sometimes refer to this discretion as "subjective discretion" to highlight that what explains why the agent fulfills the duty or not may depend on her subjectivity, i.e., on her inclinations, passions, and sensibility.

Latitude: A duty offers latitude to the extent that it allows for a wide variety of ways to fulfill it, both in terms of *how* the duty is to be fulfilled, *when* it should be fulfilled, and *whom* it should benefit. I will say that a duty is **wide** if it affords latitude and **narrow** if it does not.

The distinction between duty-types and duty-tokens allows one to sharpen the above distinction. "Discretion" tells you whether you have leeway to fulfill a particular duty-token. Once you've decided to fulfill a duty-token, "latitude" indicates how much leeway you have in effectively discharging it.

The following two examples further clarify this. The first illustrates that a duty may afford much discretion but little latitude. Imagine a stranger asking for directions in a foreign country where passersby don't speak his language. You speak his language and overhear him. You have a duty to help (this duty-type is obligatory); if you never help in these kind of cases you would be callous and could not be said to fulfill the duty of beneficence instantiated here. But this duty is discretionary because you are not obligated to discharge this duty-token. There are a variety of reasons, many related with subjective considerations, which may justify passing on this opportunity to help. Once you've decided to discharge the duty on this particular occasion (i.e., this duty-token), you have little latitude in terms of how you ought to fulfill it (you need to provide directions), when you are to help (the directions are needed now), or whom you should benefit (you need to help the foreigner).

The second example addresses a potential confusion between "having discretion concerning *whether* to fulfill a duty" and "having latitude concerning *when* to fulfill a duty." The former has to do with a decision about *whether* a particular duty-token should be discharged. The second about *when* a duty-token you've already decided to fulfill should be carried out. For instance, once you decide to cook a dinner for your neighbor who just had a baby, you may have latitude to decide *when* you will do so (for instance, you may do it this week or the next).

Within business ethics, research into duties of beneficence has been typically approached in a binary fashion. Scholars in business ethics have often argued, either that managers are, or are not, bound by duties of beneficence. As I will show in this article, we need a more granular approach to understand the duties that managers need to discharge when they act on behalf of shareholders. In the next sections, I will examine three families of duties of beneficence that are structurally different: duties of charity that are wide and afford discretion (section 3), perfect duties of rescue that do not offer discretion or latitude (section 4), and duties of beneficence that are narrow but allow for discretion (section 5). Table 2, reprinted for the reader's convenience, offers an overview of the conceptual landscape that we will explore.

3 Wide Duties of Beneficence That Afford Discretion

3.1 Do Wide Duties of Charity Bind Shareholders?

The wide duty of charity, which is typically fulfilled by making a financial contribution to a charitable organization, is perhaps the paradigmatic example of a duty of beneficence. This duty affords the agent not only discretion to decide whether to fulfill the duty in any particular circumstance but also latitude concerning how, when, and whom to benefit.[11]

To assess whether the manager needs to fulfill an obligation when she is acting on behalf of shareholders, one needs to first establish that this obligation arises in the context of the activities that the manager conducts on behalf of shareholders (Heath

[11] Given its wide latitude, the duty of charity has sometimes been characterized as "universal" or "general" (Dubbink 2018; Kaler 2003; Lea 2004).

	Affords discretion	**Does not afford discretion**
Affords latitude	Duties of charity (wide and discretionary) Manager not required to fulfill (section 3)	—
Does not afford latitude	Narrow and Discretionary duties of beneficence Manager required to fulfill (but has discretion) (section 5)	Perfect duties of rescue (Narrow and not discretionary) Manager required to fulfill (without discretion). (section 4)

Discretion:	allows the agent to determine *whether or not* to fulfill the duty in a particular occasion.
Latitude:	allows for latitude in terms of *how* the duty is to be fulfilled and *whom* it should benefi.t

Table 2: Latitude and discretion in duties of beneficence

2014b; Marcoux 2003; Von Kriegstein 2016). Arguably, the duty of charity arises in the context of shareholders' joint venture, at least when the company in which they have invested is financially successful. The fact that shareholders are increasing their wealth through their investment brings with it a moral obligation to share some of their proceeds with those who are less fortunate. Thus, at least when the business is financially successful, shareholders have a moral obligation to fulfill the wide duty of charity.

Some scholars in the field have suggested that, when all shareholders are bound by a particular obligation, the manager who is acting on their behalf is required to fulfill it (Goodpaster 1991, 68; Mansell 2013, 596; Ohreen and Petry 2012, 368; Von Kriegstein 2016, 446). Goodpaster (1991, 68), for instance, has claimed: "The conscience of the corporation is a logical and moral extension of the consciences of its principals." Mansell (2013, 596) has argued that "if shareholders have a 'duty of beneficence' to make the interests of non-shareholders their end, then *ipso facto* these interests become part of the corporate objective." While this may seem like a natural conclusion to draw, it is mistaken. The fact that every shareholder is bound by an obligation does not necessarily entail that this obligation should be fulfilled by their agent. An obligation that falls on shareholders should only be fulfilled by the manager if (normative) shareholders would want her to fulfill it on their behalf. There are, of course, cases where shareholders may have explicitly or tacitly agreed to this.[12] However, barring such explicit or tacit agreement, there are compelling reasons to think that shareholders who live up to what morality requires may not want the manager to fulfill the wide duty of charity on their behalf.

3.2 Why Shareholders May Not Want to Fulfill Their Duty of Charity Through Their Manager

Not requiring the manager to do charity (i.e., a wide discretionary duty) on behalf of shareholders may be seen as warranted, even morally warranted, because 1) this is a personal matter into which managers have no insight; 2) this allows shareholders to better express themselves morally.

A Personal Matter

As we discussed above, it is typically taken for granted that, in deciding how to fulfill one's duty of charity, every individual person is supposed to be guided by his own inclinations and subjectivity, as well as by his specific financial situation. If a shareholder's inclinations and sensibility incline him to help children, he will want to focus his beneficent efforts on initiatives that help children. But if his inclinations and sensibilities incline him to help the elder then he may focus his beneficent efforts on serving elders. A shareholder's financial situation may also impose different constraints concerning how much he is supposed to contribute. Wealthier individuals are expected to contribute more to charity than those less well-off (Lea 2004, 214–5)).

Thus,

Respecting the Moral Freedom and Moral Autonomy of Shareholders

Different authors in the literature have recognized that wide duties of charity provide agents with a space to express themselves morally. Buchanan (1996, 30), for instance, mentions that the wide latitude afforded by discretionary duties "allows us to pick

[12] Shareholders explicitly direct the manager to fulfilling their wide duty of charity when they have, for instance, voted on a resolution requesting the manager to do so. Shareholders tacitly agree to having the manager fulfill their wide duty of charity when they buy shares in a company, such as Whole Foods or Target, that have explicit and well-advertised policies concerning its mandated charitable contributions (Dunfee 2006; Friedman et al. 2005; McNew 2015; Target 2018).

our moral battles" (Buchanan 1996, 30). Similarly, Lea (2004, 210) claims that such latitude preserves agents' freedom, individual autonomy, and "moral choice" (Lea 2004, 210, 211). Finally, Rainbolt (2000, 248) has argued that by giving us the latitude to decide who to help and how to help, the duty of charity allows us to exercise "moral freedom" by offering us a space to express ourselves morally.

When a manager fulfills the duty of charity on behalf of shareholders, she is actually constraining their ability to express themselves morally in this way (unless shareholders have exercised this autonomy by agreeing, either tacitly or explicitly, to have the manager fulfill this duty on their behalf). Thus, the refusal by the manager to fulfill the duty of charity on behalf of shareholders is not merely morally justified; it is morally recommended when it is a manifestation of her recognition of the autonomy and freedom of shareholders to express themselves morally.

3.3 Objections and Caveats

Aren't shareholders, in this view, morally callous?

It may be objected that by claiming that shareholders who abide by what morality recommends will not want the manager to fulfill the duty of charity on their behalf, I end up portraying such shareholders as morally callous. This objection is misguided. I am not denying that shareholders are obligated and should be committed to fulfilling the duty of charity. All that I am saying is that, because this duty affords wide latitude, shareholders are not required to fulfill it through the company in which they have invested. If shareholders adequately fulfill their duty of charity individually, their moral standing need not be compromised and the attribution of "callousness" is misguided.

Of course, what I have said is not meant to discourage shareholders from coordinating efforts to fulfill their duty of charity through their joint venture. It is meant to show that coordinating such efforts is not morally required and that not trying to do it need not be morally objectionable.

Subjective discretion, needs, and efficiency

The claim that shareholders should have subjective discretion to determine how to fulfill their wide duties of charity does not entail that the fulfillment of such a duty should be *only* responsive to their subjective preferences. Beneficence cannot be merely guided by the personal preferences of the giver; it also has to be guided by the actual needs of the potential receivers. Thus, the subjective discretion that the duty affords cannot be unfettered from the needs of those that the beneficent deeds are meant to serve. Moreover, the subjective latitude concerning how, when, and whom to help has to take into account considerations about impact, effectiveness, and efficiency. As I discussed earlier (sec. 2), beneficence is not merely "wishing well." It has to involve "active practical" steps to further the benefit of others. These steps involve the person's reflection and responsiveness to issues concerning the impact, effectiveness, and efficiency of her beneficent deeds.

The limits of my argument

In this section, I have shown that you cannot ground the manager's obligation to fulfill the duty of charity on the agent-principal relationship between manager and shareholders. My argument is limited to the duties that emerge from the agent-principal relationship alone. It is open to scholars to argue that managers have additional moral obligations beyond these. For instance, one might argue that the government provides certain benefits to companies in exchange for which the company is obligated to give back to society in the form of charitable contributions (Ciepley 2013; Ireland 1999); that by incorporating as a company, the company acquires corporate agency and, with it, has the same obligations that apply to human persons (Hsieh 2017a; Smith 2012); or that managers' fiduciary duties are limited to generating reasonable financial returns for shareholders, but that the manager is required to pursue corporate charity with the surplus from these returns (Lee 2020; Ohreen and Petry 2012; Strudler 2017).

Effective altruism

Defenders of effective altruism are likely to object to the account of charity that I offered in this section.[13] In particular, they may object that beneficence should not include considerations about the personal idiosyncrasies of the giver but should be based exclusively on the particular needs of the recipients and the overall amount of good that can be done. The objector would argue that we should not be given latitude to decide how to fulfill our duty of beneficence and should, instead, seek the way to do charity that creates the most good.

My aim in this article is to offer a taxonomy that organizes what diverse scholars in the literature of business ethics have said about beneficence and to use this account to articulate which of these duties bind managers if they are conceived as agents of shareholders. As such, it is not my aim to determine which account of beneficence is

[13] I want to thank attendants of the Zicklin Center's Normative Business Ethics Workshop for pressing me to clarify this.

superior, but to articulate what each of these accounts entails for the corporate duties of beneficence that managers, *qua* agents of shareholders, are required to fulfill.

Most business ethicists agree that the duty of charity affords discretion and latitude and I have shown that, when charity is conceptualized in this way, the principal-agency relationship between shareholders and managers does not require managers to fulfill (and in some cases even forbids them from fulfilling) this duty on behalf of the shareholders. Those who endorse effective altruism deny that charity affords latitude and, thereby, conceptualize all duties of charity as narrow duties. What are the managerial obligations in this case? The next two sections flesh this out. In section 4, I discuss narrow duties of beneficence that afford *no* discretion. In section 5, I investigate narrow duties of beneficence that *do* afford discretion.

4 Narrow Duties of Beneficence That Afford No Discretion

Because the wide duty of charity has been the paradigmatic example of the duty of beneficence, and because of the central stage that this duty has occupied in the literature, scholars have tended to conceptualize all duties of beneficence on its likeness. With few exceptions (de los Reyes 2019; Donaldson 1992; Dubbink 2018; Ohreen and Petry 2012), business ethicists tend to think that norms concerning beneficent activities should be voluntary and, consequently, that duties of beneficence should be characterized as imperfect.

My two main aims in this section are: 1) to show that some duties of beneficence should be conceptualized as perfect duties, 2) to show that fulfilling these obligations is something that managers are required to do when they are conducting the company on shareholders' behalf.

4.1 A Drowning Child

Let me start by discussing perfect duties of beneficence in general before focusing on the corporate case. Singer (1972) offered a powerful example to motivate the intuition that some duties of beneficence should be conceptualized as perfect duties:

> DROWNING: A passerby is walking past a child who is drowning in a small pond. All it takes for the passerby to save the child is the inconvenience of getting her clothes muddy. There is nobody around; if she does not save the child, the child will drown.

Nearly every scholar who has discussed this example agrees that, in this case, the agent does not have any subjective discretion to decide whether or not to rescue the child (Beauchamp 2019; de los Reyes 2019; Donaldson 1992; Dubbink 2018; Dunfee 2006; Herman 1993; Hill 1971; Hsieh 2009a, 2017a; Ohreen and Petry 2012; Scanlon 1998; Schmitz 2000; Schroeder 2014; Singer 1972; Stohr 2011). Fulfilling this duty of rescue does not afford much latitude either since what the rescuing agent is supposed to do is pretty narrow in terms of what to do and who to help. Given that this duty affords neither subjective discretion nor latitude, it should be conceptualized as a "perfect" duty.

Scholars have pointed to at least four features of this situation that, in combination, account for why this situation does not leave room for subjective discretion (Beauchamp 2019; de los Reyes 2019; Donaldson 1992; Dubbink 2018; Dunfee 2006; Herman 1993; Hill 1971; Ohreen and Petry 2012; Rainbolt 2000; Scanlon 1998; Schroeder 2014; Singer 1972; Stohr 2011):

1. **Grave consequences:** There are grave consequences for the victim if he does not get rescued.

2. **Minor sacrifice:** The sacrifice required of the rescuing agent is minor.

3. **Ability:** The rescuing agent has the required abilities and capacities to rescue the victim.

4. **Uniquely well-placed agent:** The agent is uniquely placed to aid the victim. If she does not help the victim grave consequences will ensue.

As I argued earlier (section 2), there is an inherent tension built into the duty of beneficence, a tension between furthering the good of our fellows and pursuing our personal projects and well-being. "Grave consequences" and "minor sacrifice" reflect the two poles of this tension. Their combination amounts to the claim that, when there is a *significant* disproportionality between the grave consequences that would otherwise ensue for the victim and the minor sacrifices that the rescuing agent is required to make, the duty of rescue becomes strongly binding. The third secures the conditions of possibility for its exercise and the fourth ensures that the duty is stringent by establishing that the agent is uniquely placed to provide help.[14]

[14] This list should not be taken to provide a list of sufficient conditions to identify duties of rescue that do not afford discretion.

4.2 Perfect Corporate duties of rescue

In a seminal paper, Dunfee (2006) drew parallels between instances like DROWNING and corporate examples where a company has the possibility to help victims of a catastrophe with limited financial sacrifices for shareholders. Business ethicists have disagreed with some of the specifics of Dunfee's account (de los Reyes 2019; Dubbink 2018; Hsieh 2009a). My interest is not to lay out the precise conditions to ensure that a duty of rescue is or is not discretionary but to establish the existence of perfect duties of beneficence, duties of beneficence that afford no discretion and no latitude. For this purpose, I will appeal to what I take to be a less controversial example that aligns closer with DROWNING and which is not liable to the charges that have been raised against Dunfee's examples:

> EARTHQUAKE: A country is devastated by an earthquake, and thousands of local residents need blood transfusions. The branch of a highly profitable multinational company, which has an important footprint in this country, has the capacity to distribute and provide blood on a short-term basis to its residents. This operation poses little risks to the company and is not particularly costly. While the country's geography is difficult to navigate, the company has unique access to a network of medical workers that know the country's difficult geography and can do the transfusions. No other organization has the competencies to distribute and provide the required blood. If the company does not act, thousands of people will die.[15]

This example fits all four criteria discussed in DROWNING.

1. **Grave consequences:** There are grave consequences for the victims if the company does not provide aid (thousands of people would die).

2. **Minor Sacrifice:** The multinational is highly profitable, and providing aid poses few risks. The sacrifice required from shareholders is minor.

3. **Ability:** The company is well-positioned to provide aid on a short-term basis, given its footprint in the country.

4. **Uniquely well-placed agent:** the company is the only one with the ability to provide and distribute blood on a short-term basis, an ability that neither the government nor any other company has.

[15] This example is adapted from Donaldson (1992, 281).

4.3 The Manager Is Required to Fulfill It

Hsieh (2009a) claims that Dunfee (2006) accounts for our intuition that companies should be held responsible for alleviating human misery, “even if at the expense of shareholder interests” (Hsieh 2009a, 554). His claims echo a standard view in the literature, namely, that fulfilling corporate duties of beneficence, including the perfect duty of rescue, is not an instance of their acting on behalf of shareholders and actually violates the duties that managers have towards them (Arnold 2003; Beauchamp 2019; Bowie 1999; de los Reyes 2019; Dunfee 2006; Friedman 1970; Friedman et al. 2005; Heath 2014b; Hsieh 2009a, 2017a; Minow 1999; Sternberg 2010; Strudler 2017). This, as I will now argue, is a mistake. Fulfilling the perfect corporate duty of rescue is something that the manager is required to do *because* she is acting on behalf of (normative) shareholders.

I argued in section 1 that managers’ decision-making process should ultimately be oriented by the question: “is this what moral shareholders would want managers to do on their behalf?”

Let’s apply it to this case. The company is uniquely placed to remedy a very grave situation; thousands of lives would be saved if the manager provides aid on shareholders’ behalf; the sacrifices involved are minor for the company (and therefore to its shareholders) since it is highly profitable and providing aid does not pose significant risks to it; and the company has the competencies to provide aid. If shareholders do not want to provide aid and the manager complies with what they want, thousands of people will die. It should be obvious that shareholders who abide by what morality recommends would want the manager to provide aid on their behalf (cf. Brophy 2015).

Unlike with wide duties of charity, however, shareholders cannot fulfill this duty on their own because they don’t have access to the resources and know-how needed to provide aid. Even if an individual shareholder volunteers to donate blood, this blood would not be readily available on a short-term basis. Moreover, no individual shareholder has the access and knowledge required to navigate the country’s difficult geography and to do the transfusions in the area. It is only their company, which the manager administers on their behalf, which has the capabilities to aid the victims through its network of medical workers. Because of this, shareholders cannot fulfill this duty on their own but need to fulfill it through their company. Consequently, the manager is obligated to discharge this duty on their behalf.

Some scholars may think that managers should fulfill these perfect duties of rescue regardless of their fiduciary duties to shareholders. My argument is not meant to challenge (or support) this intuition. My aim is merely to show that one can ground this managerial duty solely on the principal-agent relationship.

5 Narrow Duties of Beneficence That Afford Discretion

In section 3, I argued that the manager *is not* required to fulfill wide duties of beneficence, like charity, that afford discretion and latitude. In section 4, I showed that the manager *is* required to fulfill duties of beneficence, like perfect duties of rescue, that offer no discretion and no latitude. I will conclude the article by turning my attention to discuss the managerial responsibilities concerning narrow discretionary duties of beneficence, i.e., duties that afford discretion but no latitude.

I will start the section by discussing two examples of such duties, discretionary duties of rescue and discretionary duties to business partners. I will argue that while the manager is required to fulfill them, she has discretion to determine, in particular occasions, whether to fulfill them or not. I then discuss the structural differences and similarities between discretionary duties of rescue and discretionary duties to business partners, articulating more generally why narrow duties of beneficence carry over from shareholders to managers. After elaborating on the decision-making strategies that the manager should deploy in deciding whether to fulfill narrow discretionary duties, I conclude by applying the framework I have developed to one of the most widely taught and discussed cases in the business ethics literature: Merck's donation of Mectizan, an effective drug to cure river blindness.

5.1 Discretionary Duties of Rescue

Four conditions in EARTHQUAKE justified the fact that the duty of beneficence did not afford discretion: 1. Grave consequences, 2. Minor sacrifice, 3. Ability to provide aid, and 4. Uniquely well-placed agent. As you relax these conditions, the demands on the rescuing agent become less stringent.

If the sacrifices and risks to the company are not minor (say, because they involve significant investments, long-term commitments, or significant legal or reputational risks); if the victims' needs are not as grave (say, if these needs concern victims' overall well-being but not their basic needs); and if the company is not uniquely placed and its competencies not so clearly aligned with the victim's need (say, if other companies would have competencies that put them in a better place to provide help), there may still be a duty to provide help, but this duty may no longer be non-discretionary. If you relax these conditions even more the rescue may not even be deemed obligatory. Arguably, a manager is not morally required to devote most of the company's resources to address a minor need in the community that risks the long-term survival of the firm. In this case, addressing this need would be considered, at best, supererogatory. There is, of course, "considerable controversy […] about where obligation ends and supererogation begins on the continuum" (Beauchamp 2019) and about where to draw the line that separates a discretionary from a non-discretionary duty of rescue. The important point in this article is not to delineate where to draw such line but to point out that there are duties of rescue that are discretionary and others that are not and that whether a duty of rescue is or is not discretionary will depend on a number of factors such as the sacrifice required, the risks and costs involved, and the capabilities and position of the company to provide the requisite aid.

To show that managers should be required to fulfill discretionary duties of rescue on behalf of shareholders, we can replicate the structure of the argument provided in the previous section. To do so we have to show that the duty binds shareholders in virtue of the fact that they have investments in the company and that shareholders who abide by morality would want the manager to discharge this duty on their behalf.

The first condition is easy to establish since the obligation to provide aid emerges from the company's specific competencies. Shareholders have the ability to remedy, through the company in which they have invested, a bad situation where humans are suffering. If the sacrifices required and potential risks incurred are moderate, and the social need addressed significant enough, addressing this need falls under the duty of beneficence.

Because the duty to provide aid is narrow and arises from the competencies of the company, shareholders would not, in general, be able to fulfill this duty on their own and can only fulfill it through their company, *via* the manager.[16] Moral shareholders would want the manager to fulfill this duty on their behalf. However, because we are assuming that this duty affords discretion concerning whether to fulfill it or not, the duty that the manager is supposed to discharge is a discretionary duty.[17] I will discuss below (sec. 5.4), how the manager could confront the difficult

[16]I discuss below why the narrow duties of beneficence ought to be fulfilled also in cases where shareholders could, theoretically, fulfill them on their own.

[17]A variety of scholars argue that our economic system is set up to enhance the common good by promoting a self-interested orientation in market transactions. They may argue that duties of rescue that emerge in the context of adversarial market interactions should not be primarily placed on business organizations but on other agents such as governments or NGOs. These scholars may also argue that in societies where there is a well-functioning government with the capabilities to provide aid to its citizens, most of the aid to such citizens should come through the government and not through the private sector (Hsieh 2004, 2009a). In this context, instead of providing aid directly, shareholders (and their companies) would contribute to the well-being of society by paying their taxes; their duties of rescue would then be discharged through a different set of agents, public servants, and not through the corporations.

It is beyond the limits of this article to take a view on which organizations should be ultimately practical problem concerning how to deal with such discretion. However, before doing this, I will discuss a structurally different duty of beneficence that is narrow and discretionary.

5.2 Narrow Discretionary Duties to Business Partners

Scholars who favor shareholder primacy often argue that beneficence is out of place in market interactions (Friedman 1970; Heath 2014a; McMahon 1981). It has been suggested that market interactions are "competitively structured and, therefore, require an adversarial orientation on the part of actors" (Heath 2014b, 174). These adversarial relations are not limited to competitors, but also include suppliers, financiers, consumers, etc. Fostering these adversarial relationships is meant to promote a more efficient allocation of resources and products. It is important to note, however, that appeals to the "implicit morality of the market" that rely on the first theorem of welfare economics assume that all the market agents are replaceable and anonymous. As McMahon (1981, 269) notes, "the proper names of consumers and firms (and the products of firms) must play no role in decisions to buy or sell. Consumers must purchase a given product from whichever producer offers it at the lowest price, and producers must sell to the highest bidder" (McMahon 1981, 269). On this spirit Donaldson notes that, while in intimate communities benevolence and solidarity tend to play an important role, in business contexts these virtues are much less important (Donaldson 1992, 277).

To think, however, that they play no role whatsoever would be to take things too far. As Heath (2007, 368) has remarked, "there are significant cooperative elements in market transactions, especially in cases where long-term contracts are in place." Not all business transactions take place between anonymous strangers. We build relationships with our business partners. And as these relationships strengthen, they lose their adversarial edge, and there is a moral pressure for us to care for our business partners for their own sake. When a loyal employee is getting married, he may ask the manager for a cash advance to help him fund the wedding party. When the warehouse of a trusted supplier gets flooded, he may request a few days to fulfill his order. Complying with these requests need not be guided by strategic reasons but by beneficence, by a genuine desire to promote the good of those we interact with. It seems callous not to care for our long-term business partners, to be indifferent to

responsible for fulfilling collective duties of rescue. What I have been discussing here, however, is compatible with this view in the following sense. It applies to all of the cases where there are government failures that don't allow the government to provide aid and leave the companies as the only agents capable of addressing a certain need.

their plights, in the name of market efficiency.

I will now argue that, like with discretionary duties of rescue, discretionary duties of beneficence to associates 1) bind shareholders *qua* shareholders and 2) carry over to managers. Moral shareholders would recognize, as principals/beneficiaries of the company that has established these relationships with these business partners, that they are bound by these duties. Shareholders would also recognize that they should not aim to fulfill these duties independently because it is either (1) not feasible or (2) not practical for shareholders to do so. (1) It would not be feasible for shareholders to fulfill some of these duties on their own because the beneficent action may *require* the use of corporate resources. For instance, only the manager can reorder the production process to produce other products while the supplier cleans up his warehouse. (2) It would not be practicable for shareholders to fulfill these duties individually, even when shareholders could theoretically fulfill this duty on their own. The transaction costs, logistical difficulties, and overall inconvenience of fulfilling the duty individually speak against it. In the examples above shareholders could, theoretically, pool money to provide the cash advance to the employee (cf. Benabou and Tirole 2010, 10). But, as we mentioned above, proceeding in this fashion undermines one of the main motivations to "separate ownership and control" at the heart of the principal-agency relationship. Shareholders pool together their resources to, on the one hand, reduce the transaction costs that shareholders would incur if they did not have a centralized manager making decisions about the administration of the company on their behalf and, on the other hand, be able to partake of a business venture despite lacking the time, willingness, or competency to play an active role in its administration.

Two caveats are in place. First, saying that in business contexts some adversarial relationships lose their edge need not entail that they lose their adversarial nature altogether. It is open to those who ground the moral legitimacy of markets on considerations about efficiency to insist that market exchanges should be generally conducted in an adversarial fashion where products and services are bought and sold because of their price and quality, not by how long the company has done business with them. From this perspective, if you have a long-term relationship with your provider and another provider offers lower prices and better quality, you ought to switch to the new one. My point is that, within this adversarial environment, beneficence makes demands of us, even if such demands are significantly more limited in their application and demandingness than in our interactions with friends or neighbors.

Second, what grounds these obligations of beneficence towards our business associates are structural features of the situation that have to do with the roles played by the business actors involved. The manager is required to be beneficent to the loyal employee or long-term supplier not because of her personal feelings for the employee or supplier. The obligation arises from her *role* as a manager, a role that brings with it a (discretionary) moral duty to be beneficent with this employee and supplier, given their loyalty working at or with the company. This discretionary duty of beneficence binds the manager even if it were her first day on the job and if she lacked any emotional connection to this employee or supplier.

5.3 Taking Stock of Narrow Duties of Beneficence

Allow me to take stock and (1) elaborate on the relationship between the two discretionary duties of beneficence I've discussed in this section and (2) explain in a more general way why narrow duties of beneficence carry over from shareholders to managers. Duties of rescue are narrow because of a specific need that the rescuing party has the capacity to address. The duty of beneficence to business partners is narrow because it is prompted by specific social relationships in the company's network (even if the company may not be particularly well suited to address the beneficiary's needs). While both of these are "narrow" duties of beneficence, what makes each of them "narrow" is structurally different. In the first case, what is narrow is the type of *aid required*, in the second, *the beneficiary.*

While both of these duties are narrow in very different ways, it is the fact that they are narrow that ultimately explains why they carry over from shareholders to the manager. Narrow duties carry over from shareholders to managers, either because it is not possible for shareholders to fulfill such duties on their own or because, being narrow, they require shareholders to coordinate their efforts to fulfill them. Such efforts would be costly and/or impractical, undermining the separation between ownership and control which is at the heart of shareholder primacy and to which shareholders committed themselves when they bought their shares.[18]

5.4 How to Fulfill Discretionary Narrow Duties of Beneficence

When I discussed the duty of charity, I highlighted that the subjective discretion that it affords allows each agent to fulfill it according to their inclinations and personal

[18] One of the central arguments put forth in this paper, namely, that managers are required to fulfill narrow duties of beneficence but not wide duties of beneficence, finds significant echoes in the work of prominent scholars in law and economics (Elhauge 2005, 847; Hart and Zingales 2017a, 249).

circumstances. One of the main reasons why shareholders should be allowed to do charity on their own is that it allows them to do so according to their particular subjective inclinations. However, in this section I have argued that some duties that afford discretion, narrow duties of beneficence, should be fulfilled by the manager. This poses a difficult practical problem: how to fulfill them in a way that reflects the subjective inclinations and personal circumstances of each shareholder? In what follows, I will mention three potential strategies to do so, together with their strengths and difficulties.

Before doing so, however, it is important to emphasize that when a company has a diverse pool of shareholders, one can be almost certain that no strategy will properly reflect the subjective inclinations and personal circumstances of each and every one of them. The manager should try her best to fulfill narrow discretionary duties in ways that address their subjective inclinations, but this will not always be possible. This result is perhaps less problematic than one may first think given that, by buying shares in a company, a shareholder buys into a collective project where he puts the interests of the joint venture over his own. This includes corporate decisions concerning beneficence that may not fully conform with his particular interests.[19]

1. Getting input from shareholders

The first and most obvious proposal would be for managers to get input from shareholders about how they would like their discretionary duties to be fulfilled (cf. Hart and Zingales 2017a,b). The idea, of course, is not that shareholders would be consulted for each and every decision (this would, again, undermine the motivation to separate ownership and control by imposing high transaction costs on shareholders). The idea is, instead, to have a set of formal policies and guidelines, approved by shareholders, that would guide the manager's beneficent decisions (Hart and Zingales 2017a; Mansell 2013).

While this proposal has much to recommend, in many cases it will not work. First, there are cases where shareholders may fail to find policies on which they agree. Shareholders of publicly traded companies come from very different backgrounds, have different sensibilities, and are faced with widely varying personal circumstances. This diversity may interfere with their ability to agree on a similar set of policies (Brophy 2015, 782, Fn 4). Second, this strategy would require the active participation of shareholders in voicing their views about the direction that the company should take in this regard. Given the many financial instruments and institutions separating the ultimate shareholders from the companies in which they

[19] cf. Elhauge 2005, 739.

invest, and given the extremely high diversification of their holdings, it seems implausible to expect shareholders to have this degree of involvement.[20] Finally, even if shareholders may agree on a general set of policies, these policies will often lack, because of its generality, sufficient specificity to provide adequate guidance to the manager in many specific cases.

2. Using moral imagination

It has been suggested that when the manager is unable to get reliable information about shareholders' interests and circumstances, she should attempt to use her moral imagination to predict how they would want her to fulfill discretionary duties on their behalf (Brophy 2015). Without denying that it is valuable for managers to use their imaginative power to enlarge the perspectives from within which they make corporate decisions, it is important to acknowledge the limits on this proposal. Because our power of moral imagination is limited, managers will often end up imagining shareholders on their likeness (Anderson 2015). If so, this strategy will lead the manager to pursue corporate beneficent initiatives that reflect her personal preferences and not those of shareholders (Dunfee 2006; Minow 1999, 202).

3. Seek strategic alignment

The third proposal I want to mention starts from the recognition of the one thing on which nearly all (normative) shareholders typically coincide: wanting to get a financial return on their investment. The fact that this is a self-interested goal may lead one to think that it should play no role in how a duty ought to be discharged. This conclusion is mistaken in the case of discretionary duties of beneficence. As I discussed, discretionary duties allow the agent to appeal to his inclinations, passions, and sensibility to decide whether to fulfill them. The fact that all shareholders agree on the economic mission of the company suggests that they would all support corporate beneficence that supports such a mission. This fact can provide valuable guidance to the manager. In particular, it entails that part of what could be factored into a managerial decision concerning when and how to fulfill discretionary duties of beneficence is an assessment of the extent to which fulfilling the duty in this opportunity aligns with the strategic financial goals of the company. By reflecting on these goals, managers would be better able to respond to the various and disparate demands of beneficence by ranking which of these demands should be given priority.

[20] Hart and Zingales (2017a) offer a clever proposal to facilitate this process.

It is important to avoid a potential misunderstanding with this third proposal. I am not suggesting that beneficence should only be pursued when it serves the financial interests of the firm, or that strategic decisions should be the single metric to make decisions about how, when, and whom to help. The duty of beneficence, after all, is structured by an inherent tension between the needs of the party that is being helped and the sacrifices imposed on the helping party. If the needs are grave enough, the manager's obligation to fulfill such needs may override her aspirations to align corporate beneficence with the company's strategic financial goals. What I am suggesting is that decisions about which discretionary duties of beneficence to fulfill should include considerations about the relative strategic financial advantages, for the firm, of how to fulfill them. Provided that the ultimate goal of the beneficent actions is to promote the good of others, the fact that this also benefits the firm financially does not entail that the manager is not, ultimately, fulfilling these duties (Dunfee 2006, 200).

5.5 Merck and river blindness

I'd like to conclude this section by applying the framework I have developed to a business case that has played a central role in the scholarly discussion in business ethics and which is frequently discussed in business ethic classes: Merck's donation of treatment to cure river blindness.[21]

When Merck started developing Mectizan, an effective drug to combat river blindness, 85 million people in Africa, the Middle East, and South America were at risk. Some small towns within these regions were so severely affected that almost all its residents were infected and all adults over 45 were blind.[22] Merck's research into River Blindness originated from the suspicion that Ivermectin, one of Merck's best-selling veterinary drugs at the time, could be used to address river blindness in humans. Merck's executives knew that marketing Mectizan would not be straightforward because those afflicted by the disease had a very limited ability to pay for the treatment. Despite this, Dr. Roy Vagelos, then head of Merck's research labs, approved research funding into it. He recognized that failing to pursue this line of research could demoralize Merck's scientists, many of whom had been recruited on the promise that they would be contributing to alleviating human suffering. Also, the project would enhance Merck's knowledge of parasitology, one of Merck's core strengths. Vagelos was hopeful that, if Merck developed a successful drug, they

[21] I am grateful to Tom Donaldson for suggesting me to apply the framework developed here to this influential case.

[22] I rely on Bollier et al. (1991) for the factual details of this case.

would a way to recoup the investment.

Research led to the development and successful approval of Mectizan, a powerful drug to cure river blindness. Even though the drug was cheap and relatively easy to administer, Merck's executives were unsuccessful in finding government or nongovernmental agencies willing to buy and distribute the drug. After some deliberation, Merck's executives decided to donate the drug under the now famous slogan "as much as needed for as long as needed."

The close parallels between Merck's case and EARTHQUAKE may tempt one to think that Merck was bound by a perfect duty of rescue to donate Mectizan. This conclusion, however, would be too quick; there are important dissimilarities between these two cases. In what follows, I will argue that, if one thinks that being uniquely placed is a necessary condition for a duty to be non-discretionary, then Merck was under a discretionary duty to produce and distribute the drug.[23]

A significant difference between Merck's donation of Mectizan and EARTHQUAKE is that Merck is not uniquely placed to produce and distribute the drug. This might, at first, sound surprising, given that Merck was the only company that had property rights on this drug. But having the property right to a drug and having the competencies and know-how to produce it need to be distinguished here.[24] Even if Merck had exclusive property rights over Mectizan, it was not the only company that could produce and distribute the drug. Merck could have given up its property rights over the patent or simply allowed other pharmaceutical organizations to legally produce and distribute the drug. Thus, if one thinks that being uniquely placed is a necessary condition for a duty of rescue to be non-discretionary, then one would conclude that Merck was not under a perfect duty to produce and distribute the drug.

However, even if Merck had a discretionary duty to donate Mectizan, the company was nevertheless bound by a non-discretionary duty to address the epidemic. If Merck felt too burdened by the risks and long-term commitments involved in donating Mectizan, or if its executives thought that shareholders wanted to pass on the

[23]It is important to highlight that I am not defending here that being uniquely placed is a necessary condition for a duty to be non-discretionary. As I said before, there is considerable scholarly controversy about where to draw the line that separates discretionary from non-discretionary duties. Some scholars would deny that "uniquely placed" is a necessary condition for duties to be non-discretionary. For instance, Herman (1993, 2019) suggests that a duty is non-discretionary if it addresses a fundamental human need without requiring significant sacrifices. Stohr (2011), by contrast, suggest that a duty is non-discretionary merely when the disproportion between the costs and benefits of helping is significant.

[24]I thank Brian Berkey and Gaston de los Reyes for helping me to see this.

opportunity to help, Merck still had a perfect obligation to address the epidemic by giving up the property rights over patent of Mectizan or, at the very least, to allow other companies, governments, or NGOs that were willing to donate the drug to do so. The duty to do this is not discretionary because it meets all the four necessary conditions I laid out in section 4: the company was able and uniquely placed to provide help, the cost and risks of doing it were minimal, and grave consequences followed from not doing so.

According to Bollier et al. (1991, Case C, 1), the World Health Organization would have likely bought the drug from Merck for a few cents. While this price was much lower than the official price of 3.00 dollars, it would still allow Merck to recoup some of the costs of the donation. Merck, however, decided instead to lead the efforts directly, not only to produce and donate the drug (something on which they had expertise) but also to distribute it (something they did not have). It is instructive to discuss some of the reasons and considerations that may have led Merck to fulfill their discretionary duty to produce and distribute Mectizan. These allow us to see the interesting ways in which altruism and self-interest can (and should) be at play in discharging this duty.

According to Bollier et al. (1991) part of what led Merck to produce and distribute the drug had to do with beneficence: "Merck felt that this was the best way to get the drug to as many people as quickly as possible" (Bollier et al. 1991, Case C, 1). But it is important to recognize that Merck also had prudential concerns for proceeding as they did. Being directly involved in producing and distributing the drug was going to generate significant goodwill from third world nations, the WHO, and their own employees who were proud Merck's decision (Bollier et al. 1991, Case B, 4).

Merck had the expertise to manufacture the drug but not to distribute it. Despite this, Merck decided to also coordinate the effort to distribute the drug. To do so, the company created the Mectizan Expert Committee, a panel of seven international experts that "established guidelines and procedures for public health programs that wished to distribute Mectizan" (Bollier et al. 1991, Case D, 1). This was a clever solution to address many of the risks associated with the donation. The panel, funded by Merck, allowed the company to keep control of how the drug was distributed, in particular, to ensure that the drug was promptly and adequately distributed, that adverse reactions were tracked, and that the drug was neither misused nor transacted in black markets that could cannibalize into the market for Ivermectin. Because the panel was an external body, independent from Merck, it served to insulate Merck from criticisms from the decisions about who could or could not distribute the drug. Finally, by allowing organizations who were approved by the committee to distribute the drug, Merck avoided creating "a dependency that would place more demands on the company or restrict its options in the future" (Bollier et al. 1991, Case C, 4).

6 Conclusion

Scholars in the literature, worried about the inordinate centrality that profits and stock prices play in corporate managerial decisions, and guided by the intuition that "corporations have a responsibility to alleviate human misery" (Hsieh 2009a), have gone to great lengths to offer grounds to justify the moral duty of managers to engage in corporate beneficence. Because it has been assumed that shareholder primacy does not have the resources to ground such a duty, a wide variety of scholars in the field have proposed and defended alternative models of corporate governance (Bower and Paine 2017; Ciepley 2013; Evan and Freeman 1993; Freeman 2007; Freeman et al. 2010; Ghoshal 2005; Ireland 1999; Ohreen and Petry 2012; Stout 2012). Other scholars have worked within the paradigm of shareholder primacy, but have tried to justify the corporate duty of beneficence by appealing to contentious notions of corporate agency or personhood (Hsieh 2017a; Smith 2012); by showing that situations of extreme social need may justify breaking the fiduciary duties to shareholders (Dunfee 2006); or by arguing that the fiduciary duties of managers are limited to making financial returns on shareholders' investment and that, beyond a reasonable return, the manager has discretion to use the company's proceeds for beneficent deeds (Lee 2020; Ohreen and Petry 2012; Strudler 2017).

Among the main contributions of this article has been to show that you do not need to go beyond the paradigm of shareholder primacy to ground a good deal of the duties of beneficence that scholars in the field expect managers to fulfill in their corporate roles. The manager's obligation to fulfill these duties is not in tension with his obligations to shareholders; it arises from the fact that she is acting on their behalf.

By showing that some duties of beneficence are wide and others are narrow, and that some offer discretion and others do not, I have provided a more granular look into the duty beneficence. These distinctions allow one to see more clearly that, if a manager acts on behalf of shareholders, some of these duties will bind her and others will not. For those that do, some will allow for more discretion than others. This approach may provide a blueprint to generalize the account offered to other types of imperfect duties and to analyze duties that bind managers who act on behalf of a wider set of stakeholders beyond just shareholders.

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