## Corporations ought to value their responsibility to shareholders over the public interest when the two conflict.

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# Topic Overview

Before we can address this resolution, we must answer some important questions. Who is considered to be a shareholder? What is the public interest? In which type of scenarios would one group benefit over another?

What is a shareholder?

Investopedia.com defines a shareholder as “Any person, company or other institution that owns at least one share of a company’s stock. Shareholders are a company's owners. They have the potential to profit if the company does well, but that comes with the potential to lose if the company does poorly. A shareholder may also be referred to as a "stockholder".” This indicates that shareholders are not the individuals in charge of running the company on a day-to-day basis. These are people or groups that have invested money in hopes that a company does well and their investment grows in value.

Shareholders are more than just people. In the majority of developed nations, the general public has much of their retirement savings, either through mutual funds, IRAs, or pension plans, invested in corporations through the public market. This makes this resolution a little more difficult to debate. With this understanding, one could easily argue that the public interest needs to focus on the success of corporations for the benefit of its shareholders. Many times in recent history, recessions have hurt the general public due to major loses for shareholders.

What is the public interest?

How you answer this question is going to have a great impact on this debate. There are many variances of the phrase “public interest” between law applications, business applications and government applications. A basic definition found through the online businessdictionary.com states that the public interest is the, “Welfare of the general public (in contrast to the selfish interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies.” In most cases, “government and its agencies” could be replaces with “corporations”.

The public interest is based on subjectivity. Therefore, what is acceptable in one instance may not be acceptable in another. The affirmative side is going to want to address the definitions in a more utilitarian way. Morality and what is best for the community is also going to be important for the affirmative. Environmental polices do play a part in the public interest if it is defined as such.

The negation is going to want to focus on the confusion that is created by trying to define the public interest. Universal rights and application of ideas may be great for some but not for everyone. For example, liaise faire capitalism might not be in the public interest in all societies.

“When the two conflict”

The resolution asks us to only look at instances when one group is going to benefit and the other is not. It does not promote the idea that corporations must always value their shareholders and vice versa. This begs the question, what is going to be an instance when the two sides will conflict? Environmental policies, harmful product sales (tobacco and pornography), and anti-monopoly legislation are all examples of when one group might benefit over another.

#### Affirmative Strategies

One strategy is to challenge the idea of the “public interest” as must as possible. If the idea of the public interest can’t be defined, than it would be unfair to expect corporations to comply with what is best for the public. You could link your argument to the idea that shareholders are the public and therefore what is best for the shareholders is going to be best for the public interest.

Another strategy is to use the affirmative side to defend the idea of capitalism. Corporations must be able to make decisions that would allow them to grow and prosper. In return, the economy would grow and society would benefit. Economist argue that restrictions on corporations have led to down-turns in the economy.

A third strategy is to look at the question of who is responsible to promote the public interest. Corporations should be allowed to due what ever is necessary to succeed as long as it is within legal practices. Therefore, governments have the responsibility to ensure that the public’s interest is protected. Functioning democracy therefore will naturally lead to laws which the public feels are necessary to protect their interests. A clear and consistent rule book would be welcomed by corporations while ensuring the public interest is controlled. A word of warning, this does theoretically overlook the “when the two conflict” part of the resolution and nay lead to a theory-based debate.

#### Negation Strategies

The negation must show that what is good for the public interest outweighs the desires of corporations. By their nature, corporations rely on their shareholders investments, and would not exist if not for the shareholder model. Therefore, “when the two conflict” the negation has the burden to show that the public interest must be protected and valued more that the status quo model.

One strategy would be to address the potential harms of corporations cause by perusing various objectives. These harms can be specific or general. Environmental harms would be an example of general harms that damage what is best for the public. Specific harms would focus mostly on the “sin” industries. Sin industries are sectors of the economy that market products deemed to be harmful to the general public, such as tobacco and alcohol.

An additional strategy is to accept that shareholders are part of the public interest but to differentiate the differences between common shareholders and preferred shareholders. Most of the public would be common shareholders. These are people who have invested in corporations for the purpose of financial gain but do not have access to change corporate policies or manage the leadership of corporations.

The negation might also want to look at various ideas of utopia, peace, and others. Striving for ideals could benefit society as a whole while requiring the limitation of corporate power. Although you could argue for the idea of Marxism, beware of how you address this topic. Some judges would be accepting while others reject the idea in its entirety.

# Aff Case

## 1 AC

#### Value:

In this debate we must value reality over conceptions. I will show that the affirmative side of this resolution is obtainable while the negation is not obtainable.

#### Criterion:

In order for something to be weighed, it must exist. It must be consistent and measurable. Therefore, I the affirmative can show that the idea of the public interest is not definable, than the affirmative side must win this debate.

### Contention 1:

#### The standard of “public interest” can never be measured making it impossible for corporations to comply with the public interest.

The resolution, by including the words “when the two conflict” asks us to evaluate the correct course of action only when corporations’ actions will benefit the shareholders but not the public interests and vice versa. Essentially, the resolution implies that public interest is measurable and consistent. This is not realistic. It is the affirmative’s position that public interest is an inconsistent idea that would benefit one group’s public interest while violating another’s.

#### Sub-point A: The idea of a “public interest” too abstract to be realistic

Bromell & Hodgkinson, 2012 – 1 (Tony [Accountant], Robert [Executive Director, ICAEW], Acting in the public interest: a framework for analysis, Institute of chartered accountants in England and Wales, Report published 2012)

The public interest is an abstract notion. Asserting that an action is in the public interest involves setting oneself up in judgment as to whether the action or requirement to change behavior will benefit the public overall – a far greater set of people than can be interacted with directly. It involves interference in people’s ability to go about their business or sometimes, as a positive policy decision, non-interference in the face of alternative actions. Other terms can be used, largely interchangeably. Examples include public benefit, the public good, and the common good – the latter in the sense of the public having a common purpose, rather than goods to which there is common access. While we use the public interest throughout, the same issues apply to use of these other terms. Invoking the public interest requires justification of an ability and right to decide what is for the greater good, in the face of a natural suspicion that those proposing an action in the public interest are actually acting in their own interests.

The public interest is an abstract notion; to argue and be able to hold out that an action (or inaction) is in the public interest can require consideration of a number of complex factors and impose a burden of proof. Flaws in the argument or the outcome can rebound upon the reputation of those asserting that they are acting in the public interest, which will harm acceptance of future matters said to be in the public interest. Alternative means of justification may be preferable, where much of the public is scoped out, or can opt out.

This idea of the public interest is important to the debate. The negation must show that the public interest is measureable and therefore obtainable. Furthermore, the negation must prove why the public interest outweighs a corporation’s responsibility to its owners and shareholders.

#### Sub-point B: The idea of a “public interest” benefits only one groups way of thinking and not the public as a whole

Bromell & Hodgkinson, 2012 – 2 (Tony [Accountant], Robert [Executive Director, ICAEW], Acting in the public interest: a framework for analysis, Institute of chartered accountants in England and Wales, Report published 2012)

The whole of the public must be eligible for consideration in respect of a matter, which is asserted to be of public interest, by its very nature. However, as a practical point, there will be large numbers of people whose welfare will not actually be affected by the action. The relevant public will therefore only be a sub-set of the whole public: those ‘affected’. This will include those whose welfare will be advantaged or disadvantaged, although this is not always clear-cut; also, others with a legitimate interest, for example NGOs, representative bodies and others with a mandate to speak on behalf of people who are affected. Within the relevant public there will also be degrees of impact, which may be relevant in determining how to weight views. The relevant public will not include those whose interest merely lies in finding something interesting. That is a different meaning of interest altogether.

Having determined who comprises the relevant public, the proponent of the public interest action’s first consideration in determining what is in their interest should be what their wants are and whether the action is consistent with those. In some circumstances fundamental values may be the starting point but popular opinion must be relevant. However, determination of opinion is not easy. First, by its nature, the relevant public in a public interest matter will be broadly based. Second, what people want is complicated: it usually revolves around happiness, which is a subjective notion built around a whole series of factors that often conflict with each other, those of other people and those of other cultures. Wants therefore tend to conflict. Third, interests can coincide with those of others and interest groups will be created. Inevitably some will have a public interest perspective and some not. Some are more articulate or otherwise better at making themselves heard than others and expressed opinion will not necessarily be the same as actual opinion.

The negation in this debate must show that public interest is truly the interest of the public as a whole. If any “public interest” overlooks a minority, in anyway, one cannot make the claim that it is in the interest of the public as a whole.

In the words of John Stewart Mill, “If all mankind minus one, were of one opinion, and only on person were of the contrary opinion, mankind would be no more justified in silencing that one person, than he…would be justified in silencing mankind.”

#### Sub-point C: The idea of “public interest” cannot be a decision of a small group

History shows us that groups often hide behind the idea of “public interest” to benefit themselves at the expense of others. Recently, it has been argued that is in the “public interest” to prevent same-sex couples from getting married. In the past, the idea of the “public interest” has been used to promote racism, encourage monopolies, and limit worker’s rights.

A specific example of a group using the “public interest” to their own advantage is the media industry. The media claims to publish stories based on what the public needs to know. This has led to even the most respected news agencies to be caught up in marketing ploys designed to make money while they claim to promote the public interest.

O’neill, 2010 (Brendan [Editor, blogger, writer], The tyranny of ‘the public interest’, Spiked, Published 12/2/2010, accessed online 7/16/15, http://www.spiked-online.com/newsite/article/9964#.VagYIRNVikp)

In a video posted on the Guardian website, the newspaper’s editor, Alan Rusbridger, says that he and a team of senior journalists – those with ‘great knowledge’ – filtered the diplomatic documents leaked by Wikileaks to work out which of them was ‘in the public interest’. Which got me thinking: who decides what is in the public interest? Rusbridger and five or six of his staff? How do they know? Do they ask the public? Is there a secret document somewhere – as yet unleaked – which informs these possessors of ‘great knowledge’ exactly what is and is not in the public interest?

It is striking that for the past two years, the very same Guardian – as well as the New York Times, which also published the Wikileaks documents – has been slating the News of the World for employing phone hackers to eavesdrop on celebs’ private phone conversations. Because now, these two heavyweight broadsheets are likewise publishing material that was obtained in a technically illegal fashion and which also reveals private shenanigans – from American diplomats’ description of Kim Jong-il as ‘flabby’ to the revelation that President Nicolas Sarkozy of France once chased a rabbit around his office.

The Guardian’s defense of its own publication of illegally obtained private discussions between well-known people in contrast to the News of the World’s is interesting. Its media correspondent states: ‘The whole point about the News of the World’s phone hacking is that the stories it obtained could not be said to have been in the public interest, [whereas] we can demonstrate that we are acting in the public interest.’ So it is not in the public interest to reveal what Prince Harry said in private to his girlfriend Chelsy, but it is in the public interest to reveal what Prince Andrew said in private to an American diplomat. It isn’t in the public interest to publish stories about what one celeb thinks of another (‘fat, stupid, UGLY’), but it is in the public interest to tell us that American diplomats think Colonel Gaddafi uses botox and wants to screw his Ukrainian nurse and that Kim Jong-il has a weight problem.

It’s hard to avoid the conclusion that ‘the public interest’, as defined in these discussions, has very little to do with the living, breathing public. The higher valuation given to the highbrow tittle-tattle spouted by the Wikileaks brigade in contrast to the lowbrow tittle-tattle spouted by the News of the World is really a question of taste, of preference, even of snobbery (‘our gossip is worthier than yours!’), yet it gets dressed up in the pseudo-democratic lingo of the public interest. What these journalists and editors really mean when they talk about ‘what is in the public interest’ is what they think is good for the public – what they have decreed, in their closed-off meetings using some narrow legalistic definitions, to be edifying and respectable enough for publication.

### Contention 2:

#### If the public interest cannot be defined, than corporations are obligated to cater to their shareholders

Miwa, 1999 (Yoshiro [Professor of economics, University of Tokyo], Corporate social responsibility: dangerous and harmful, though maybe not irrelevant, Cornell Law Review, Vol. 84, Number 5, pp. 1227-1254)

The view has been gaining widespread acceptance that corporate officials and labor leaders have a "social responsibility" that goes beyond serving the interest of their stockholders or their members. This view shows a fundamental misconception of the character and nature of a free economy. In such an economy, there is one and only one social responsibility of business-to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.... It is the responsibility of the rest of us to establish a framework of law such that an individual in pursuing his own interest is, to quote Adam Smith, again, "led by an invisible hand to promote an end which was no part of his intention. Nor is it always the worse for the society that it was no part of it. By pursuing his own interest, he frequently promotes that of the society more effectually than when he really intends to promote it. I have never known much good done by those who affected to trade for the public good."'

If businessmen do have a social responsibility other than making maximum profits for stockholders, how are they to know what it is? Can self-selected private individuals decide what the social interest is? Can they decide how great a burden they are justified in placing on themselves or their stockholders to serve that social interest? Is it tolerable that these public functions of taxation, expenditure, and control be exercised by the people who happen at the moment to be in charge of particular enterprises, chosen for those posts by strictly private groups?

Corporations exist to benefit their shareholders. They exist to make money and to grow the economy. Corporations also understand that they need to be responsive to the public. Not the public interest, which the affirmation has shown does not exist in reality, but to the desires of their customers. The free market is based on this idea. Corporations know that if they overlook the desires of the public, this will negate their obligation to their shareholders. Therefore, corporations should have the ability to monitor themselves as long as they are within legal parameters set by fair and legitimate governments.

# Neg Case

## 1 NC

Corporations’ drive for profit and expansion benefit only a small group of individuals often at the expense of what’s best for society. Many corporations are willing to overlook the direct harms of their products for the benefit of their shareholders.

It is for this reason that I must negate the resolution, “Corporations ought to value their responsibility to shareholders over the public interest when the two conflict.”

This resolution is asking us to evaluate what is of more importance when doing what is best for society may harm corporate profits. This resolution requires us to find which side is going to produce the most sensible outcome when the two options conflict. It is the negations stance that the community as a whole is better than a limited group of investors.

#### Definitions

Public Interest -- Welfare of the general public (in contrast to the selfish interest of a person, group, or firm) in which the whole society has a stake and which warrants recognition, promotion, and protection by the government and its agencies. Despite the vagueness of the term, public interest is claimed generally by governments in matters of state secrecy and confidentiality. It is approximated by comparing expected gains and potential costs or losses associated with a decision, policy, program, or project. (Business Dictionary . com)

Shareholder -- Any person, company or other institution that owns at least one share of a company’s stock. Shareholders are a company's owners. They have the potential to profit if the company does well, but that comes with the potential to lose if the company does poorly. A shareholder may also be referred to as a "stockholder". (Investopedia.com)

#### Observation 1

This resolution addresses only when shareholder interest and the public interest directly conflict. We must not focus on limiting shareholder interest unless it directly leads to harm for society.

#### Value

We must look to the value of societal welfare in order to decide which option is better.

Business Dictionary defines society welfare as “The well-being of the entire society. Social welfare is not the same as [standard of living](http://www.businessdictionary.com/definition/standard-of-living.html) but is more concerned with the [quality of life](http://www.businessdictionary.com/definition/quality-of-life.html) that includes [factors](http://www.businessdictionary.com/definition/factor.html) such as the [quality](http://www.businessdictionary.com/definition/quality.html) of the [environment](http://www.businessdictionary.com/definition/environment.html) (air, [soil](http://www.businessdictionary.com/definition/soil.html), water), level of [crime](http://www.businessdictionary.com/definition/crime.html), extent of [drug abuse](http://www.businessdictionary.com/definition/drug-abuse.html), [availability](http://www.businessdictionary.com/definition/availability.html) of essential [social services](http://www.businessdictionary.com/definition/social-services.html), as well as religious and spiritual aspects of life.”

In other words, societal welfare promotes a society free of crime, free of drug abuse, free of sickness and premature death, and free from poverty.

#### Criterion

To determine what is best for society, we need to use consequentialism. This means that the justification of an action is to be judged solely by its consequences.

If the actions of corporations benefit society, than the results of such actions would provide for a better society. If the actions of a corporation harms society, than it must be accepted that the action cannot be justified under the value of societal welfare.

### Contention 1

#### Tobacco use around the world has a negative affect on societal welfare

#### Sub-point A: Tobacco use causes numerous health conditions which hurts societal welfare

World Health Organization, 2015 (Tobacco: Fact Sheet No. 339, Updated 6/13/2015, Found on http://www.who.int/mediacentre/factsheets/fs339/en/#)

According to the World Health Organization in 2015:

The tobacco epidemic is one of the biggest public health threats the world has ever faced, killing around 6 million people a year. More than 5 million of those deaths are the result of direct tobacco use while more than 600 000 are the result of non-smokers being exposed to second- hand smoke. Nearly 80% of the more than 1 billion smokers worldwide live in low- and middle-income countries, where the burden of tobacco-related illness and death is heaviest. Tobacco users who die prematurely deprive their families of income, raise the cost of health care and hinder economic development. In some countries, children from poor households are frequently employed in tobacco farming to provide family income. These children are especially vulnerable to "green tobacco sickness", which is caused by the nicotine that is absorbed through the skin from the handling of wet tobacco leaves. Second-hand smoke is the smoke that fills restaurants, offices or other enclosed spaces when people burn tobacco products such as cigarettes, bidis and water-pipes. There are more than 4000 chemicals in tobacco smoke, of which at least 250 are known to be harmful and more than 50 are known to cause cancer. There is no safe level of exposure to second-hand tobacco smoke. In adults, second-hand smoke causes serious cardiovascular and respiratory diseases, including coronary heart disease and lung cancer. In infants, it causes sudden death. In pregnant women, it causes low birth weight. Almost half of children regularly breathe air polluted by tobacco smoke in public places. Second-hand smoke causes more than 600 000 premature deaths per year. In 2004, children accounted for 28% of the deaths attributable to second-hand smoke. Every person should be able to breathe tobacco-smoke-free air. Smoke-free laws protect the health of non-smokers, are popular, do not harm business and encourage smokers to quit. Over 1.3 billion people, or 18% of the world's population, are protected by comprehensive national smoke-free laws.

#### Sub-point B: Tobacco use promotes poverty hurting societal welfare

John, 2011 (Rijo, [Professor – India Institute of Technology], County 15 million more poor in India, thanks to tobacco, Tobacco Control, Vol. 20, No. 5, pp. 249 – 352)

Studying the impact of tobacco use on poverty is important because the economic performance of many LMICs is measured by their progress towards poverty alleviation. In addition, poverty reduction is one of the Millennium Development Goals (MDG) set out by the United Nations 3 Research has demonstrated the link between poverty and tobacco use, but most of the studies do not quantify the impact. We attempt to do so using data from India, a low-income country where 10% of the world's tobacco smokers live, the second largest group of smokers in the world after China. This is the first study that enumerates how many people are de facto below the poverty line in India as a result of tobacco consumption. It is of significant political and social interest to count correctly the actual number of people living in poverty as even small changes in poverty rates capture the headlines and the attention of many policymakers. Tobacco use contributes to poverty in several ways. First, since poor households typically devote a large share of their income to food, spending on tobacco often takes away resources that would otherwise be available for food, making the difference between an adequate diet and malnutrition. A study in Bangladesh showed that a typical poor smoker could purchase food worth at least 500 additional calories every day if he/she did not purchase tobacco. If the money spent on tobacco were directed towards food, about 10.5 million people in Bangladesh would have an adequate diet instead of being malnourished. Apart from food, tobacco expenditure reduces consumption of other important goods and services. Studies from China and India have shown, for example, that spending on tobacco reduces investment in education, thus further perpetuating the cycle of poverty.

### Contention 2

#### Tobacco companies overlook the public interest

#### Sub-point A: Tobacco companies’ push for market expansion overlooks the public interest

Gilmore, 2015 (Anna, Professor, University of Bath, Exposing and addressing tobacco industry conduct in low-income and middle-income countries, The Lancet, Vol. 385, Issue 9972)

The tobacco industry’s future depends on increasing tobacco use in low-income and middle-income countries (LMICs), which face a growing burden of tobacco-related disease, yet have potential to prevent full-scale escalation of this epidemic. To drive up sales the industry markets its products heavily, deliberately targeting non-smokers and keeps prices low until smoking and local economies are sufficiently established to drive prices and profits up. The industry systematically flaunts existing tobacco control legislation and works aggressively to prevent future policies using its resource advantage to present highly misleading economic arguments, rebrand political activities as corporate social responsibility, and establish and use third parties to make its arguments more palatable. Increasingly it is using domestic litigation and international arbitration to bully LMICs from implementing effective policies and hijacking the problem of tobacco smuggling for policy gain, attempting to put itself in control of an illegal trade in which there is overwhelming historical evidence of its complicity. Progress will not be realized until tobacco industry interference is actively addressed as outlined in Article 5.3 of the Framework Convention on Tobacco Control. Exemplar LMICs show this action can be achieved and indicate that exposing tobacco industry misconduct is an essential first step.

#### Sub-point B: Tobacco companies still market to children and the vulnerable

Hastings, 2014 (Gerald, Professor, University of Stirling, Tobacco companies are still determined to get children addicted, British Medical Journal (BMJ), Vol. 348, Issue 1439)

The French journalist Paul Moreira’s new documentary, Big Tobacco, Young Targets, is a timely reminder of three truths about smoking: only the young start; it kills one in two of those who don’t escape the resulting addiction; and the tobacco industry exploits these vulnerabilities with icy determination. The resulting carnage beggars belief: the World Health Organization estimates that the death toll will reach eight million a year by 2030. This film exposes the cynical marketing used to pull young and vulnerable people into tobacco’s deadly trap.

The tricks we in the developed world thought had been legislated away—celebrity endorsement, sport and music sponsorship, product placement, free samples, juvenile flavorings, novelty, and glitz—are, Moreira shows, still being enthusiastically used in developing countries. Thus in Indonesia, sponsored and heavily branded tours by Western rock bands are a favored promotional technique, as are free concerts by local artists.

[An email was sent to one] multinational tobacco company to ask it to explain such disregard for its own marketing code. Its response was, “It is not possible because the competition is too fierce.” Business is business; count the cash, not the cadavers. And if journalists come sniffing around, stonewall them, call your lawyers, and eject them from your premises. Big tobacco, as Moreira painfully discovered, also employs big bouncers.

The second innovation presumably reflects painful lessons learnt from past exposés. Two decades of embarrassing courtroom disclosures and revelations by former employees have shown the dangers of paper trails. Now tobacco companies tightly control communication with the media, as Moreira found out. And, the insider explains, they are also systematically destroying documents before anyone even thinks of having them subpoenaed.

[These] courageous revelations are timely because tobacco multinationals are currently on a charm offensive. Using the mantle of harm reduction and the opportunity of electronic cigarettes, they hope to make a return to the respectable business community and even build collaborations with public health. In their own words, they see an opportunity to move from “curse to cure.”

They envisage a legitimized market in recreational nicotine that they will populate with products of varying hazard, from the highly toxic tobacco cigarette to untested but probably much less dangerous alternative nicotine delivery devices, including e-cigarettes. British American Tobacco, Lorillard, and Philip Morris have all made massive e-cigarette acquisitions in recent months. Offerings with a range of risk can then be used to delegate the responsibility for harm done to “consumer choice.” A disingenuous defense is probably already being drafted by corporate lawyers: we are offering safer alternatives, doing our best to reduce harm, and we can’t be blamed if the consumer insists on opting for the more dangerous product. But choice becomes Orwellian in the teeth of addiction, and marketing edits any residual self-determination.

We have to remember that this is business; it is about profit not public health. Notwithstanding their multimillion-dollar buy-in to e-cigarettes, the companies continue to make 99% of their money from tobacco. E-cigarettes will therefore be used to protect this core business; there is no money to be made cannibalizing existing sales or undermining established brands.

Predictably, then, the tobacco industry’s move into e-cigarettes has seen an exponential increase in promotional spend, and these born again campaigns have an uncanny familiarity—the celebrity endorsement, sport and music sponsorship, product placement, free samples, juvenile flavorings, novelty, and glitz are all back. It’s as if we had returned to the 1970s and the heyday of tobacco advertising—or lived in Asia today. And so the three core truths of the tobacco pandemic, so neatly underlined by this film, reassert themselves: get them young, keep them addicted, and ignore the collateral.

#### Sub-point C: E-Cigarettes are not a safe alternative

While some look to e-cigarettes, pushed by tobacco companies, as a harmless alternative to smoking, e-cigarettes are still contain massive amounts of nicotine. Nicotine is addictive and has no positive benefits from human consumption. In fact, the addictive nature of nicotine leads people to become dependent on its usage.

Experts are still trying to determine the safety of e-cigarettes. While they may not be as harmful as traditional methods of nicotine delivery, it is almost certain that there are negative health consequences from their use.

The fact that e-cigarettes and other vaping systems are being used by large numbers of teen agers indicates that tobacco companies are not willing to give up the fight to create generations of people addicted to their product.

### Contention 3

#### Other industries harm the public interest to satisfy share holders

Tobacco companies are not the only industry whose products are detrimental to societal welfare. Other industries willingly sell their products knowing that they cause direct harm to their consumers. These harms worsen society and limit human potential.

The gambling industry:

Ciment, 2006 (James, [Author], Social issues in America: an encyclopedia, M.E. Sharpe, Armonk, NY, 2006)

The benefits of gambling include the entertainment it provides for participants, as well as the financial boost it brings to local and national economies. At the same time, gambling, especially when done to excess, is linked to a host of social ills, including alcoholism, crime, homelessness, and increased rates of suicide. Further, municipalities that choose to limit or prohibit gambling are often drained of significant capital by neighboring municipalities where the activity is legal.

Fast Food Industry:

Freeman, 2007 (Andrea, [Professor of Law], Fast Food: Oppression through poor nutrition, California Law Review, Vol. 95, No. 1, pp. 2211-2260)

West Oakland, California, a neighborhood of 30,000 people populated primarily by African Americans and Latinos, has one supermarket and thirtysix liquor and convenience stores. The supermarket is not accessible on foot to most of the area's residents. The convenience stores charge twice as much as grocery stores for identical items. Fast food restaurants selling cheap and hot food appear on almost every corner. West Oakland is not unique. The prevalence of fast food in low-income urban neighborhoods across the United States, combined with the lack of access to fresh, healthy food, contributes to an overwhelmingly disproportionate incidence of food-related death and disease among African Americans and Latinos as compared to whites. Urban communities of color suffer the harshest effects of poor nutrition. Individuals living in these communities often lack sufficient access to adequate health care and education, compounding the deleterious effects of a diet monopolized by fast food. Members of these communities also experience multiple forms of oppression as a result of their class and race. Attributes such as gender, age, disability, or sexual orientation can add further layers of vulnerability. Although the harm caused by over-consumption of fast food cuts across race and class lines, its pronounced and extreme effect on low-income people of color represents a form of structural oppression that activists must incorporate into a struggle for racial and economic justice.

Industries promoting alcohol use, pornography, violence, the over consumption of prescription drugs, and destruction of the environmental resources are just a few more which we can look to. These companies’ desire to increase profits and satisfy their share holders harm the public interest.

Therefore, the negation has shown that corporations who place their share holders above the public interest harms society and do little more than create harms for the general public.

# Aff Cards

#### Corporations do not have the ability to decide what is moral

Mansell, 2013 (Samuel [Ph.D., Dean-St. Andrew’s University], Shareholder theory and Kant’s ‘Duty of beneficence’, Journal of Business Ethics, Vol. 117, Issue 3, pp. 583-599)

According to Friedman, there is no such thing as ‘corporate’ social responsibility, because as the free choice of the individual is at the basis of his moral principles only individuals can be said to have moral responsibilities (ibid.). In line with his premise that the right to own property is part of the concept of a free individual, he argues that as shareholders are owners of the business, it falls within their free choice to decide upon the purposes for which the assets of the business are used: In a free enterprise, private-property system a corporate executive is an employee of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which will generally be to make as much money as possible… Of course, in some cases his employers may have a different objective (ibid.). The argument here is simply that managers of a business are agents who have a duty to the principals—the shareholders as owners—to conduct the operations of the business in accordance with their wishes. Here the strictly deontological obligations arising out of the contract between managers and shareholders can be seen. The shareholder theory in this form is the result of three postulates: that there exists a moral right to property; that the relationship of the shareholders to the business is the same as an individual to his/her property; and that the relationship of the shareholders to management is one of a voluntarily entered contract, whereby management take on a delegated responsibility for the property of the owners. On this basis there can be only one responsibility of those running the business: they must act in accordance with the wishes of the property owners, which will usually be to maximize the value of that property, or to maximize profit as the means to achieving this end.

#### Shareholders do not have the ability to force corporations to take any course of action

Klonoski, 1986 (Richard [Ph.D., Professor of philosophy, University of Scranton], The moral responsibilities of stockholders, Journal of Business Ethics, Vol. 5, No. 5, pp. 385-390)

The most obvious and seemingly most significant right that common stockholders have is their right, as owners of the corporation, to vote their shares in response to items or resolutions up for consideration on the agenda of the annual stockholder's meeting. Putting aside the limitations inherent in the conditions under which proxy resolutions can be included on and retained for consecutive years in the agenda for the stockholders meeting, it is important to examine this right to vote in regard to its actual and potential impact on the management of the corporation.

The fundamental question, of course, is whether or not this right carries with it any significant power or capacity to effect change. However, in order to discuss the issue as to whether shareholders can have their will felt by the corporation and thereby effect change, it is necessary to distinguish between large and small stockholders. It becomes clear quickly that this is a distinction in practice tantamount to one between significant and generally insignificant shareholders.

The large stockholders are most often, for example, pension funds, mutual funds, insurance companies, foundations and charitable institutions. These shareholders tend to vote with management, if they vote their shares at all. In the case of an extraordinary or very serious conflict of interests between such a major stockholder and the corporation, this sort of shareholder will just divest itself of its stock and invest elsewhere.

The point here is that unless there occurs the mass selling of stock by common shareholders, necessarily including these major or large stock holders, (such that, for example, there would be a dramatic or remarkable decline in stock prices), the effect of a stockholder protest aimed at substantially altering company policy or halting a designated corporate investment or venture will in all likelihood be insignificant.

#### Shareholder (pension plans) prosperity is the public interest

Gourevitch, 2007 (Peter [Ph.D], What do corporations owe citizens?, Society, Vol. 44, Issue 5, pp. 12-18)

What do corporations owe citizens? According to shareholder ideology, the primary claimant on the firm’s managers is the shareholder. The obligation of managers is to maximize the rate of return. To most specialists in finance, this is an analytic statement, a descriptive one and a prescriptive one. According to the alternative stakeholder ideology, shareholders are but one of many valid claimants on the cash flow of the firm: Others include the employees, suppliers, subcontractors, distributors (all members of the supply chain), communities, and the public at large. In the last few years, concepts of the “triple bottom” line (profit, the environment, community) and corporate social responsibility have amplified these ideas.

Pensioners, present and future, are among these claimants in both shareholder and stakeholder models. The scandals of 2001 and following of Enron, World Com, et al., revealed the vulnerability of pension claims to managerial strategies. Managers are able to solve the short term cash flow demands on the firm by lowering contributions to the pension funds, in terms of actual cash or by changing assumptions about rates of return and claims. Declaring bankruptcy allows the firm to shift obligations on to the Pension Benefit Guaranty Corporation (PBGC). Created by ERISA in 1974, the PBGC is an insurance plan, paid by premiums. If very many firms use it, the plan runs out of money and the government will face demands for bailout, as happened with the Savings and Loan debacle in the 1980s. Intergenerational issues complicate issues of short vs. long-term claimants. Crisis also looms in public pension obligations at the state and local levels. (Financial crises in Orange County, CA, San Diego, New Jersey show the propensity of public institutions make the same unrealistic assumptions as the private sector on rates of return to justify lower contributions to pension funds. Little supervision has occurred, as there has been no regulatory structure to monitor the public pension funds.)

#### Shareholders are being treated unfairly under the disguise of the public interest

Nader, 2013 (Ralph [economist], Fannie and Freddie shareholders – the forgotten, used and abused, silenced constituency, Shareholder Respect, essay, accessed online 7/17/15 at http://www.shareholderrespect.org/2013/11/22/fannie-and-freddie-shareholders-the-forgotten-used-and-abused-silenced-constituency/)

Since the 2008 bailout of Fannie Mae and Freddie Mac, and the beginning of their conservatorship, the stockholders of these two companies, of which I am one, have been stripped of their basic rights as shareholders.

Prior to the financial crisis, shareholders of these government sponsored enterprises (GSEs) had legal rights to challenge management decisions through the courts and through proxy battles, or by offering shareholder resolutions. On September 7, 2008, when the U.S. Treasury and the Federal Housing Finance Agency (FHFA) established a conservatorship for Fannie Mae and Freddie Mac, common shareholders lost their voting rights, dividends on preferred and common stock were suspended, and annual shareholder meetings were canceled.

The legal mandate of the conservatorship is to “conserve and preserve the assets” of the companies taken into conservatorship and “restore them to safe and sound condition.” But neither goal is being advanced by the FHFA. And FHFA, under Ed DeMarco, has acted as a “closet liquidator” of the GSEs, effectively acting to wind down the companies. This explicitly contradicts the legal mandate of the conservatorship. Fannie and Freddie – and their shareholders – are being treated unfairly.

The federal government – the Treasury, FHFA, and Congress – exploited and ignored the GSEs’ shareholders with zombie stock, and stuck them in financial limbo. The GSEs were required to pay above-market 10 percent dividends on Treasury’s investment, while many of the Wall Street banks that were bailed out with TARP money were required to pay dividends half of that rate. The shareholders of their bailed out banks were preserved and given a chance to recover.

The FHFA ordered the Fannie and Freddie boards and executives to suspend communications with shareholders and abolish annual shareholder meetings. And finally, adding insult to injury, in 2010 the FHFA arbitrarily directed Fannie and Freddie to initiate the delisting of their common and preferred stock from the NYSE. This further degraded shareholder value and chased away many institutional investors.

In 2012, as Fannie Mae and Freddie Mac were returning to profitability despite financial and operating restrictions on their activities, the U.S. Treasury changed the terms of its investment in the GSEs to its own benefit. The Treasury replaced the already well-above-market 10 percent dividends that the GSEs were paying to a “sweep” of all of the profits of the companies.

In times when the GSEs were facing mounting losses, the 10 percent dividends were burdening the GSEs with debt, forcing them to borrow from Treasury in order to turn around and pay that borrowed money right back to Treasury, thus compounding their debt and inflating future dividend payments. However, now that the [Fannie and Freddie] have returned to profitability, this arrangement has the potential to do great harm. The [companies] are now sending nearly all of their earnings to Treasury, can’t rebuild their capital, and their shareholders remain in a limbo where they are neither eliminated nor given an opportunity to recover. If the enterprises were doing well enough to pay the government a 10 % return on the senior preferred stock, why couldn’t they also pay dividends on the common stock and junior preferred stock?

# Neg Cards

#### The “invisible hand” is not strong enough to guide corporations to moral actions

Visser, 2010 (Wayne [Ph.D, Author], Public Interest, The A to Z of corporate social responsibility, John Wiley & Sons Ltd, Hoboken, NJ)

Corporate social responsibility (CSR) is often conceived as the way in which business demonstrates that it is operating in the public interest, or the ‘common good’. This is a shift from Adam Smith's original proposition that the ‘invisible hand’ of the free market automatically ensures that companies operate in the public interest. Subsequently, critics of the free market ideology have argued that, in the case of public goods (like clean air, water and a healthy environment), markets tend to fail.

In economic terms, this is often expressed as the failure of companies to internalize the externalities (social and environmental costs or benefits) of their activities. Hence, there is the need for market intervention in the form of either regulation, or market based instruments (such as eco-taxes and eco-subsidies) in order to protect the public interest.

#### Economic policies detract from democratic principles

Branco, 2012 (Manuel [Economist, Investigative reporter] Economics Against Democracy, Review of Radical Political Economics, Vol. 44, Issue 1, pp. 23-39)

Even a quick glance at any serious newspaper today will inevitably show how economics has reached the status of a political fact, of a major political fact in reality. Partisan political programs have essentially become economic programs, and economic variables such as interest rates, oil prices, or unemployment have thereby become major global political issues. In an age in which democracy seems to have become the default political regime in almost every corner of the planet, one would expect economics to have accompanied this drift, to have introduced democratic logic into its process of decision making. Unfortunately this does not seem to be the case. Economics has, on the contrary, decisively contributed to the production of a justificatory ideology according to which, in the supposed interest of all, economic decisions depend on calculation rather than on deliberation. The political system resulting from this vision seems, therefore, to be increasingly made of imperatives independent of that collective political will that supports citizenship. As we will see, in mainstream economics there is only one best solution for each economic problem and thus the purpose of policy consists in finding out that solution and not in confronting collective preferences, in other words in engaging in political debate. In the realm of politics transformed into economics, pluralism is, therefore, crowded out; in other words there is no alternative as former British Prime Minister Margaret Thatcher once stated.

This disregard of economics for democracy is not the outcome of economics having somehow been hijacked by dubious personal interests, in other words doing the right economics wrongly, but of simply following its logic, that is to say of doing the wrong economics rightly (see Branco and Henriques 2010). The conflict between economics and democracy does not result, therefore, from any moral weakness of economic actors but from an intrinsic incompatibility between the logic of economics and that of democracy, between the institutions of economics, such as the market, and the institutions of democracy.

#### Corporations overlook human rights claiming they are acting in the public’s interest – Anti Moral-Universalism

Demuijnck, 2015 (Geert [Ph.D., Professor of Business], Universal values and virtues in management versus cross-cultural moral relativism: an educational strategy to clear the ground for business ethics, Journal of Business Ethics, Vol. 128, Issue 4, pp. 817-835)

During these different contacts and discussions with business people over the years, I have heard the same relativist arguments ad nauseam: ‘‘There are things that we cannot understand from our Western perspective.’’ ‘‘Public opinion and NGOs in Europe are too quick with their judgments, they lack experience in the field.’’ ‘‘Life has not the same value over there.’’ ‘‘People accept such differences in treatment [between expatriates and locals] easily, they do not think in egalitarian terms like the French.’’ ‘‘Some decades ago, children worked in the fields during the harvest season in Europe, and no one was shocked. It is just a matter of the level of development.’’ ‘‘Corruption is just part of the social system there. It creates social links. It is just a different way of doing things.’’ Expatriate managers in particular are often convinced or at least they pretend to be convinced that practices and customs in foreign subsidiaries cannot be judged on the basis of the ethical standards of their homeland. They often refer to the fundamental differences, which make all judgments from an external perspective beside the point. As a consequence, they are mostly convinced by or even resigned to a deeply relativist vision. Admittedly, some business people or students mention also that, in principle, some basic human rights should be respected everywhere, but they mostly feel at the same time that one should not impose so called universal principles against prevailing local opinions and that ultimately we cannot prove that we ‘‘got it right.’’ To conclude, moral universalism, i.e., the idea that moral principles, values, duties, and virtues are valid and applicable universally, does not seem to be fashionable, either among managers or among students.

But, even worse is the fact that people often raise objections against universal values and virtues. Two of them, of a rather different nature, often crop up. First, moral universalism and even human rights are often dismissed as manifestations of Eurocentrism, Western arrogance, or cultural imperialism. European business people do not like to be described as ‘‘neocolonialists,’’ and it seems to be part of political correctness not to judge other cultures.

#### The invisible hand does not always drive what is best for society

Frank, 2008 (Robert [Economist, Ph.D.], The invisible hand is shaking, The New York Times, Economic View, Published 5/25/2008)

Adam Smith’s modern disciples are far more enthusiastic about his celebrated invisible-hand idea than he ever was. In their account, Smith’s assertion was that purely selfish individuals are led by an invisible hand to produce the greatest good for all. Yet Smith himself was under no such illusion.

On the contrary, the relevant quotation from his “Wealth of Nations,” which describes a profit-seeking business owner, is far more circumspect. It says that this owner “is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.” It continues: “Nor is it always the worse for the society that it was no part of it. By pursuing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it.”

In short, Smith understood that the invisible hand is often benign, but not always.

This understanding has important implications for economic policy in general, and for the recent presidential campaign dust-up about gasoline taxes in particular.

If you believe, with Smith’s modern disciples, that unfettered pursuit of self-interest always promotes society’s interests, you probably view all taxes as a regrettable evil — necessary to pay for roads and national security, but also an unwelcome drag on economic efficiency. The problem, according to this view, is that taxes distort the price signals through which the invisible hand guides resources to their best destinations.

Smith’s more nuanced position supports a different view of taxes. When market prices convey accurate signals of cost and value, the invisible hand promotes the common good. But prices often diverge from cost and value and, in those cases, taxes can actually help steer resources toward more highly valued uses.

#### Shareholder benefits are not the primary concern for corporations

Stout, 2013 (Lynn [Professor of Law], The toxic side effects of shareholder primacy, University of Pennsylvania Law Review, Vol. 161, Issue 7, pp. 2003-2023)

When asked to explain exactly why corporations should focus solely on maximizing shareholder value, nonexperts typically default to empirically false claims like “shareholders own corporations” or “the law says corporations must maximize profits for shareholders.” More sophisticated shareholder primacy advocates typically rely on a different factual assertion: that shareholders are the sole “residual claimants” in corporations. According to this view, because the claims that nonshareholders such as creditors, employees, or taxing authorities have against corporations are fixed by contract or by law, maximizing the value of the shareholders’ residual interest in the corporation is equivalent to maximizing the value of the corporation itself, which in turn maximizes social value.

The shareholders-are-the-residual-claimants argument has its roots in bankruptcy law. At least in theory, when an insolvent company is liquidated, shareholders receive any assets remaining in the firm after the legal and contractual claims of other stakeholder groups (employees, creditors, suppliers, and government tax collectors) have been paid in full. As both Rock’s and Adler and Kahan’s discussions of the tension between shareholders’ and creditors’ interests implicitly admit, however, it is not accurate to treat shareholders as the sole residual claimants in a company that is not insolvent. In fact, outside the bankruptcy context, it is highly misleading to suggest that shareholders are legally entitled to receive each and every penny of corporate profit left over after the fixed claims of other stakeholders have been paid. To the contrary, the corporation as a legal entity is its own residual claimant, with legal title to its profits; shareholders are only legally entitled to whatever dividends the board of directors might, in its business judgment, declare. The interests of creditors, employees, suppliers, and taxing authorities are likewise neither fixed nor static. In solvent corporations, the business judgment rule gives boards legal discretion at any time to increase employee salaries and benefits, treat suppliers more generously, retain earnings to give creditors a larger “equity cushion,” or decline to pursue aggressive tax-avoidance strategies.

# Additional Resources

1. Harvard Business Review – “What Good are Shareholders?”

<https://hbr.org/2012/07/what-good-are-shareholders>

1. In the Public Interest

<http://www.inthepublicinterest.org/?everything=everything>

1. Public Interest Theory

<http://www.newworldencyclopedia.org/entry/Arthur_Cecil_Pigou>

1. A Short History of Corporations

<http://newint.org/features/2002/07/05/history/>

1. Corporations and the Public Interest: Guiding the Invisible Hand

Book published by Berrett-Koehler Publishers (February 1, 2005)

1. The Fundamental Rights of the Shareholder

<http://lawreview.law.ucdavis.edu/issues/40/2/articles/DavisVol40No2_Velasco.pdf>

1. What is Public Interest Law?

<http://www.law.harvard.edu/current/careers/opia/public-interest-law/index.html>

1. Do Corporations Have Social Responsibilities?

<http://fee.org/freeman/detail/do-corporations-have-social-responsibilities>

1. The First Rule of Corporate Social Responsibility Is Not What You Think

<http://www.ssireview.org/blog/entry/the_first_rule_of_corporate_social_responsibility_is_not_what_you_think>

1. Karl Marx vs. Adam Smith: Rebirth of Reason

http://rebirthofreason.com/Articles/twigg/Karl\_Marx\_versus\_Adam\_Smith.shtml