



John Rawls' Concept of the Reasonable: A Study of Stakeholder Action and Reaction Between British Petroleum and the Victims of the Oil Spill in the Gulf of Mexico

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Abstract

In his political philosophy, John Rawls has a normative notion of reasonable behaviour expected of citizens in a pluralist society. We interpret the various strands of this idea and introduce them to the discourse on stakeholder dialogue in order to address two shortcomings in the latter. The first shortcoming is an unnoticed, artificial separation of words from actions which neglects the communicative power of action. Second, in its proposed new role of the firm, the discourse of political CSR appeared to offer a promising synthesis of deliberation and action. However, the discourse has been criticized for its shortcoming in failing to provide a regulatory environment for corporation—stakeholder dialogue. Through our interpretation of Rawls' notion of reasonableness in citizens, the article makes two important theoretical contributions to the debate on stakeholder dialogue. First, we transfer Rawls' injunction in insisting that dialogues between business corporations and their weaker stakeholders must be understood as consisting of both verbal exchanges and actions. Second, we propose that the coercive power of government ought to provide a necessary context for stakeholder dialogue, and that by doing so, it can provide a way forward for the discourse of political CSR. We illustrate the usefulness of this contribution from Rawls in an analysis of BP's behaviour towards thousands of victims following the Deepwater Horizon blowout in 2010.

Keywords John Rawls' concept of the reasonable · A study of stakeholder action and reaction between British petroleum and the victims of the oil spill in the Gulf of Mexico · Political philosophy and business ethics

Introduction

In this study, we introduce a central idea in the political philosophy of John Rawls; his normative notion of the *reasonable* behaviour expected of citizens in a pluralist society. This is developed in *Political Liberalism* (1993) and is described by him as essential for achieving overlapping consensus (p. 41) between citizens holding fundamental and different value sets. Recent research into stakeholder dialogue has been characterized by growing scepticism towards its potential to deliver satisfactory agreements for weaker stakeholders in their dialogue with business corporations (Burchell

and Cook 2008, 2012; Scherer et al. 2013; Whelan 2013). Several scholars have followed up this growing scepticism by proposing to augment stakeholder dialogue with ideas and procedures taken from other fields. Common for this work is the aim to increase the prospects for stakeholder dialogues to deliver more satisfactory agreements to the parties (Machin 2012; Burchell and Cook 2013; Dawkins 2015). Our paper contributes to this research stream by identifying six normative ideas, derived from the political philosophy of John Rawls, for evaluating the actions of stakeholders in a dialogue. We will emphasize that in his development of the reasonable, Rawls was as concerned about the *behaviour* to be expected of citizens as of their moral *sensibility*. It is our contention that the discourse around stakeholder dialogue has been overly reliant on an understanding of communication as being primarily verbal and has paid too little attention to the communicative power of action in a dialogue. By introducing Rawls' notion of the reasonable into the discourse of stakeholder dialogue, this shortcoming can be addressed.

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In the first section, we summarize our reading of fifteen years of literature on stakeholder dialogue in order to provide the context for our contribution. In “[John Rawls’ Understanding of Being Reasonable](#)” section we interpret the details in Rawls’ notion of being *reasonable* and other closely associated concepts. The primary text is *Political Liberalism* (Rawls 1993), in which Rawls elucidates certain normative qualities of behaviour that a society requires of its citizens to ensure that it functions fairly for all. We develop a theoretical framework consisting of six ideas from Rawls’ thinking that can shed new light on the actions of a business corporation in a dynamic relationship to stakeholders. In “[Behaving Reasonably when Participating in Stakeholder Dialogue](#)” section, we use a case-based approach to exemplify the usefulness of these normative ideas in evaluating how a business corporation cooperated with its weaker stakeholders. The case we use focuses on corporate actions and stakeholder reactions following the Deepwater Horizon blowout in 2010. British Petroleum (BP) offered an enormous economic compensation plan to recompense thousands of stakeholders who were threatened by bankruptcy. We look at how they reacted to this offer by presenting claims, of which many were accepted linked to payment. We also discuss the political role of the US government as a powerful facilitator. Many of the stakeholders were small businesses, fishing boats, fish wholesalers, wet fish shops, seafood restaurants and hotels along the coasts of Texas, Louisiana, Mississippi, Alabama and Florida. Within a short time after the blowout on the 20th April 2010 these businesses’ economic foundation: the marine life in the Gulf of Mexico, had been destroyed.

Literature Review

Although its normative aspects remain contested in the literature, stakeholder theory has gained traction both academically and in practice since its introduction by Freeman in 1984. Corporate practitioners have also developed Freeman’s original idea by attempting to implement it as a tool of management (e.g. Gjessing and Syse 2007). These practitioners have accepted the normative claims of stakeholder theory and have focused on operational concerns. These include, but are not confined to, issues such as (i) how to identify the stakeholders, (ii) how to respond to stakeholder demands and (iii) how to manage the new corporation-stakeholder relationships.

This corporation-centred view of stakeholder relationships is reviewed by Payne and Calton in a 2002 article, in which they characterize it as “the need for unilateral managerial cognition and control” (p. 121). However, they regard this unilateral approach as just the first stage in a shift towards acknowledging that stakeholders might also

have something to say. They describe the second stage as “a perceived need by some for reciprocal engagement and new dialogic forms of collective cognition” (p. 121), which takes an implicit optimistic view with regard to the potential for agreement. Examples of authors who take an optimistic view of the potential of stakeholder dialogue include McNamee and Gergen (1999), Cramer (2005) and Van Huijstee and Glasbergen (2008). A key text in promoting this optimism is *Dialogue and the art of thinking together* (Isaacs 1999). Here, one can trace a line of thinking back through the discourse of organizational learning, via Senge (1990) to Argyris and Schön (1978). This train of thought proposed that by talking together, new collective cognitions of apparently insoluble problems would emerge which would lead to new solutions. In our reading, the discourse of stakeholder dialogue at this time was overly optimistic about the potential outcomes of such verbal dialogues and failed to account for the communicative impact on stakeholders of actions taken by the corporation. A useful marker of dissent to these optimists is Burchell and Cook’s 2008 article containing a summary of the significantly different understandings of “stakeholder dialogue” that practitioners—both managers and NGO representatives—were acquiring as a consequence of their respective practices. This revealed a growing scepticism, particularly from the NGOs, towards participating in dialogue processes when corporations were seemingly unwilling or unable to take commensurate action.

One cannot review scholarship on dialogue and deliberation without considering Habermas. His ideals for communicative discourse are undoubtedly an important point of reference for articles on stakeholder dialogue (e.g. Barrett and Scott 2008; Reynolds and Yuthas 2007; Smith 2004; Stansbury 2009). The ubiquity of his influence on the discourse is such that Noland and Phillips’ 2010 article summarizing about 15 years of research into corporation—stakeholder engagement uses the term “Habermasians” to describe scholars who advocate a stakeholder dialogue which is marked “by specific conditions of communication which ensure that this communication is uncorrupted by power differences and strategic motivations” (p. 39). In Noland and Phillips’ reading, the Habermasians represent a competing approach to that of the “ethical strategists”—adherents to Freeman’s original stakeholder theory. The latter “hold that good strategy properly understood must encompass what are typically recognized as moral concerns, because the very purpose of the firm and the capitalist system within which it operates is, when viewed rightly, the creation of value for all stakeholders” (p. 39). Although it is not explicit in their account, the Habermasian approach puts its faith in verbal dialogue whereas the latter’s focus on “moral concerns” is effectively arguing that action is the decisive test of a corporation’s legitimacy in its stakeholder engagement. According to Noland and Phillips, the Habermasians are allowing

the instrumental and self-interested essence of the existing corporation, and, therefore, its actions, to continue as they are and focusing their attention on making the dialogue with stakeholders as moral as their ideals dictate. Noland and Phillips' favoured approach is to keep faith with Freeman's stakeholder theory and insist on his normative conceptualization of the corporation and its behaviour, radically different from the shareholder model; "What is called for is a basis for incorporating ethics into every aspect of a firm's decision-making, strategic and otherwise" (p. 46). In this future, utopian world, stakeholder engagement would no longer be corrupted by power asymmetry and the firm's strategic, self-interested considerations. There would, therefore, be no need to impose Habermasian ideals of deliberation on the dialogue with stakeholders with a view to changing corporate actions.

Noland and Philips' reading offers two approaches: dialogue or action, in which there is an apparent mutual exclusivity. This separation is implicit in their article, but it is an assumption that has long been contested. The recognition that utterances may be performative just as actions can be communicative has its philosophical and linguistic roots in J. L. Austin's *How to do things with words* (1962).¹ The essence of his observation—now almost seventy years old—is that words in dialogues are uttered "as the outward and visible sign (.) of an inward and spiritual act (p. 9)." Among many scholars within the philosophy of language who were influenced by him, John Searle's work draws on this insight repeatedly (1969, 1979, 1995). As such, he subscribes to the power of language to be constitutive of social realities, much as Argyris and Schön (1978). In addition, however, Searle insists on the existence of states and actions that exist independently of language, something he describes as "*brute facts*" (1969, p. 51).² In our reading of the discourse of stakeholder dialogue, it is an optimism in the power of words to construct new understandings, combined with a lack of attention to the communicative power of the brute facts of corporate action, that has led this discourse into a cul-de-sac.

Around the time of the writing of Noland and Philips' summary article, however, a new discourse was in the process of development, which appeared to offer a way forward for stakeholder dialogue by reconciling the 'talk-vs-action' dichotomy. The discourse of political CSR envisioned both a behavioural and a deliberative role for the business firm

as a partly political, rather than a purely market-based actor (Scherer and Palazzo 2007). Starting from their "political analysis of the changing interplay of governments, civil society actors, and corporations," Scherer and Palazzo advanced "a new concept of the business firm as an economic *and* a political actor in market societies" (p. 1115). In our reading of Scherer and Palazzo, it is their conceptualisation of the corporation as a part political "actor" i.e. an agent that *acts* which is of greatest significance. Instead of continuing to ground CSR in an instrumentalist, 'going-green-is-good-for-business' context, they argued that the corporation was moving towards a hybrid status of part market-based economic actor and part political citizen. Although the article was presented as a theoretical contribution and the authors conceded that their evidence was anecdotal, they claimed to observe the beginnings of this corporate transformation in stating that "corporations already have started to assume enlarged responsibilities in their globally expanded business environment, responsibilities once regarded as genuine governmental responsibilities" (p. 1109). While claiming to observe the seeds of corporate citizenship behaviour, the authors noted the role of verbal dialogue in arguing that "the deliberative concept of CSR can enhance the legitimacy and credibility of corporate action" (p. 1112). In their concept of political CSR we see the emergence of a new corporation, whose dialogues with stakeholders consist of actions that communicate as well as deliberative verbal exchanges that attempt to construct mutually agreed understandings.³ We adopt Scherer and Palazzo's 'talk-and-action' conceptualisation as our definition of stakeholder dialogue. We will also note that with this conceptualisation they find common ground with Rawls' insistence (see next section), that reasonableness must be measured by considering the communicative power of both words and action.

Scherer and Palazzo's optimistic reading of the motivations of the business corporation in the *absence* of governmental regulation may have led the authors, as they themselves admit in an article nine years later, to be "too sceptical with regard to governmental regulation both on a national and international level and too much focused on soft-law initiatives and the significance of private authority" (Scherer et al. 2016, p. 284). With the benefit of hindsight and the record of certain business corporations in taking advantage of weak regulation to maximize their narrow, financial interests, many scholars will have applauded this concession. It is followed by two paragraphs in which the authors cite research concerned with more recent nation-state attempts to reign in the power of MNCs, and also initiatives from

¹ The book consists of a series of lectures delivered in 1955 at Harvard University. The notes for the Harvard lectures had their origin in a lecture series Austin delivered at Oxford in each of the years 1952–1954 and entitled "Words and Deeds."

² "Brute facts, such as, e.g., the fact that I weigh 160 lb, of course require certain conventions of measuring weight and also require certain linguistic institutions in order to be stated in a language, but the fact stated is nonetheless a brute fact" (Searle 1969 p. 51).

³ This move towards recognizing the communicative power of action has parallels with the recent proposal for a "Virtues-based Model of Stakeholder Dialogue and Engagement" by Del Baldo (2017).

inter-governmental organizations such as the UN and OECD to establish voluntary regulations for corporate behaviour in areas such as supply-chain due diligence and public health issues (see for example; Kaczmarek and Newman 2011; Emmenegger et al. 2015; Garsten and Jacobsson 2013; Valentin and Murillo 2012). This concession by Scherer et al. to their optimistic line of PCSR is not sufficient for Sabadoz and Singer. In their 2017 article, they question whether the instrumentality of a for-profit corporation can be curbed sufficiently by voluntarily entering into political deliberation. The question that they leave unanswered is whether some higher authority with a coercive power to instruct the corporation might be necessary to secure fair outcomes for all.

In various other research streams, scholars, whilst supportive of the idea of PCSR, have also been sceptical regarding the corporation's willingness to enter unconditionally into deliberative processes whose outcome could prejudice strategic business goals. Brown and Dillard, writing in the field of accounting (2015), argue that "deliberative democracy approaches based on ideal speech criteria and universalistic consensus need to be balanced with theorizations that recognise the reality and value of more open-ended and unfinalizable struggles among actors with different histories, cultures, and/or ideological orientations". Their argument suggests a general scepticism that political deliberation is enough to cause change in organizations in which instrumental, financial goals have traditionally dominated. If the business corporation is going to morph into some new hybrid, as both ethical strategists and proponents of PCSR would like, stronger medicine than dialogue will be necessary.

As this scepticism has gained in strength over the last ten years, the notion of pluralism: that the corporation embodies a different value set from some of its stakeholders, has received more attention. Recent articles have turned their attention to the possibility, indeed probability, that dialogue between parties with such diverse views cannot achieve agreement. In looking for possible avenues out of what, for these scholars, is an intractable problem of disagreement, several recent contributions on stakeholder dialogue have turned to Mouffe's (1999) account of the political (see e.g. Machin 2012; Burchell and Cook 2013; Dawkins 2014). Several articles have also turned to positioning attempts at dialogue within power structures (e.g. Burchell and Cook 2012; Scherer et al. 2013; Whelan 2013). This begs the question, if the corporation is so powerful in its engagement with weaker stakeholders, then what authority can provide assurances to them that their interests will be respected?

In the preceding text we have identified a shortcoming in approaches to stakeholder engagement that are exclusively verbal. Habermasian understandings of dialogue that limit themselves to an exchange of words fail to capture the communicative power of actions undertaken by the corporation. On the other hand, the action-oriented, normative project

which proposes to change the very essence of the business corporation into a wholly moral agent offers little hope of success any time soon. The discourse of political CSR appeared to offer a promising synthesis of deliberation and action. However, the anticipated voluntary move by business corporations into the political arena has not materialized and the discourse has been criticized for its failure to provide a regulatory environment for corporation—stakeholder dialogue.

These shortcomings, or gaps in the research, are addressed by Rawls' idea of reasonableness. His thinking brings together deliberation and action, both of which, he argues, are essential for achieving overlapping consensus between citizens holding fundamental and different value sets (*PL*, p. 41). In his notion of the coercive power of government, a pre-condition for reasonableness, he also provides weaker citizens with assurances that their interests will not be overridden by those of more powerful agents. Despite the considerable body of research into corporate citizenship, Rawls' normative idea of reasonableness has to date not been imported from political philosophy into the discourse of stakeholder dialogue. In the next section, we attempt to do this.

John Rawls' Understanding of Being Reasonable

In this section we conduct a close reading of different qualities in Rawls' normative notion of being reasonable as it is presented in "§1. The Reasonable and the Rational" (*PL*, p. 48).⁴ Rawls also refers to qualities of reasonableness in several other sections of *Political Liberalism*, and these have also been used in our interpretation. Our basic presupposition is that a central idea in an influential theoretical system always consists of several details. Therefore, we use the method of close reading characterized by being a "detailed description" (Bass and Linkon 2008). "The practice has multiple ancestors, including classical rhetorical analysis, biblical exegesis, and legal interpretation" (Smith 2016, p. 58). This method gives us not only the possibility to interpret the details in his line of arguments, but also the assumed consistency in this part of his theory. At the end of the section, we tease out six conceptual strands, based on our close reading. We use these as a framework for applying his idea to corporation—stakeholder dialogue in the case study of "Behaving Reasonably when Participating in Stakeholder Dialogue" section.

⁴ We have additionally made use of several secondary sources, to which we refer, that have provided commentaries on the notion.

Rawls begins with the suggestion that two of the basic aspects of reasonableness may be understood as virtues of persons. The first aspect is mainly explained in a footnote (pp. 48–50) and concerns the moral identity of the person as citizen. A person ought to be a reasonable citizen by having a specific virtue or disposition, as commentators have underscored (Boettcher 2004, p. 604; Mulhall and Swift 2002, p. 482). Rawls writes:

Persons are reasonable ... when ... they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so (*PL*, p. 49).

In order to satisfy Rawls' definition of being a reasonable person, the individual must be willing to enter into a dialogue with others in order to negotiate "fair terms of cooperation." In addition, however, Rawls insists that actions of cooperation must follow from, and be consistent with, words. He repeatedly underscores throughout the beginning of *Political Liberalism* that cooperative actions originate from words as proposals of fair terms—and that this relationship is *the* core quality of a reasonable person. He describes the moral relationship of being reasonable in different ways. However, he understands this project as his attempt to reconstruct Kant's categorical imperative in a new historical setting.⁵ With our literature review in mind, specific words oblige to specific actions; once the terms of cooperation have been agreed, the individual must "abide by them willingly."⁶ To bring reasonableness into sharper outline, it is instructive to note Rawls' vision of unreasonableness as people who:

... plan to engage in cooperative schemes but are unwilling to honor, or even to propose, except as a nec-

⁵ Rawls writes about being reasonable as his reconstruction of Kant's categorical imperative, the type of pure practical reason expressing itself in; "the willingness to propose and honor fair terms of cooperation" (*PL*, p. 49). His use of the term "honor" refers to an action. He then talks about reasonable persons cooperating on terms all can accept, (*PL*, p. 50) and underscores that such persons "engage in fair term of cooperation ... on terms others as equals might reasonably be expected to endorse" (*PL*, p. 51). He also talks about being reasonable as a sense of justice leading to "social cooperation" (*PL*, p. 52). He additionally underscores that the quality of being a reasonable person expresses itself in the society, in the public world and that the proposal of fair terms of cooperation and the behaviour of such cooperation is the way citizens "work out the framework for the public social world" (*PL*, p. 53), a concept relevant for our analysis of the BP case.

⁶ The proviso of an "assurance that others will likewise do so" is a prudent clause inserted by Rawls to guarantee every citizen the assurance that they will be protected from free riders or cynical citizens. It would be unfair to demand this behaviour of citizens without taking steps to ensure that all citizens behaved in this way and sanction those who did not.

essary public pretense, any general principles or standards for specifying fair terms of cooperation. *They are ready to violate such terms as suits their interests when circumstances allow* (*PL*, p. 50, emphasis added).

Rawls' account of unreasonable behaviour in the citizen describes an individual who uses words casually or even cynically.⁷ Casual users make verbal commitments, which, when the time for action comes, they find themselves unwilling to honour. More cynically, some make commitments in their dialogue with other citizens, while knowing that they do not intend to deliver on these promises. In the unreasonable citizen, words and actions operate in two separate spheres, much as Noland and Phillips fear.

Rawls adds a second aspect to the quality of being reasonable: a willingness to recognize what he refers to as the "burdens of judgement." Rawls describes the burdens of judgement as radical imperfections in our practical and theoretical reason and he provides an account of six of the possible causes of such disagreement (*PL*, pp. 56–57).⁸ Such burdens imply that even if we use our reason as best we can in order to agree in important discussions, we often disagree.⁹ The ethical, religious and political pluralism of a democratic society exists, according to Rawls, because of this unavoidable mechanism in our rationality (Larmore 1994, pp. 75–76). We interpret Rawls as wishing to suggest that the individual's powers of *judgement* have to carry the *burdens* of his/her history, which are the unavoidable consequences

⁷ Rawls has other examples of unreasonable behaviour, to which we return later in this section.

⁸ Rawls' account extends over one page. In order to give an impression of to what he is referring, we present an abridged account; "a. The evidence—empirical and scientific—bearing on the case is conflicting and complex b. Even where we agree fully about the kinds of considerations that are relevant we may disagree about their weight c. To some extent all our concepts ... are vague and subject to hard cases d. To some extent (how great we cannot tell) the way we assess evidence and weigh moral and political values is shaped by our total experience e. Often there are different kinds of normative considerations of different force on both sides of an issue f. Any system of social institutions is limited in the values it can admit so that some selection must be made" (*PL*, pp. 56–57).

⁹ Rawls' perspective on disagreement is not unique. Other commentators have interpreted the subjectivity of reasoning in an analogous way to identify the causes behind disagreement. Charles Taylor's philosophical approach to the significance of the individual's life context, Hans Georg Gadamer's hermeneutical theory underscoring that the pre-understanding of individuals always influences our capacity to understand, and Shockley-Zalabak's interpretation of the importance of personal values for our choices explains why people disagree even if they have been reasoning as best as they can. In line with Grimen (2002, 2004, 2007), we additionally want to underscore that normative questions—as the one we discuss in this paper (to which degree should BP compensate for the economic losses of companies and individuals?), will always be an object of discussion, because of this multifaceted subjectivity of reasoning.

of our subjective experience. We paraphrase Rawls' "burdens of judgment" as being akin to an individual's *subjective reasoning or judgement*; what person A considers to be a sound, 'logical' reasoning for making judgements and taking action is different from the reasoning that B uses and leads to disagreement. The term "subjective reasoning" should not be confused or conflated with Rawls' use of the term "rationality." He uses this latter term, which we now introduce, to represent another quality of the individual, the possession of which is a necessary complement to that of being reasonable.

According to Rawls, the rational "applies to a single, unified agent (either an individual or corporate person) with the powers of judgement and deliberation in seeking ends and interests peculiarly its own" (Rawls, p. 50). In this initial attempt at a definition, Rawls sketches a picture of a selfish individual, although he then immediately seeks to downplay the extent of self-interest. First, being rational is considered legitimate as a way of evaluating how agents ought to balance final ends according to the significance they have for "their plan of life as a whole" (p. 50). However, the self-interests of rational agents do not necessarily have to be selfish interests, i.e. those which benefit just themselves. Rational agents "may have all kinds of affections for persons and attachments to communities and places, including love of country and of nature" (p. 51). Within rational behaviour, the citizen is wholly in control of his decision as to who will benefit from his actions. Rawls presents a heterogeneous picture of the rational agent as both interested in other persons' welfare as well as being self-interested. He underscores that rational agents may be "psychopathic when their interests are solely in benefit to themselves" (p. 51).¹⁰ In reasonable behaviour, on the other hand, the citizen is engaged in a public negotiation, over which he has influence but not control, as to how benefits will be distributed.

Rawls' main concern is to interpret rationality in its relationship to being reasonable as a specific kind of existence. Although rationality is distinct from reasonableness, he says that the two of them work in tandem. The contrast perspective is linked to a description of rationality as empty of an ethics characterized by an individual seeking principles of fair cooperation that could be accepted by all citizens.

What rational agents lack is the particular form of moral sensibility that underlies the desire to engage in fair cooperation as such, and to do so on terms that others as equals might reasonably be expected to endorse (PL, p. 51).

¹⁰ There is a clear parallel here with certain interpretations of the psychology of the modern business corporation, notably in *The Corporation* (Bakan 2004).

As complementary ideas, neither the reasonable nor the rational, according to Rawls, can stand without the other.

Merely reasonable agents would have no ends of their own they wanted to advance by fair cooperation; merely rational agents lack a sense of justice and fail to recognize the independent validity of the claims of others (PL, p. 52).

Nevertheless, even if reasonableness is a contrast to rationality, for agents to function effectively in society they must have them both. They complement each other:

They work in tandem to specify the idea of fair terms of cooperation, taking into account the kind of social cooperation in question (PL 1993, p. 52).

Rawls appears to use his tandem metaphor because he wishes to suggest the idea of a cooperation between these two aspects of the citizen. The interpretation which Rawls takes over from Kant's concept of *vernünftig* is that the two of them are complementary, and not independent of each other.¹¹ In our reading, we perceive a tension between them: that each quality needs to have sufficient strength to withstand the attractive force of the other, and that if one gets too strong in relation to the other, it will pull the citizen over to one side and create an imbalance.

Rawls writes that "a further basic difference between the reasonable and the rational is that the reasonable is public in a way the rational is not (.). It is by the reasonable that we enter as equals the public world of others and stand ready to propose, or to accept, as the case may be, fair terms of cooperation with them" (p. 53).¹² Recognizing our equality with others sharing the public sphere, we are obliged to negotiate over terms of cooperation as equals and to accept that these terms will lead to a distribution of the benefits that probably won't satisfy our rational wishes. As already mentioned, as reasonable citizens we have influence, but not control, over outcomes.

It is therefore tempting to give more rein to one's rationality in an attempt to exert greater influence over public negotiations. Rawls foresees several examples of such behaviour. The most pertinent of his observations, for our interpretation, is that mighty citizens might be tempted to act in an

¹¹ "The distinction between the reasonable and the rational goes back, I believe, to Kant: it is expressed in his distinction between the categorical and the hypothetical imperative in the *Foundations* and his other writings. The first represents pure practical reason, the second represents empirical practical reason" (PL, pp. 48–49). Rawls sees them both as imperatives which complement each other.

¹² As we shall see in the dialogue between BP and its stakeholders, the question of where to draw Rawls' boundary between public reasonableness and private rationality was crucially important to the livelihoods of thousands of people living along the coast of the Gulf of Mexico.

unreasonable way. Here, we return to another of his examples of unreasonable behaviour. Unreasonable persons in possession of great political power might use it to repress views different from their own when fundamental political questions are at stake (*PL*, pp. 60–61). Although Rawls considers this problem to have been greater in pre-modern history, as the slave system and the war in the fifteenth century between the Protestants and the Catholics shows, it is still present in modern times.¹³ Even today, powerful institutions might not take their responsibility to overcome or stop the consequences of their destructive actions on a large number of citizens. The latter's confidence in the basic institutions of society may be weakened and they might be reluctant or lose the will to cooperate with such institutions on fair terms. Consequently, a vicious circle of instability might develop.

Rawls' explanation of how reasonableness between citizens should be protected and encouraged when confronted with such severe challenges cannot be found in *Political Liberalism*. He does not elaborate on the need, in such circumstances, for an external authority with the power to intervene and force the parties to a practical agreement. We have, however, found his elaboration on this topic in *A Theory of Justice* (Rawls 1971). In chapter IV on equal liberties, Rawls outlines the importance of the rule of law (§38), conceding that even in a well-ordered society:

...the coercive powers of government are to some degree necessary for the stability of social cooperation. Men may lack full confidence in one another. They may suspect that some are not doing their part, and so they may be tempted not to do theirs. The role of an authorised public interpretation of rules supported by collective sanctions is precisely to overcome this instability (p. 240).

Although he doesn't do so explicitly, in our interpretation of Rawls we propose to include his notion of the coercive powers of government as one strand within his concept of the reasonable. In "Behaving Reasonably when Participating in Stakeholder Dialogue" section we explore this fragment of an idea in more detail by examining the way in which the US government imposed its will on BP.

In this concluding part of our Rawls interpretation, we have teased out six conceptual strands, which we have identified in the preceding presentation. We propose that these

serve as a theoretical framework (TF) for applying the normative notion of reasonableness as a basis for evaluating the corporate actions and stakeholder reactions.

TF 1	<i>A willingness to cooperate</i> The first requirement of reasonableness is drawn from Rawls' statement that "Persons are reasonable ... when ... they are ready to propose principles and standards as fair terms of cooperation and to abide by them willingly, given the assurance that others will likewise do so" (<i>PL</i> , p. 49)
TF 2	<i>Fair terms of cooperation</i> The second condition for reasonable behaviour is that fair terms of cooperation can be agreed upon by the reasonable citizens. In the case that follows, we problematize what <i>fair terms</i> meant for the protagonists
TF 3	<i>The coercive power of government</i> Continuing from Rawls' observations in <i>A Theory of Justice</i> , in order to safeguard reasonable behaviour between citizens, a more powerful authority than even the most powerful citizen is needed to act as guarantor of the liberty of all
TF 4	<i>Being unreasonable</i> Two examples of being unreasonable that are relevant for stakeholder dialogue are (i) an unwillingness to cooperate or (ii) the temptation to use one's greater power in the pursuit of selfish interests. In order to put a citizen's willingness to cooperate into greater relief, and following Rawls' example, we propose this idea as a way of exploring the sort of unreasonable behaviour on the part of citizens that might lead to sanctioning by the government
TF 5	<i>A willingness to recognize our own and other citizens' subjective reasoning</i> This requirement develops out of our reading of Rawls' account of the "burdens of judgement"
TF 6	<i>The tandem of reasonable cooperating with rational</i> We understand "working in tandem" as a normative concept identifying the ideal balance between being reasonable and being rational

¹³ The modern school of political philosophy, to which Rawls belongs, was forged in the wake of religious wars and was concerned with exploring how citizens with differing spiritual and secular views might manage to live together peacefully in a pluralistic society. Rawls builds on this tradition and continues to be relevant; twenty-first century society contains people and agents, such as business corporations with very different beliefs and interests that they wish to pursue, sometimes aggressively.

In the next section, we show how each of these ideas may be used to shed light on stakeholder dialogue processes that were played out between BP and the thousands of small businesses and individuals who suffered loss as a consequence of the Deepwater Horizon blowout in April 2010. The normative ideas help us to consider and evaluate the qualities of action in the dialogue process.

Behaving Reasonably when Participating in Stakeholder Dialogue

The Deepwater Horizon drilling rig was chartered to BP from March 2008 to September 2013. When the disaster occurred, the rig was drilling an exploratory well into an oilfield operated by BP, at a point roughly 66 km off the Louisiana coast in the Gulf of Mexico. Although BP was the principal developer of the oilfield, the rig itself was being operated by Transocean. On the 20th April 2010, a series of technical failures took place, which subsequent inquiries established were partially a consequence of BP's cost-cutting measures. Gas from the well rose into the drilling rig, where it exploded. In the ensuing fire, eleven workers died, and the platform was destroyed, sinking two days later on the 22nd April. On the same day that it sank, oil was discovered to be leaking from the well head on the seabed. A large slick began to spread at the former rig site and continued to flow for 87 days. "At its maximum extent on June 19, 2010, oil covered 15,300 square miles" (NOAA 2016, pp. 2–9), an area that is about the size of the Netherlands. The oil on the sea surface mixed with water, forming emulsions and narrow strands of thick oil in addition to more widespread areas of oil sheen. Ocean currents, tides, and winds then transported the oil to the Gulf Coast, contaminating over 2000 km of shoreline from Texas in the west to the Florida Panhandle in the east (Nixon et al. 2015).¹⁴

Within a short time of the blowout, marine life in large parts of the Gulf of Mexico was virtually destroyed. This was the economic foundation of thousands of small businesses: fishing boats, fish wholesalers, wet fish shops, seafood restaurants and hotels along the coasts of Texas, Louisiana, Mississippi, Alabama and Florida. In response, BP implemented an economic compensation plan to recompense these small stakeholders who were now threatened by bankruptcy. Although they had no wish to enter into a stakeholder relationship with BP, the events of the 20th April 2010 dictated that, in order to secure their survival, they would have

to engage with this giant business corporation in a series of actions and reactions.

Foundation and Methodological Considerations

There are several reasons why this case is exemplary (Yin 2012) and, therefore, suitable for investigation. The first concerns the documentary evidence. Several factors—such as the scale of the damage to the natural environment, the number of people affected, the financial compensation and the enormous media coverage—have led to a great deal of publicly available documentation and analysis from which we have been able to select the most critical evidence. Second, because the effects of this disaster had such wide, destructive consequences, the case is of significance both nationally and internationally. Third, the case reveals how BP's behaviour changed as, in our interpretation, strategic interests gained ascendancy over the corporation's moral responsibility towards its stakeholders (Yin 2012, pp. 185–190). The case reveals a complexity in BP's weighing of the various factors that were influencing how they ought to act. The case also illustrates how an influential normative theory can distinguish between legitimate and illegitimate actions in an extremely complex mix of social realities playing out over time.

There are also aspects to the case which, without necessarily being explicitly advanced by Yin, are relevant and worthy of mention. The case can become useful as a guide to a possible positive development of the practice of stakeholder dialogue. First, the dialogue was monitored closely by a greater power: the justice and executive branches of the US government. A second aspect is that the dialogue was administered by an independent third party. Both aspects could be implemented in more typical corporation—stakeholder dialogues. The third reason is that this case might become a benchmark for corporation—stakeholder relationships in the future, not least because of the effects of the monitoring aspect. Despite certain criticisms, BP's behaviour is often compared favourably with other companies' reactions to disasters, for example, with that of Exxon Corporation following the sinking of the Exxon Valdez in Prince William Sound, Alaska in 1989. A fourth reason comes from the discipline of ethics: normative notions such as reasonableness are often parts of normative theories used to consider and evaluate the qualities of *actions*, not the qualities of words.

We have argued that stakeholder dialogue in some studies is understood as a combination of both words and actions. For Rawls, reasonableness in the citizen consists of (i) a moral disposition which leads to (ii) actions and (iii) words. Given the limitations of the article form and the fact that the case includes a very comprehensive number of stakeholders, we have elected to study the dialogue using one single dimension, that of action and reaction. In a further

¹⁴ At the time of writing (2020), the full long-term consequences for the natural ecosystems in the Gulf of Mexico are still not fully understood.

narrowing of focus, our attention has been primarily on BP's main actions, secondarily on the main actions of the most well-known type of stakeholders. These methodological decisions have limited the scope of the study and made it possible to carry it out. This approach also enables us to make an in-depth analysis within an admittedly narrow scope. Having introduced the case, we now examine it with the six aspects of reasonableness that we identified at the end of the last section.

TF 1: A Willingness to Cooperate

In this section we explore the aspect of will, which manifests itself in cooperative behaviour between corporation and stakeholders, in a chain of actions and reactions. It is only to be expected that BP demonstrated a willingness to cooperate with its new stakeholders in the wake of the disaster, given (i) the magnitude of the immediate blowout, (ii) the rapid realization that the well was leaking oil into the Gulf of Mexico, (iii) concern for marine life, (iv) the economic consequences for the seafood and tourism industry, and (v) the glare of media publicity. Just days after the oil spill began, BP acted by offering interim compensation. This triggered a response in the form of claims from stakeholders, to which BP, in turn, had to react by deciding whether to accept them. The consequences of these actions by BP meant survival or bankruptcy for many small firms (BDO 2012, p.2). In doing so, BP acted, as Rawls would have expected a reasonable citizen to do. In the first phase of compensation, which comprised two consecutive administrative systems, claimants found that BP's terms of cooperation were not overly onerous to satisfy and that the payments came quickly.

"Interim payments for many claimants came quickly, designed to replace one month of lost income due to fisheries and tourism closure. From April 25th through August 23rd, BP received 154,000 claims and wrote 127,000 checks covering \$399 million in estimated damages" (Mayer et al. 2015). Despite this seemingly impressive rate of paying out, "BP's claims data from that summer suggest that only one third of the total claims submitted were actually fulfilled" (Mayer et al. 2015).

BP offered economic support on their website to all the fishing boats, fish wholesalers, wet fish shops, seafood restaurants, hotels and other stakeholders that were harmed by the disaster. The corporation acted so in order to compensate for loss of earnings or profits, removal and clean-up costs, real or personal property damage, loss of subsistence use of natural resources and physical injury or death (BDO 2012, p. 13). However, only one third of all the stakeholders that were triggered to react by claiming for compensation received payment that could contribute to solving such problems. The majority of the victims did not receive any compensation, even though they had been offered it and claimed for

it. BP's failure was due to the enormous number of claims and destructive problems behind them. Brennan (2013, p. 9) underscores this: "After the disaster, BP was under a lot of pressure to create a solution that would satisfy the negatively impacted stakeholders in a timely manner. The Deepwater Horizon Oil Spill was highly publicized; not a day went by that a story didn't appear in the news about the catastrophe that had occurred off the shore in the Gulf of Mexico". BP recognized that a bigger administrative apparatus than the one it had managed to set up was now needed.

Consequently, BP established the Gulf Coast Claims Facility (GCCF) on the 16th of June 2010. This began to pay out on the 23rd of August 2010, thereby superseding the company's own compensation facility from this date. In a further manifestation of its willingness to cooperate with stakeholders, BP also accepted that this \$20 billion fund should be supervised by a neutral third party; the Washington D.C.-based legal firm of Feinberg Rozen.¹⁵ In practice, BP ceded its decision-making control over the pay-outs while maintaining its commitment to pay them. Moreover, in line with BP's understanding, the GCCF was well equipped with professional personnel to differentiate and cooperate as efficiently, and relevantly as possible; it consisted of a large team of "experienced professionals, including claims processing firms, accounting firms, investigators, catastrophe response companies, economists, academics and other professionals, which at one point numbered in excess of 4500" (BDO 2012, pp. 8–9).

Given our decision to study Rawls' notion of reasonableness by focusing on actions, one might use the *rate* at which the corporation, the GCCF and the stakeholders acted together as a proof of a *common* "willingness to cooperate." In the next section we explore the workings of the GCCF in more detail and use this aspect of the case to problematize Rawls' notion of "fair terms" and how this might be understood within a context of corporation and stakeholder engagement.

TF 2: Fair Terms of Cooperation

One pre-requisite for cooperation is, according to Rawls, an assurance that the other parties to the cooperation will also abide by the terms of the agreement assuming that they

¹⁵ Its managing partner, Kenneth Feinberg, had been in charge of the U.S. government's September 11th Victim Compensation Fund and in that role had acquired a reputation for impartiality. Although the firm was nominally independent of BP, the company paid it 850,000 dollars per month for its work. Critics pointed out that this financial dependency was grounds for questioning his firm's true impartiality (Reuters 2010). <https://www.reuters.com/article/us-feinberg-disclosure/pressure-on-kenneth-feinberg-to-disclose-bp-pay-deal-idUSTRE6AL5KX20101122> (retrieved March 2018).

also consider them fair. For the time being, we put aside the possibility that other stakeholders might not behave reasonably (see “TF 4: Being Unreasonable” section). Here, we use the case to ask the question, what are *fair* terms? In our reading of Rawls, he glosses over the difficulty of formulating terms of cooperation that all parties will agree are fair. In the context of the action-dimension of a corporation—stakeholder relation, we will define “fair terms” as being terms that all the directly involved parties to the dialogue are willing to practically accept in meeting their particular interests. This, we argue, is a minimum condition to sustain the dialogue; clearly, if one party’s experience of a cooperation is that the terms are not as fair as they could be, the cooperation is threatened. In such extremely complicated situations as this case, which continued for a long period of time, reaching terms that everyone agreed were fair proved to be impossible.

To begin with, the fact that BP paid out on compensation claims is evidence that it accepted the terms of the GCCF cooperation as fair. As previously mentioned, the GCCF was initially administered by attorney Kenneth Feinberg and began accepting claims on the 23rd of August 2010. Over the following 18 months, more than one million claims from 220,000 individual and business claimants were processed and more than \$6.2 billion was paid out from the fund (Mayer et al. 2015, p. 374). As a compensation payments mechanism, the GCCF was certainly revolutionary, in that claimants—whether businesses or individuals—only had to demonstrate that they had suffered losses and what the size of the losses was during the time of the spill; there was no need to prove causation, i.e. that the spill was responsible for causing the loss.

BP’s and the fund’s willingness to exclude a cause-effect requirement from its terms of cooperation in this first phase of compensation was crucial for the speed with which it was able to pay out money to stakeholders. This is confirmed in the independent evaluation of the GCCF made for the US Department of Justice by the consultancy firm BDO (2012). It stated that the exclusion of this requirement for individuals and businesses in geographic locations most likely to be impacted enabled them “to receive compensation for their losses on an expedited basis without providing extensive documentation. During October 2010, the GCCF’s second full month of operation, it paid claimants over \$840 million—an average of more than \$27 million per day—in emergency advance payments” (BDO 2012).

However, claimants were treated more strictly by the GCCF in the second phase of compensation according to BDO; more stringent documentations requirements were necessary and were sometimes very difficult to fulfil (Reckdahl 2015). The victims of this phase were thus treated unfairly compared to those in the first phase. In the second phase, the GCCF had had time to develop its methodology

for compensation and to take better care of BP’s economic self-interest. As a consequence, a necessary presupposition for compensation type (a) and (b) was that claimants had to agree not to sue BP and other potentially liable parties (Partlett and Weaver 2011, pp. 1350–1352). In this second phase, the GCCF offered more differentiated and precise compensation options: three types, and the requirement of more specific types of documentation of losses was linked to each of them as basis for a legitimate claim: a. Final payments for past and future losses. b. Quick payments; final payments of predetermined amounts based on no additional documentation requirements beyond having received a prior payment from the GCCF or the fund created by the GCCF to compensate real estate brokers and agents harmed by the Spill. c. Interim payments, which permitted claimants to seek compensation for past losses without waiving the right to continue to submit additional claims in the future (BDO 2012, p. 9.). Consequently, the communicative actions of the compensations-system were equivalently differentiated compared to phase one.

The BP case illustrates how very difficult it is to (i) establish “fair terms” for a cooperation between corporation and stakeholders and (ii) to administer them uniformly so that the confidence of stakeholders is maintained and everyone remains willing to abide by them. A further complicating factor, which we discuss under TF 4, concerns the difficulty of how to deal with stakeholders who behave unreasonably.

TF 3: The Coercive Power of Government and Law

On the 30th April 2010, ten days after the explosion of the rig and with evidence mounting that the well was leaking oil, President Obama dispatched the Secretaries of the Department of Interior and Homeland Security (DOI), as well as representatives of the Environmental Protection Agency (EPA) and the National Oceanic and Atmospheric Administration (NOAA) to the Gulf Coast to assess the disaster.¹⁶ The US president was acting quickly and emphatically. A few weeks afterwards, in his 15th of June speech, and after having understood at least a part of the far-reaching consequences for the life in the ocean and for the local seafood industry, Obama said:

This oil spill is the worst environmental disaster America has ever faced ... Make no mistake: we will fight this spill with everything we’ve got for as long as it takes. We will make BP pay for the damage their

¹⁶ Office of the Press Secretary (30 April 2010). “Statement by the President on the Economy and the Oil Spill in the Gulf of Mexico” (Press release). The White House. <https://www.whitehouse.gov/the-press-office/statement-president-economy-and-oil-spill-gulf-mexico> (retrieved March 2018).

company has caused. And we will do whatever's necessary to help the Gulf Coast and its people recover from this tragedy ... You know, for generations, men and women who call this region home have made their living from the water. That living is now in jeopardy. I've talked to shrimpers and fishermen who don't know how they're going to support their families this year. I've seen empty docks and restaurants with fewer customers -- even in areas where the beaches are not yet affected. I've talked to owners of shops and hotels who wonder when the tourists might start coming back. The sadness and the anger they feel is not just about the money they've lost. It's about a wrenching anxiety that their way of life may be lost. I refuse to let that happen (The White House 2010).

Obama's empathic focus is on action from the beginning to the end; first on the destructive action of BP and the tremendous consequences caused, then enforcing an implementation¹⁷ of agreement; the resources BP's management has to set aside to compensate by meeting legitimate claims.

Tomorrow, I will meet with the chairman of BP and inform him that he is to set aside whatever resources are required to compensate the workers and business owners who have been harmed as a result of his company's recklessness. And this fund will not be controlled by BP. In order to ensure that all legitimate claims are paid out in a fair and timely manner, the account must and will be administered by an independent third party (The White House 2010).

On the 16th June 2010, the day after Obama's speech, and following a meeting with him, BP executives announced the establishment of the GCCF.

To what degree is Rawls' theory able to explain state intervention as a pre-condition for BP's willingness to cooperate with the victims in both of the phases mentioned? In *A Theory of Justice* Rawls writes: "It is reasonable to assume that even in a well-ordered society the coercive powers of government are to some degree necessary for the stability of social cooperation" (p. 240). This fits very well with Obama's powerful initiative. BP announced the GCCF immediately after meeting the president and the day after his speech as a direct consequence of pressure. Obama's action resulted in the multinational company cooperating closely with the victims through an independent third party, the GCCF.

Rawls' theory points additionally to why the sanction of coercive action from the government is necessary for the stability of social cooperation. Rawls underscores that even if

partners share a common sense of justice and want to adhere to existing arrangements, they may lack complete confidence in each other. This may be due to the suspicion that others are not "honoring their duties and obligations" (p. 240), and this suspicion is increased by the fact that it is particularly easy to break the rules "in the absence of an authoritarian interpretation and enforcement of the rules" (p. 240). It is "the authoritative public interpretation of the rules" which prevents social stability from turning into social instability.

This foundation gives us an interpretative key to understand a possible basis for Obama's public intervention. The reason for forcing BP to cooperate with the victims through the mechanism of an independent GCCF, administered by Feinberg and under the supervision of the courts, is one way by which Obama seeks to maintain social stability in the process of cooperation. The victims have no confidence in a corporation that is responsible for so much damage and cannot therefore trust BP to administer the compensation process on fair terms.

Obama's initiative corresponds with Rawls' focus on the significance of putting the just laws of a democracy into reality as presuppositions for the individual virtue of a will to propose fair terms of cooperation. The president is the guarantor of a realization between this individual value and its sources in societal values. What Obama indicates through his individual and virtuous initiative in the June 15th speech and in the meeting on the 16th when saying that BP should "pay for the damage" is an individual articulation of the justice demanded in a series of different laws in the US democracy. Those laws place the guilt on the person or institution responsible for the damage of persons, material values or nature and demand action(s) that to the best possible degree restore the situation to what it was before the damage was done in order for the victims to experience justice.

The fact that the GCCF introduced unfair terms of cooperation in the second phase compared to the first does not affect the fundamental reality of the coercive and empathetic power of the US president. The literature on political CSR lacks such a normative however fragmentary understanding of a strong state, such as the one we find in Rawls' political philosophy and which is identified in the reality of this case.

BP knew that, in addition to the coercive power of government, the law might be a similar challenge to its economic interests. Consequently, even if BP began the cooperation with good intentions, their willingness to abide by the initial terms of cooperation declined in phase two. In phase two the GCCF demanded of the stakeholders as a necessary presupposition for accepting claims based on the offer of compensation of type (a) and (b) that they should agree not to sue BP, even if new information proved that the compensation was insufficient, the long-term effects of the disaster taken into consideration. This was indeed a lack of willingness to abide by the cooperative terms of the first phase,

¹⁷ The phrase "enforcing an implementation of agreement" is originating from a comment from an anonymous reviewer.

where requirements not to sue BP were not part of the picture. It discloses the unreasonable precautions taken by BP in order to protect their economic interests against a threat by something that might support the economic interests of the weak stakeholders: the power of the law (BDO 2012).

TF 4: Being Unreasonable

In our reading of Rawls there is ambiguity in his description of unreasonable behaviour. In his first account, he suggests that unreasonable behaviour is characterized by an unwillingness to propose or honour, “except as a necessary public pretence,” fair terms for cooperation. In this first account of unreasonable behaviour, Rawls stipulates that, from the very start of any proposed cooperation, there is an intention on the part of the unreasonable citizen not to cooperate with other citizens based on fair terms. Any proposition and subsequent negotiation over the fair terms for a cooperation is, according to Rawls, simply playing to the gallery of public acceptability; the unreasonable citizen never intends to respect the terms.

However, he then expands his definition of unreasonableness. Some citizens can begin a process of cooperation by proposing, negotiating and agreeing fair terms with other citizens. Although they may begin with good intentions, however, their willingness to abide by the terms declines. As Rawls describes it, they “are ready to violate such terms as suits their interests when circumstances allow” (*PL*, p. 50).

This latter account of the unreasonable might apply in the BP case. Although the company engaged in cooperative schemes in the initial stages of its own short-term compensation procedure and then the GCCF, it subsequently attempted to change the terms of the cooperation. In March 2013, approximately 30 months into the operation of the GCCF, the company challenged the causation clause in the latter’s compensation claims procedure. Contrary to its name, this was the clause that specifically did not demand proof of causation but simply required claimants to document that they had suffered a business economic loss (BEL) in the period of the spill.

BP asked US District Judge Carl Barbier to put a stop to all “business economic loss” (BEL) payments (.). In December of that year, Barbier granted BP’s request and payments were suspended for five months (Reckdahl 2015).

The first interpretation that we make of BP’s action is to point to the fact that the company made an application to the courts to change the terms of the agreement. Referring back to the previous section, it was the state’s legal system to which BP appealed in an attempt to renegotiate “fair terms” for its cooperation with stakeholders. It did not simply violate the terms of the existing agreement; a

greater power than BP ensured that its cooperation with other citizens should take place within a legal context.

At this point, however, our Rawlsian interpretation of the case becomes more complicated. The first interpretive complication returns us to TF 2 and the difficulty of deciding upon and agreeing to mutually satisfactory “fair terms.” BP’s March 2013 request to the judge to stop all BEL payments and to require all claimants to demonstrate that their loss was caused by the oil spill was justified because inappropriate claims, having nothing whatsoever to do with the oil spill, were being rewarded by the fund. In a Rawlsian interpretation, BP was no longer satisfied that the terms of the cooperation were fair. As we have seen, Judge Barbier’s first ruling was to agree with the company and to suspend the payments. However,

...within weeks, Barbier issued a ruling that the settlement’s approach to causation made sense: “The delays that would result from having to engage in a claim-by-claim analysis of whether each claim is ‘fairly traceable’ to the oil spill ... are the very delays that the Settlement, indeed all class settlements, are intended to avoid” (Reckdahl 2015).

On reflection, Judge Barbier conceded that in requiring claimants to prove causation, the efficient operation of the GCCF would be radically reduced, the payment of claims would slow down dramatically, and small businesses and individuals would suffer greatly. In reinstating the causation clause, the judge prioritized the claimants’ “fair terms” over BP’s “fair terms.” Effectively, he had to choose the lesser of two evils. It was fairer to keep the actions of compensation payments flowing to the majority of deserving stakeholders, and thus keep their businesses solvent. The downside of these “fair terms” would be that a small number of doubtful claims would continue to go through the system. The message to BP was that it would have to cooperate on the basis of “fair terms” with which it was dissatisfied.

A second interpretive complication arises out of BP’s March 2013 justification for wishing to change the terms of cooperation. According to BP, some of the claims, which were being processed by the GCCF, were more than unfair, they were directly fraudulent:

BP lawyers cited cases like the nursing home in Central Louisiana that received \$663,834, even though it had shut down a year before the spill. Or the wheat farmer located 200 miles from the Gulf who had decided not to plant a crop in 2010 and received \$266,730 for a diminished harvest that year. Or the dental office that received £137,519 for lost revenue during the months it was closed due to water damage unrelated to the spill (Reckdahl 2015).

What, we should ask Rawls, does the reasonable citizen do on discovering that some of those citizens with whom s/he is cooperating appear to be behaving unreasonably? Rawls' response would appear to be that we could only expect reasonable citizens to behave reasonably, "given the assurance that others will likewise do so" (Rawls 1993, p. 50). Rawls inserts a get-out clause into his description of reasonable behaviour: if the other party behaves unreasonably, it is ok to withdraw from the commitment to behave reasonably. What he fails to account for, however, is a case such as BP's in which tens of thousands of BP stakeholders behave reasonably by presenting legitimate claims and a tiny minority behave unreasonably by fraudulently presenting themselves as BP stakeholders with the sole intention of stealing from the compensation fund. This was the dilemma with which Judge Barbier had to grapple. Although he did not concede the causation clause to BP, he did provide the company with a significant concession, which we discuss under TF 5.

TF 5: A Willingness to Recognize Our Own and Other Citizens' Subjective Reasoning

Although Judge Barbier insisted that the GCCF compensation scheme would continue to accept claims simply for BEL and without the need to prove causation, he did concede to BP's lawyers the right to insist that claimants present a much more stringent documentation of their loss. Because of his concession on amending "fair terms," the BP lawyers were able in May 2014 to publish a new, 88-page accounting policy that would apply to claimants. This was a dramatic new burden of judgement for many of the small-business stakeholders. Such companies were often simply run out of a check book and their compensation application was suddenly required to document the claim they were making much more stringently, both when it comes to past and future losses. The fact that claimants in the second phase had to promise not to sue BP in order to receive final (a) or quick (b) payment represented a comparable burden for stakeholders. Even if they could identify future information about long-term effects of the disaster proving that the GCCF's compensation was insufficient seen from a legal point of view, this should not oblige BP to compensate, because their subjective reasoning about avoiding being sued based on their financial interest was given priority.

There are clear parallels with the first two items that Rawls presents as examples of the burdens of judgement. First, he postulates that "relevant facts involved in a specific case could be complex, contradictory and difficult to consider and evaluate, because they are different." Second, he argues, "even if we might agree about what type of considerations are relevant in a specific case, we might disagree on how to weight them, and therefore arrive at different conclusions." Rawls' reasonable citizen would recognize such

obstacles. However, the corporation's lawyers imposed—through the 88 pages of standards—a much more demanding 'reasoning' on the claimants, not least when it comes to the requirement not to sue BP as a necessary presupposition for compensation. The company refused to recognize that other citizen stakeholders of BP had a 'reasoning' that was different to the company's own standards of accounting and linked to these stakeholders' legitimate worry regarding negative, undiscovered long-term effects of the disaster for their private or corporate economy. The consequences for the claimant stakeholders were further exacerbated by an additional move made by BP. A Texas lawyer, Brent Coon, who worked on behalf of many claimants at the time, said that the small businesses "simply don't have every piece of paper that BP requires ... And BP doesn't negotiate over gaps in paperwork ... Even if you have 99 percent of the paperwork, BP won't pay out 99 percent of the claim. Without the final 1 percent, you don't get paid" (cited in Reckdahl 2015).

In this phase of the stakeholder dialogue, BP was no longer willing to recognize other citizens' subjective reasoning, specifically when it came to the legitimate worry that the compensation offered and given by the GCCF in phase two might be insufficient from a future legal point of view and then give legitimate reason to sue BP. The consequence of ignoring Rawls' injunction was that BP's rational, financial self-interest was served. However, this was at the expense of stakeholders and the company's own reasonableness—a development that we discuss in the next section.

TF 6: The Tandem of Reasonable Cooperating with Rational

It is in the balance of the rational and the reasonable that Rawls seeks some form of self-restraint from the powerful citizen. In our reading, it is significant that BP's lawyers enter into the narrative in this phase of the case. Rawls recognizes the right of every citizen to pursue his or her own rational ends in life but insists on them tempering the rational by behaving reasonably. However, it is the job of BP's lawyers to serve the rational interests of their client, for example by avoiding being sued by numerous citizens who might have legitimate claims in order to avoid large expenses. Their single-minded pursuit of the company's rational, financial interests appears, therefore, to be perfectly in line with Rawls. However, by letting the lawyers loose on the terms of the cooperation with BP's stakeholders, and not imposing some restraints, the corporation neglected that balance.

Rawls uses a metaphor of a tandem to suggest that in order to maintain a healthy balance the citizen needs to have appropriate quantities of both reasonableness and rationality. As outlined in "John Rawls' Understanding of Being Reasonable" section, we perceive a tension between these two attributes in which one acts as a counter to the other.

A seesaw might be a more appropriate metaphor for conceptualizing the relationship; if either one is too heavy in relation to the other, the balance is lost. Transferred to the case, this means that BP is challenged to balance, on the one hand, legitimate economic self-interests and, on the other, an economic compensation plan that helped the victims through their crisis and opened the door for them to continue financially on their own, as a company or a person. It seems as if what happens through the stages of the compensation process is that this balance is changed from being primarily in the interest of the victims to be primarily in the interest of BP. This seems to imply that, according to this part of Rawls' theoretical framework, reasonable and rational do not cooperate as a tandem when it comes to how BP manages to balance the two of them. On the contrary, being rational, understood as taking care of one's own economic interest, plays the key role for BP in the second part of the process. In this phase, BP's lawyers demanded, albeit unsuccessfully, that companies and persons should prove that the spill caused their losses and demanded much stricter documentation of their losses.

Concluding Remarks

This article contributes to knowledge in three areas. First, we identify shortcomings in the various research discourses which have developed theory on stakeholder dialogue. Second, through our interpretation of Rawls, we propose a contribution to the theory of stakeholder dialogue which addresses those shortcomings. Third, the application of the revised theory in the case study illustrates the usefulness of the contribution and reveals some shortcomings that will require further research.

In this article we have identified a shortcoming in those approaches to stakeholder engagement that are exclusively verbal. Habermasian understandings of "dialogue" that limit themselves to an exchange of words fail to capture the communicative power of actions undertaken by the corporation. On the other hand, the action-oriented, normative project which proposes to change the very essence of the business corporation into a wholly moral agent, offers little hope of success any time soon. Second, the discourse of political CSR appeared to offer a promising synthesis of deliberation and action. However, the anticipated voluntary move by business corporations into the political arena has not materialized and the discourse has been criticized for its failure to provide a regulatory environment for corporation—stakeholder dialogue. These two gaps in the literature are addressed by bringing the Rawlsian framework into the debate about stakeholder dialogue.

Through our interpretation of a core element of Rawls' political philosophy, namely his notion of reasonableness

in citizens, the article makes two important theoretical contributions to the debate on stakeholder dialogue. First, following Rawls, we insist that dialogues between business corporations and their weaker stakeholders must be understood as consisting of both verbal exchanges and actions. We ground this injunction in our reading of Scherer and Palazzo's political CSR and by taking our cue from Rawls' definition of reasonableness in citizens as a willingness "to propose principles and standards as fair terms of cooperation and to abide by them willingly" (*PL*, p. 49). Second, we propose that the coercive power of government ought to provide a necessary context for the cooperation, in order to give all stakeholders, the "assurance that others will [abide by the terms of cooperation willingly]." By transferring his idea of the coercive power of government into the debate on stakeholder dialogue this article offers a critical alternative and a way forward for the discourse of political CSR.

In our application of Rawls' idea of reasonableness to the BP case, we have limited our object of study to the actions of BP and its stakeholders. The case illustrates how BP's actions led to stakeholders' reactions and, in turn to new more differentiated actions from BP in a process that we characterize as a dialogue. Although our decision to focus on action and ignore verbal exchange was taken for practical reasons, the study illustrates—as we intended—the powerful communicative role of action in shedding light on the dynamic of stakeholder engagement. We argue for a greater focus on actions in future research into corporation—stakeholder dialogue.

Application of the theory to the case illustrates that initially BP behaved reasonably to the satisfaction of the small stakeholders who had suffered economic loss and were threatened by corporate or private bankruptcy. However, in the second period of analysis, BP moved towards a more self-interested, rational attitude and behaved unreasonably, to the detriment of the same stakeholders. Working against the corporation's lawyers were the coercive powers of government in the form of President Obama and Judge Carl Barbier. The importance of Rawls' guarantee to all stakeholders that their reasonable behaviour would be safeguarded by a powerful government was well illustrated.

The application of TF 4 also illustrates, however, a shortcoming in Rawls' theory with which the judge had to grapple: most stakeholders had legitimate claims for compensation and behaved reasonably but a small minority of fraudulent individuals submitted false claims to BP. Unfortunately, Rawls' theory does not envisage such a situation. Judge Barbier resolved the problem by insisting that BP would have to tolerate continued unreasonable behaviour from this minority. However, the application of TF 5 also revealed that BP's lawyers gained an important concession from the judge. They were not willing to recognize other citizens' subjective reasoning, and his permission for them

to impose the new 88-page claims document on all stakeholders represented a major tipping of the scales in favour of BP's rational interests and against the stakeholders.

In the application of TF 6 in which Rawls sees reasonableness and rationality operating in a complimentary relationship with each other, we have pointed out that the metaphor of a tandem is inappropriate, and that the idea of a seesaw would be more suggestive of their antagonistic relationship to each other. In the context of our preceding reflections on the importance of the coercive powers of government, we now suggest that the goddess Justitia with her blindfold, sword and balance, might be a better metaphor than Rawls' tandem. In the one scale of the balance, we place BP's rational interests as exemplified by its lawyers' pursuit of their client's financial interest. In the other scale we place BP's reasonableness in taking care of its stakeholders' legitimate interests. She holds the scales in one hand, the sword in her other hand signifying her coercive power and the blindfold signifying that she will ensure fair terms to the parties, regardless of their standing in society.

Further Research

We have identified three major areas in which further research is needed. First, the discourse of political CSR needs a more explicit account of the role of a greater coercive power in promoting a corporation—stakeholder dialogue that will work more effectively for the weaker parties. Rawls provides important tendencies for one such, but political philosophy also contains other hopefully more developed accounts of the role of a greater power in effecting democratic processes.

The second major area for research must be further attempted applications of the Rawls framework to test its usefulness. Numerous questions have arisen from this first case. First, how important is the public sphere in imposing expectations of reasonable behaviour on a very powerful corporation? Second, what is to be done in situations in which corporation and stakeholders cannot agree on fair terms of cooperation? Third, further research should dig down into Rawls' notion of subjective reasoning, his so-called burdens of judgement, in order to better understand possibilities for tolerating different values and worldviews. How, for example, should a gold-mining company respond to an indigenous people who regard the proposed site of a new mine as being of great religious significance and therefore, under no circumstances, for sale? Rawls' unequivocal instruction is to respect the stakeholder's reasoning and, therefore, cancel the proposed mining project. Fourth, empirical and theoretical research is needed to explore what the appropriate balance is between the pursuit of private

rational interests and a reasonable behaviour that recognizes the legitimacy of others' interests.

Finally, whilst we believe that this article makes a persuasive case for the communicative power of actions, the third major area for further research is most definitely needed to develop a theory of stakeholder 'dialogue' that can account for the communicative effect of both words, actions and their interdependency, and also provide corresponding tools of analysis. In achieving this goal, the artificial dichotomy between verbal exchange and pure moral action that was outlined by Noland and Philips (2010) would be reconciled.

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Compliance with Ethical Standards

Conflicts of interest The authors declared that they have no conflicts of interest.

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