ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY
VOLUME 2; ISSUE 1
SUMMER 2019

ABOUT THE ALSB JOURNAL OF BUSINESS LAW & ETHICS PEDAGOGY

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CONTENT & OPINIONS

FROM THE EDITOR

Business Law and Ethics: Foundational to Business Education

Business law and ethics continue to be relevant and necessary components of business education. Knowledge and understanding of business law and ethics is foundational to business education and for all business professionals as they perform their work. An absence or a disregard law and ethics can undermine excellence in other areas of a business, resulting in scandals at the least, and potentially the end of the business from legal judgments and bankruptcy.

Interest in business law has been consistent over the years, and attention to business ethics has increasingly been emphasized since the Enron fraud and demise in 2001. Substantial increases in litigation threats and costs, in addition to the rise of emotional and unpredictable social media campaigns and controversies, make these disciplines more important than ever.

This journal is a vehicle for the sharing of teaching information and excellence, as well as a venue for sharing and archiving valuable and relevant pedagogical ideas, research, and analysis. The quality of the articles is high, and the dedication and hard work of our authors, editors, and reviewers is outstanding.

This issue includes four articles worthy of your consideration. First, Professor Nancy White shares a legal analysis template to help students break down law into elements, and then add them to the template for the purpose of applying the law to factual situations in order to reach a legal conclusion. She generously includes a wealth of examples for each step along the way.

In the second article, Professor Rachel Spooner shares her intriguing ethics service-learning project, "Do Better, Be Better." The project includes concepts and tools important in business education today – corporate social responsibility, experiential learning, and service learning. This project is particularly valuable because it can be incorporated into a variety of business classes across the business curriculum. Her detailed explanations and experience-tested development facilitate easy implementation.

Next, Professor Sandra Benson utilizes a courtroom simulation exercise to strengthen business law knowledge and to help students develop critical thinking skills, communication skills, and civility when dealing with differing perspectives. This classroom-tested experiential learning exercise includes detailed instructions, as well as feedback from students and evidence of student learning.

Finally, Professor Daniel Herron studies the ethical concept of stakeholder theory and explains how the theory can be used as a basis for collaborative decision-making in the business world. This excellent in-depth analysis connects the theoretical ethical concepts to government's legal regulations and alternative dispute resolution.

As these papers illustrate, this journal successfully provides strong and valuable educational innovation for business law and ethics disciplines to benefit students, educators, the business community, and society as a whole.

Linda Christiansen
EDITOR IN CHIEF

A Unified Approach to Corporate Collaborative Decision-Making: Why Adopt It and How to Operationalize It

*Daniel J. Herron**

ABSTRACT

Collaboration is the cornerstone of decision-making for many societal institutions, including the market and business decision-making. While collaboration is a straightforward concept, its application is highly complex. The "devil," as they say, is in the details. This article lays out the theoretical and ethical foundations of collaborative decision-making, focusing on stakeholder theory as the driving dynamic of the theories. In arguing for stakeholder theory, the article invokes game theory and team building. Further, the article presents various devices to enhance collaborative stakeholder decision-making as well as tools for teaching such practices.

KEY WORDS: COLLABORATION; STAKEHOLDER; ETHICS; GAME THEORY; BUSINESS ANALYSIS; DECISION-MAKING

I. Introduction

Collaboration is hard. Period. Moreover, collaboration is an elusive concept in that most of us "agree with it in principle" but fail to reach consensus on exactly how to operationalize it. This paper explores the process known as stakeholder-theory decision-making as it is applicable to societal collaborative decision-making. A bedrock of any collaborative theory is, of course, "compromise," the understanding that one cannot adopt the "my way or the highway" mentality. This may be a difficult hurdle to overcome in an age of political and religious extremism.

Religion and politics notwithstanding, the two most significant societal institutions in 21st century Western nations are government and business. Their decision-making styles are often at odds with one another other as governments are democratic and businesses are autocratic.[1] Businesses are not bound to think for the betterment of those around them, whereas this is the exact purpose for which governments were created. However, there has been a movement, initiated by legal studies scholars, to correlate business activity with solving societal problems:[2] "[i]ndeed, it's multinational corporations, and not governments or non-profits, that have the vast human and financial capital, advanced technology, international footprint, market power and financial motivation to solve the world's most daunting problems."[3] As *New York Times* columnist Thomas Friedman stated in a December 8, 1996 column, with only partial tongue-in-cheek, "So I've had this thesis for a long time and came here to Hamburger University at McDonald's headquarters to finally test it out. The thesis is this: No two countries that both have a McDonald's have ever fought a war against each other."[4]

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[1] Martina Tonizzo, *Political Institutions, Size of Government and Redistribution: An Empirical Investigation* 5 (Development Studies Institute Working Paper Series No.08-89, 2008), http://www.lse.ac.uk/internationalDevelopment/pdf/WP/WP89.pdf.

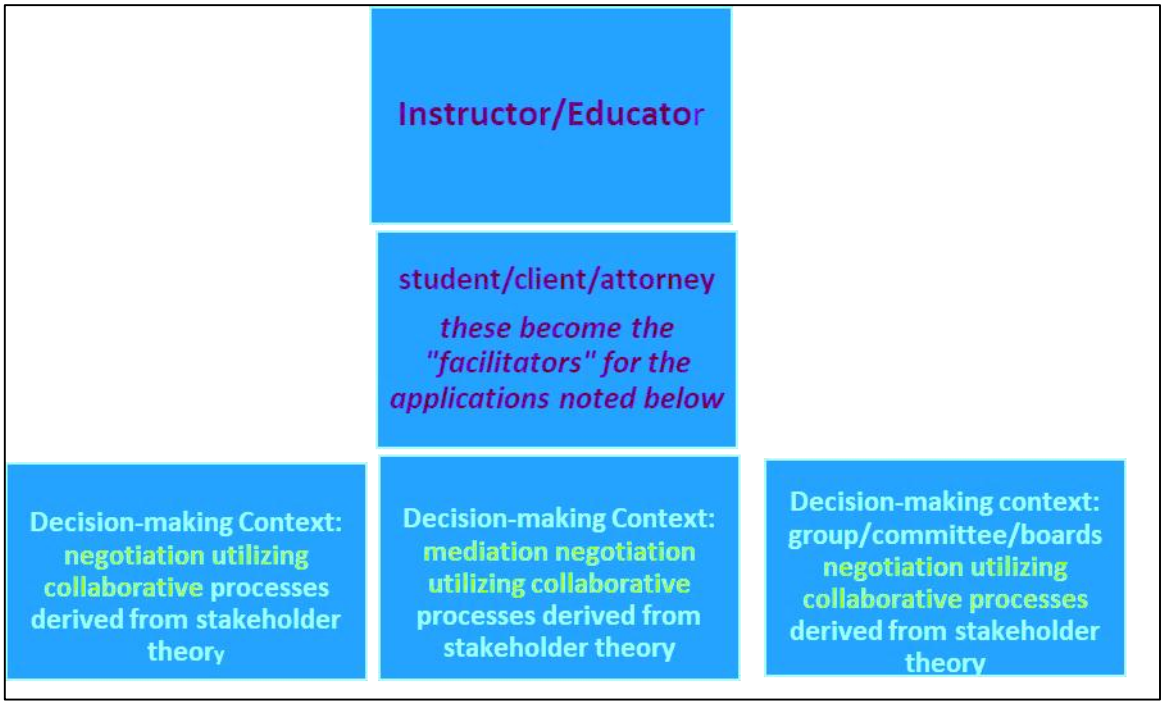
[2] Roberto Mollison, *Can Business Solve Social Problems?*, (Jan. 27, 2016), http://sites.psu.edu/robertomollison/2016/01/27/can-business-solve-social-problems/.

[3] Alice Korngold, *Businesses Can Do What Governments Can't: Solve The World's Biggest Problems,* THE GUARDIAN (Jan. 7, 2014), http://www.theguardian.com/sustainable-business/business-government-world-problems-davos-multinational and cf. footnote 91 *infra*.

[4] Thomas L. Friedman, *Foreign Affairs Big Mac I*, N.Y. TIMES, (Dec. 8, 1996), http://www.nytimes.com/1996/12/08/opinion/foreign-affairs-big-mac-i.html.

While the nexus between government and business is not new historically, it is a path to be explored.[5] When we look at that nexus of governmental and business constituencies and we add Non-Governmental Organizations (NGOs), societal concerns, and even private citizens, we create a viable group of stakeholders for the collaborative methodology to begin to solve global issues. Think of the metaphor "a place at the table." The issues that first present themselves in creating a collaborative model are: 1) how do we get "everyone" to the table when we are confronted with societal issues? 2) Is there one framework to guide the participants at the table in their decision-making process? 3) If so, how do we operationalize it?

First, though, we must create the facilitators, the ones who guide the process. Educators or instructors teach and educate students, clients, or attorneys and these individuals then have the power to facilitate three decision making processes: negotiation, mediation, and group negotiation. This process may be visualized as:



This paper proposes that stakeholder theory, as introduced by Edward Freeman in his seminal work *Strategic Management: A Stakeholder Approach* (1984), is that unifying framework. Freeman's theory has been widely adopted and adapted in the business world.[6] At its heart the underlying dynamic of stakeholder theory is collaboration. This paper argues that the fundamentals of business stakeholder theory can be incorporated into any decision-making model by broadly applying the business definition of stakeholder to the decision-making situation. The argument in support of this proposition is examined as follows:

II. Historical Context of Economic Systems
III. Competitive vs. Collaborative Economic Models
IV. The Current Debate Regarding Capitalism
V. Market Reasons for Adopting Stakeholder Decision-Making
VI. Operationalizing the Stakeholder Decision-Making Model
VII. The Relationship with 20th Century Democratization

[5] *See generally*, TIMOTHY L. FORT & CINDY A. SCHIPANI, THE ROLE OF BUSINESS IN FOSTERING PEACEFUL SOCIETIES (2011); Timothy L. Fort & Cindy A. Schipani, *An Action Plan for the Role of Business in Fostering Peace*, 44 AMERICAN BUSINESS LAW JOURNAL 359-377 (2007); *see also* in popular literature THOMAS L. FRIEDMAN, THE WORLD IS FLAT (2005).

[6] ROBERT PHILLIPS, STAKEHOLDER THEORY AND ORGANIZATIONAL ETHICS (2003); MARIA BONNAFOUS-BOUCHER & JACOB DAHL RENDTORFF, STAKEHOLDER THEORY: A MODEL FOR STRATEGIC MANAGEMENT (2016).

The heart of the paper is **Section VI**, **Operationalizing the Stakeholder Decision-Making Model,** in which collaborative methods of this model are explored. However, a threshold question is "why adopt a 'business' methodology to societal issues looking to 'collaboration' for problem-solving?" There are two important premises here: 1) stakeholder theory in business is premised on collaboration and many, if not all, of the concepts are transferable, and, 2) unlike the Middle Ages in the western civilization, where the two predominant societal forces were the monarch and the church, the two predominant 21st societal forces are democracy and business. During the European Middle Ages, change in society required reconciliation between church and sovereign, Henry VIII of England being a revolutionary but notable exception. In the 21st century, societal change and advancement will be much more efficient and productive if government and business share a similar perspective. As such, the hallmarks of "democratic" government and the hierarchy of business decision-making must to some degree be reconciled. Traditional business theories recognize that business decision-making is autocratic[7]. Stakeholder theory provides a mechanism to "democratize" business. All Western democracies are in varying degrees capitalistic. Business and government need to partner in leading societal change and advancement.

A case in point is the 2015 Paris Conference on Global Warming. This event is a prime example of what appear to be irreconcilable positions taken by business, government, and private sector interest groups. Business, with its need for profit, opposed government regulations that would hamper full capitalistic endeavors. NGO's and private citizens advocated for the environment (and planet earth) demanding increased regulations to curtail polluting emission; democratic governments were caught between competing interests of voters, national economies, and interest groups. However, it is imperative that business has a "place at the table." All stakeholders need to be invested in the process.

This paper explains what stakeholder theory is, how it is justified, and how it can incorporate both government and business in the societal mix of decision-makers. The paper then explores ways to apply this process across social institutions for collaborative decision-making.

As this paper describes, stakeholder theory can provide a framework for such collaborative decision-making. Of course, it is not easy, but it is a structure which can provide a pathway to greater inclusion. Collaboration always requires compromise; compromise requires the ability to form alternate perspectives. It is in this dynamic that we can also foresee an application of game theory into the process in order to develop a tool in which to balance competing interests.

In order to facilitate collaboration, the participants need to understand a framework of collaborative interest-based decision-making. Participants need to comprehend the dynamics of the interchange between the participants who are in the decision-making process where opposing views are held.

This paper:

1) Explains the framework of the collaborative process by
    a. Giving the historical context of the intersection of the two most vital dynamics in Western culture: democracy and capitalism;
    b. Explaining how democracy and capitalism are inconsistent with each other in non-market and market decision-making contexts;
    c. Explaining how that inconsistency can be remedied within this framework.
2) Explains how the collaborative mechanism works by:
    a. Identifying stakeholders;
    b. Recognizing the optimal outcome desired by each stakeholder;
    c. Plotting the intersection of those outcomes;
    d. Identifying the maximum set of outcomes obtainable considering all stakeholders.
3) Instructors need to understand and ***buy into*** how this system works in order to teach those who will actually be in the decision-making process or who will be facilitators of that decision-making process.
4) The structure and methodology presented by this paper is grounded in governmental legal regulations and the interplay among business, government, and special interest groups. Given the addition of ADR processes into the traditional legal system's adversarial dispute resolution spectrum, the legal educator is familiar with the use of collaborative processes and therefore well positioned to teach the collaborative decision-making process.

[7] Muhammad Saqib Khan et al., *The Styles of Leadership: A Critical Review*, 5 PUB. POL'Y AND ADMIN. RES., no. 3 (2015), http://www.iiste.org/Journals/index.php/PPAR/article/viewFile/20878/21131.

II. Historical Context of Economic Systems

With the publication of Adam Smith's *The Wealth of Nations*[8] in 1776, a continuing experiment has been running. While it is purely coincidental that the publication of laissez faire's "bible" should be published simultaneously and serendipitously with the birth of American independence, both events will intersect over the next two and a half centuries in ways unfathomable to 18th century perspectives.

The Wealth of Nations began the great liberal[9] laissez faire experiment of the free market. Relatively unfettered by governmental and societal restraints, this experiment evolved into what we now refer to as "Darwinian" capitalism.[10] Within this stereotypical cutthroat approach, profit is the ultimate and even exclusive goal and is the stuff that fueled the industrial revolution. It also fueled the incredible poverty and classed society of the mid to late 19th century and early 20th century.[11] It was responsible for the amassing of incredible fortunes and the creation of the first global companies.[12] As with any widespread and nearly omnipresent movement, it also spawned reaction, often violent reaction. Hand-in-hand with this Darwinian capitalism came the classed societies of the western world. "Left to itself, capitalism produced long-term aggregate benefits along with great volatility and inequity."[13] With the exception of the United States, this economic model dovetailed nicely with the political environment of monarchies and aristocracies.[14]

Even in the United States, any sort of sustained political and economic egalitarianism was left for the progressive era at the end of the 19th century.[15] Thus, the political reaction of aborted uprisings in many European capitals in the 1870s demonstrated the bubbling cauldron of political discontent just under the façade of supposedly well-ordered societies. Of course, much discontent was also fueled by the publication of Karl Marx's *Das Kapital*[16] as a response to the continuing evolution of Darwinian capitalism. "By the late nineteenth and early twentieth centuries, therefore, liberalism [*i.e.,* laissez faire thinking] was being challenged by reactionary nationalism and cosmopolitan socialism, with both the left and right promising, in their own ways, relief from the turmoil and angst of modern life."[17]

Less volatile reaction to Darwinian capitalism, but just as damning, came in the form of governmental regulations in the United States. With the passing of the Sherman Antitrust Act[18] in 1890, the United States Congress made clear its view that the invisible hand[19] as extrapolated from Smith's *Wealth of Nations* was not entirely effective in market self-regulation. Thus would begin over a century of governmental regulation into the market, continuing in 1914 with both the Clayton Act[20] and the Federal Trade Commission Act.[21] And, to put it bluntly, we were off to

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[8] ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS (2018).

[9] The irony is obvious: the "new" laissez faire mentality, being bold and new, is viewed from the 18th century perspective as "liberal" while we view it in the 21st century as classically conservative.

[10] Michal Gal, *Monopoly Pricing as an Antitrust Offense in the U.S. and the EC: Two Systems of Belief About Monopoly?* (N.Y.U. Law and Econ. Working Paper, 2004).

[11] Kevin H. O'Rourke, *Globalization and Inequality: Historical Trends* (Nat'l Bureau of Econ. Res., Working Paper No. 8339, 2001).

[12] *Id*.

[13] Gideon Rose, *Making Modernity Work: The Reconciliation of Capitalism and Democracy*, FOREIGN AFFAIRS, Jan/Feb 2012, at 4.

[14] Nathan Lewis, *Moving Toward 21st Century Capitalism*, FORBES, Jan 12, 2011, noting: "Capitalism of the 19th century, especially in Britain and the U.S., was characterized by very low taxes—no federal taxes at all in the U.S.—almost no government services, and money that was linked to gold. It was a wonderful environment for unfettered capitalism, and societies made great advances in industrialization and wealth creation. However, the gulf between rich and poor, and the general conditions of overwork and exploitation, became totally unacceptable by the end of the century."

[15] Thomas C. Leonard, *American Economic Reform in the Progressive Era: Its Foundational Beliefs and Their Relation to Eugenics*, 41 HIST. POLIT. ECON. 109, 110 (2009).

[16] KARL MARX, DAS KAPITAL, KRITIK DER POLITISCHEN ÖKONOMIE (Verlag von Otto Meisner 1867), *translated in* Dragon Nikolic Aristeus Books by Samuel Moore and Edward Aveling, (2012).

[17] Rose, *supra* note 13.

[18] Sherman Antitrust Act 15 U.S.C.A. § 1 (1890).

[19] Emma Rothschild, *Adam Smith and the Invisible Hand*, 84 THE AMER. ECON REV 319 (1994).

[20] Clayton Act 15 U.S.C. §12-27 (1914).

the races over the next ninety-nine years with ad hoc governmental regulations for the market. Governmental presence in the marketplace would become more definitive with the advent of the Great Depression in 1929. With Franklin Roosevelt in the White House, John Maynard Keynes became the economist laureate of the nation and his economic philosophy provided the foundation for Roosevelt's New Deal. Formalizing the government's role as an economic stimulant, Keynes introduced the third model in the economic experiment begun by Smith: the semi-regulated market or semi-laissez faire market, for want of a better term.

Of course, the second model on modern economic theory had begun a decade and a half earlier with the 1917 beginning of the Russian Revolution. Drawing on Marxist principles, Lenin and the Russian Bolsheviks created a socialist state with communism as its guiding political philosophy.[22] With the establishment of the Soviet Union and with Roosevelt's undertaking of the New Deal, the three great experiments in modern social economics were playing out: the two bookends—laissez-faire economics and socialism, and the one in the middle, so to speak, the regulated market.

By the time that the 20th Century concluded, the results were fairly clear. Laissez-faire, i.e. unregulated economies were ineffective in light of overwhelming social concerns over such issues as human rights, consumer protection, environmental issues, workplace safety—just to name a few; the list goes on identifying the various areas in which the laissez-faire market was unable or unwilling to regulate itself to any degree. Except for the extreme right wing of the American Republican party who, forgetting all rational historical perspective and wanting to roll back the economy to pre-New Deal times under some belief of economic stimulus,[23] the general consensus was that governmental regulation was necessary. The only legitimate question was a matter of how much regulation was needed. Unlike America, Europe suffered no angst as to the legitimacy of governmental presence in the marketplace.[24]

At the same time, socialism, as a unitary economic system, was clearly defunct. Not only with the fall of the Soviet Union in 1989, but the modifications of the Chinese market into a quasi-capitalistic encapsulated in a socialistic/communistic bubble demonstrated the demise of the socialistic approach.[25]

The only viable model standing was the middle ground: the regulated free market. But it was on life support by the turn of the 21st century. Attacked by the American right as an economy-killer,[26] the regulated market was nevertheless as needed in the late twentieth century as it was in the early twentieth century. Financial fraud, banking scandals, and consumer victims[27] were as rampant in the last decade of the twentieth century and the first decade of the twenty-first century as they were in the 1920's leading up to the collapse of the worldwide financial markets.[28] Yet, the panacea clamored for by the political right was a return to the unfettered markets of the 19th century, the very same environment creating the current conundrum. Ironically, it was the 18th century British conservative Edmund Burke who opined "Those who don't know history are destined to repeat it."[29]

Even with ad hoc governmental regulations, such those promulgated or enforced by the Consumer Financial Protection Bureau,[30] this kind of governmental intervention into the marketplace is truly akin to trying to put out a forest fire with a garden hose, especially with many on the political right trying to cut the albeit meager water supply.

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[21] Federal Trade Commission Act 15 U.S.C. §41 (1914).

[22] John Mueller, *What Was the Cold War About? Evidence from Its Ending*, 19 POL. SCI. Q. 609 (2004).

[23] PAUL KRUGMAN, THE CONSCIENCE OF A LIBERAL 10 (2009) ("Money is the glue of movement conservatism, which is largely financed by a handful of extremely wealthy individuals and a number of major corporations, all of whom stand to gain from increased inequality, an end to progressive taxation, and a rollback of the welfare state - in short, from a reversal of the New Deal. And turning the clock back on economic policies that limit inequality is, at its core, what movement conservatism is all about.").

[24] Julia Bersch & Graciela Kaminsky, *Financial Globalization in the 19th Century: Germany as a Financial Center* (Sept. 2008), https://home.gwu.edu/~graciela/HOME-PAGE/RESEARCH-WORK/WORKING-PAPERS/Germany-center.pdf.

[25] Daniel Herron & Patricia Pattison, *The Mountains Are High and the Emperor is Far Away: Sanctity of Contract in China*, 40 A.B.L.J. 3 (2003).

[26] The regulated market of the 1990's with its higher taxes of and with the same governmental regulations as exist currently, the economy flourished and unemployment was low, many on the right simply ignore such historically provable facts as ideologically anathema.

[27] *Economic Crime Survey 2003*, PriceWaterHouseCoopers, https://www.pwc.com/hu/en/publications/assets/pwc_crime_survey_2003.pdf.

[28] Eugene N. White, *The Stock Market Boom and Crash of 1929 Revisited*, 4 J. ECON. PERSP. 67-83 (1990).

[29] EDMUND BURKE, REFLECTIONS ON THE REVOLUTION IN FRANCE, (2018).

[30] *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub. L. No. 111-203, § 929-Z, 124 Stat. 1376, 1871 (2010) (codified at 15 U.S.C. § 78o).

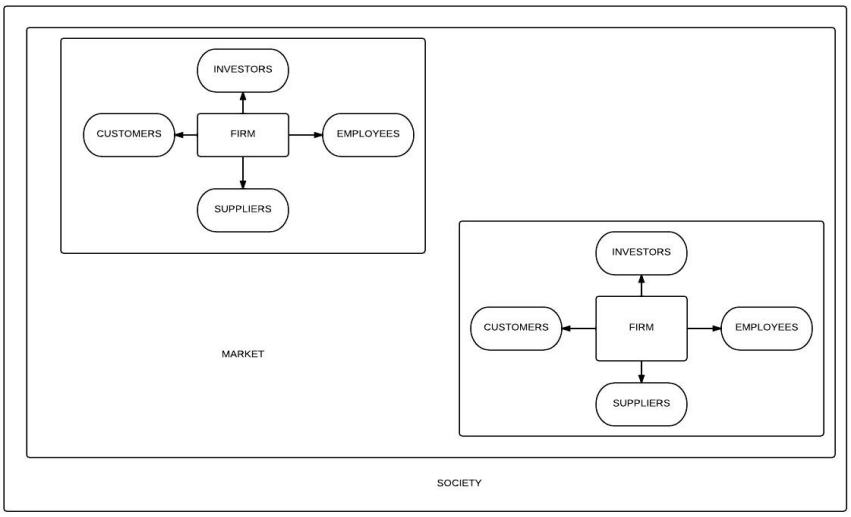
Clearly a "fourth way," or fourth experiment is needed. The first three---Darwinian capitalism, socialism, and the regulated economy---have either failed or completely underwhelmed and underperformed.

III. Competitive vs. Collaborative Economic Models

When we look at these first three models: Darwinian capitalism, socialism, and the regulated economy, two characteristics emerge that aid us in understanding these models: competition and collaboration. Let's first look at the structure of the market. The firm, whether it is a corporation, partnership, sole proprietorship or any other legal or factual variant, is the decision-maker. The transaction is the focal point of that decision-making. All business is transactional.[31] All business revolves around a seller selling a good, service, realty, intangibles or some combination thereof, and a buyer buying the same. The vehicle for the sale is, contract.

There are two environments for the firm during this transactional activity: the internal and the external. The internal environment includes those constituents which make the actual transaction occur. The constituencies are part-and-parcel to a firm's existence and in facilitating the firm's transactional decisions and actual transactions. Investors such as owners, employees, customers, and the supply-chain are crucial to the sale. The effect of this activity immediately influences the market itself, from a macro perspective, and the society in which the firm operated.

The external environment pertains to those constituencies with whom the firm is competing for these transactions, the competitors themselves. We might diagrammatically represent this as follows:



In this diagram, a number of relationships are demonstrated: 1) The universe is Society at large; all business functioning from the discrete function of the firm to the economic forces of the market are subset of the universe; 2) Business is represented by the larger rectangle within society operates in the capitalistic market environment; 3) Within the smaller two rectangles are the discrete firm functions and relationships with the four transactional stakeholders: customers, suppliers, employees, and investors. The dynamics represented here emphasizes two environments: the internal one with the firm's relationship with the transactional stakeholders; the external one with competitors in the market. Of course, influencing both environments are market forces and societal interests, the two "contexts" upon which and in which business operated. With these two environments in mind, we can apply the two characteristics of collaboration and completion to the relationships.

[31] O.E. WILLIAMSON, MARKETS AND HIERARCHIES: ANALYSIS AND ANTITRUST IMPLICATIONS (1975).

In Darwinian capitalism, every relationship, internally and externally, is competitive in nature. Internally, customers want the lowest prices; firms want to sell at the highest prices; employees want higher wages; investors was greater return on investment; the supply chain wants the highest price for good; the firm wants the lowest, etc. Everyone is out to get the "best deal for themselves." Externally, it is the same and even clearer, each firm wants as much market share as possible at the expense of other competitors.

In socialism, every relationship, both internally and externally, is collaborative. Every activity is designed to accomplish the singular goal of benefiting society or articulated societal goals.

In the regulated economy, we have the competitive nature of Darwinian capitalism but with the government, and not the market, setting up various rules and boundaries of how the competitive relationships will play out. For example, employees and employers are only free to negotiate salary so long as that negotiation does not violate minimum wage laws. Customers and the firm are free to let the market set purchase price so long as certain notices, imposed by the government, are complied with, such as ingredients on the label. But the end result is a capitalistic market with the "Darwinian" aspect modified by governmental regulations.

However, the "fourth way," stakeholder theory, blends BOTH the collaborative and competitive characteristics. Stakeholder theory, as explained below, argues for a competitive environment between firms for market share, reflective of a Darwinian capitalistic approach. However, the approach argues for a collaborative environment between and among the internal stakeholders along with society and the market itself. How this is operationalized will be discussed following the argument below.

IV. The Current Debate Regarding Capitalism

With socialism defunct as a comprehensive economic system, at least in the Western world, and with the regulated economy under attack, the debate resurrects laissez-faire economics as a potential savior, Edmund Burke's admonition notwithstanding. Thus, the choice lies between the original theory of laissez-faire economics versus the "new" theory, stakeholder theory, or, the "fourth way," introduced above.

This struggle over economic strategy is not a new debate but it is one that has been raging for decades. Supporting the former, Milton Friedman and others argue that two principles must guide business decision-making: obeying the law and maximizing investor (or owner) wealth.[32] Supporting the latter, ethicists Tom Donaldson, Kenneth Goodpaster and others argue that all stakeholders affected by business decision-making must have their interests incorporated into the decision-making process.[33]

As Donaldson and Dunfee note "The concept of corporate obligations to stakeholders has been a major theme in Western business ethics for several decades… the nature and scope of corporate obligations to stakeholders is one of the most important and extensive components of the modern literature on business ethics."[34]

Most of the debate between these two approaches has been centered in two venues: the economic one or the ethical one. The arguments are laid out rather simplistically as follows.

Economic Argument

The Laissez Faire: Investor/Shareholder theory: since market efficiency is a desired outcome, the focus of business decision-making should be on maximizing return on investment; other constituent concerns may be considered by the government, the legal system or some other advocate, but not by the business decision-maker. In other words, business does business, government does government, social welfare groups do social welfare activities, etc. and with everyone doing what they are supposed to do, the system not only works but is efficient.[35]

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[32] *See, e.g.*, MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962); Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, NEW YORK TIMES MAGAZINE (Sept. 13, 1970), http://www.umich.edu/~thecore/doc/Friedman.pdf; and Philip Coelho, James McClure & John Spry, *The Social Responsibility of Corporate Management: A Classical Critique*, 18 MID-AMER. J. BUS. 15-24 (2003).

[33] *See, e.g.*, R. Edward Freeman, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH (2010); Thomas Donaldson & Lee E. Preston, *The Stakeholder Theory of the Corporation: Concepts, Evidence, and Implications*, 20 ACAD. MGMT. REV. 65-91 (1995).

[34] THOMAS DONALDSON & THOMAS DUNFEE, TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS 235 (1999); *See also* TIMOTHY L. FORT, ETHICS AND GOVERNANCE: BUSINESS AS MEDIATING INSTITUTION 119 (2001) ("No approach has been more prominent in contemporary business ethics than stakeholder theory. Led by the work of Ed Freeman, the theory has successfully played off the typical focus on corporate duties to "shareholders" to identify duties toward employees, suppliers, community, and perhaps many others besides.").

[35] ALAIN-CHARLES MARTINET et al., EPISTEMOLOGIE DES SCIENCES DE GESTION (1900); MARIA BONNAFOUS-BOUCHER & JACOB DAHL RENDTORFF, STAKEHOLDER THEORY: A MODEL FOR STRATEGIC MANAGEMENT (2016).

Stakeholder theory: accepting the notion that market efficiency is a desired outcome, this theory argues that the most efficient approach is to take into account all stakeholder interests since that approach will incorporate all aspects of the decision-making process. Proponents of this approach tend to point to the financial success of companies with articulated corporate social responsibility credos that incorporate multiple stakeholders.[36]

Ethical Argument

The Laissez Faire: Investor/Shareholder theory: business decision-makers have a fiduciary, and hence *ethical*, obligation to owners/investors to safeguard and prudently manage the "money" entrusted to them. Few other constituencies or stakeholders have the comparable degree of fiduciary obligation owed to them by the decision-makers.

Stakeholder theory: the business decision-makers affect, via their decisions, a variety of stakeholders, including, but clearly not limited to the investor/owners; as such, some degree of duty, generally characterized as an ethically-based one (rather than an economically-based one), is owed to these stakeholders.

While economics and ethics command the focus of the ongoing arguments, ironically the legal aspect was fairly well-settled and it ran parallel with the investor/ethical argument. The paramount relationship is that of investor/owner or shareholder and those who manage that investment (via decision-making).[37] The decision-maker has a fiduciary obligation to manage that owners' money according to the wishes and expectations of the investors.

This maxim has, however, been relaxed and it is now recognized that it is well within the discretion of business decision-makers to factor into the decision-making the effects on all business constituencies, not just the owners and investors.[38] This legal relaxation raises the issue of the law's characterization of stakeholder theory in the context of moral and legal reliance. The evolution of the common law has witnessed the rise of reliance theories in contract law with the recognition of such remedies as promissory estoppels, equitable reliance, and *quantum meruit*. Can this rationale be applied to the adoption of stakeholder theory?

Reliance Theories and Moral Obligation

Fundamental Western philosophy holds that all individuals have some degree of autonomy. We have free will.[39] Even with the advent of nineteenth century Darwinist and Freudian determinism, we base our lives and societies on the concept that human beings can make decisions.[40] Our social institutions rely on this belief. Freedom to marry, work, worship: all the daily decisions we make are premised upon this one concept of autonomy and operationalized with the function of free will. Our legal and political systems could not survive without such a foundation of "free choice." The determination of legal liability would be a hollow exercise and democracy would be a silly activity.

However, if autonomy or free will is the very first foundational stone and an obvious one at that, the second stone is far more difficult to identify and understand. If indeed "choice" is the first characteristic of decision-making functions, what are the products and ramifications of such "choice"?

We know the following by experiential data:

Choice or decision ➔ a result

We also know by experiential data that the following may and usually does occur:

Choice or decision ➔ a result ➔ effect on others

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[36] *See e.g.*, MEDTRONIC, INC., https://www.medtronic.com/us-en/about/corporate-governance/code-conduct.html.

[37] *See*, ADOLPH A. BERLE & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932) (the classic book which lays out traditional corporate/legal theory).

[38] *See* Constance Bagley, *Shareholder Primacy is a Choice, Not a Legal Mandate*, *in* 1 THE ACCOUNTABLE CORPORATION 85-105 (Marc Epstein & Kirk Hanson, eds., 2006).

[39] *See* Douglas Uyl, *Autonomous Autonomy: Spinoza On Autonomy, Perfectionism And Politics*, 20 SOC. PHIL. POL'Y. 30-69 (2003).

[40] *Id.* at 30, *citing to* ROBERT PAUL WOLFF, IN DEFENSE OF ANARCHISM (1998) ("The fundamental assumption or moral philosophy is that men are responsible for their actions. From this assumption it necessarily follows…that men are metaphysically free.").

The question which arises, which is fundamental to understanding the nature of "obligation," is: what , if any, is the relationship between the decision-maker and those who are affected by that decision? Does some kind of obligation spring into being as a result of this relationship?

Common law addresses this issue but only after adding two variables.[41] If the affected person "relied" on the decision-maker's choice to the affected person's detriment AND the decision-maker knew or should have known that such reliance was occurring, then obligation from the decision-maker to the affected person is created.[42] This has been morally encapsulated by John Stuart Mill in 1859:

> When a person, either by express promise or conduct, has encouraged another to rely upon his continuing to act in a certain way—to build expectations and calculations, and stake any part of his plan of life upon that supposition—a new series of moral obligations arises on his part towards that person, which may possibly be overruled, but cannot be ignored … A person is bound to take all of these circumstances into account, before resolving on a step which may affect such important interests of others; and if he does not allow proper weight to those interests, he is morally responsible for the wrong.[43]

Reliance theories essentially permit the substitution of detrimental reliance for consideration in contract formation and enforcement.[44] For example, a person clearly promises her niece that in exchange for her niece's many years of devotion and care to her, she is leaving the niece her home, a valuable piece of property, upon her death. The aunt invites the niece to move in now while the aunt is still alive. The niece relies on this information, sells her current home, and moves in with her aunt. Her aunt passes away a few months later but she neglected to change her will and her will does not mention the bequest to the niece. Under classic contract law or under the laws of descent, the niece has very little legal strength. The niece has not given good consideration for the transaction (the "years of devotion" were in the past and not good current consideration; this was essentially a gift that was not executed and thus not enforceable).

However, this is where reliance theory may come into play. Because there was a clear promise upon which the niece relied and upon which the niece acted to her detriment (i.e., selling her home and moving in with the aunt), the promise will be enforced as if it were an enforceable contract.[45]

However, the law is equally settled that the affected party's reliance must be based on good faith and cannot be created if the party knows or should know that such reliance is misplaced.[46] It is not a leap to understand that since the law only requires a fiduciary obligation between the business decision-maker and the investor/owner, then any attempt to create a relationship between the business decision-maker and other stakeholders would be misplaced.[47]

To encapsulate this issue in the context of this paper: must business decision-makers take into account constituencies, i.e., stakeholders, other than owners, if it can be shown that 1) by express or implied behavior (action or words) the business decision-maker created reliance in those stakeholders; and, 2) the business decision-making will have a detrimental effect on those very stakeholders in whom reliance was created?

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[41] There is no statutory reference to reliance theories. Reliance theories have evolved exclusively from judicial interpretation in case law.

[42] *See* McIntosh v. Murphy, 52 Haw. 29, 469 P.2d 177 (1970) in which the court held that though the formal contract between the parties was technically unenforceable due to the statute of frauds and neither enforcement of the agreement nor money damages were available, the enforcement of the agreement under a reliance argument was justified since "…injustice can only be avoided by the enforcement of the contract and the granting of money damages."

[43] JOHN STUART MILL, ON LIBERTY (1859), http://www.serendipity.li/jsmill/on_liberty_chapter_5.htm (last visited Jun. 26, 2019).

[44] Don Habibi & Daniel J. Herron, *Law, Ethics, and the Dilemma of Modern Liberalism*, 13 MIDWEST LAW REV. 1, 14 (1995).

[45] *See* Daniel A. Farber & John H. Matheson, *Beyond Promissory Estoppel: Contract Law and the "Invisible Handshake"*, 52 U. CHI. LAW REV. 903, 903-947 (1985); Michael B. Metzger & Michael J. Phillips, *The Emergence of Promissory Estoppel as an Independent Theory of Recovery*, 35 RUTGERS LAW REV. 472, 472-557 (1983).

[46] *See* Michael B. Metzger & Michael J. Phillips, *Promissory Estoppel and the Evolution of Contract Law* 18 AM. BUS. LAW J. 160 (1980).

[47] Of course, the long-held judicially-created "business judgment rule" does permit fiduciaries to act in discretionary ways in the furtherance of the business activity even if the "return on investment" is not fully and unequivocally maximized. This, for example, would apply to the area of business philanthropy.

Yet, from a moral perspective, the question still remains, regardless of the law's modification of the question, "does the mere affecting of another by a decision-maker create some obligatory relationship flowing from the decision-maker to the affected party?" The resolution of this question goes to the very heart of whether stakeholder theory has legitimacy as an ethical theory rather than as an economic one based on competing efficiency approaches or legalistic ones based on reliance theories. However, economic justifications are equally as powerful, as the next section argues.

V. Market Reasons for Adopting Stakeholder Decision-Making

While the philosophical argument for the adoption of stakeholder theory rests in legal and moral arguments of reliance and responsibility as outlined above, there are concrete market reasons for adopting a stakeholder business decision-making approach.

There are four interlocking, fundamental market reasons for adopting the stakeholder construct as a model for business decision-making:

1) **Coping strategy;**
2) **Self-Interest;**
3) **Social Contract; and**
4) **Fundamental fairness.**

These four reasons can clearly standalone but also interact with each other to create a more persuasive and symbiotic rationale.

1) Coping Strategy

To put it simply, if business decision-making conflicts with societal expectations, then the likelihood of governmental intervention and regulations become nearly inevitable. The classic example, among many historically, is the 1929 stock market crash. The stock market crash of 1929 and the Great Depression that followed ushered in a whole host of government regulations, first and foremost were the Securities Act and the Securities Exchange Act, aimed at curbing the perceived abuses of large corporations. Needless to say, this wave of regulations had a profound effect on corporate America.[48]

In other words, if we agree that in a capitalistic market governmental regulation is generally undesired, then we need to behave proactively in a way to keep the government out of the marketplace. If no "reason" is created for governmental intervention, then the government, predictably a reactive force, vis-à-vis a proactive force, will find the impetus for regulation. Succinctly put, government regulation only occurs where there is a reason for it to occur!

However, this is not to suggest that all governmental regulation is only a response to social injustices created by business. As one commentator has aptly noted "…there…would be no private markets in the absence of public policy. In short, markets do not exist in some ideal state of nature. They are human inventions that rely are underlying rules and enforcement mechanisms that specific property rights, correct market failures, address social goals, and provide structure to the economic game."[49]

2) Self-Interest

The ultimate goal of business in a capitalistic society is not to "do good," "be a good citizen," "help society," or "increase society's standard of living." While these results should be factored into decision-making and may be the outcome of an integrated corporate decision-making matrix, the ultimate goal is indeed to "make money." Adam Smith, Milton Friedman and others are correct, to a point. What they miss is that "making money" is not the exclusive goal, it is the "first" goal of many goals. As Bagley notes schematically, the initial two questions of any business

[48] Michael Bradley & Stephen Wallenstein, *The History of Corporate Governance in the United States*, *in* 1 THE ACCOUNTABLE CORPORATION 50 (Marc Epstein & Kirk Hanson, Eds., 2006).

[49] Karen E. Schnietz, *The Purpose and History of Business Regulation*, *in* 4 THE ACCOUNTABLE CORPORATION 3 (Marc Epstein & Kirk Hanson, Eds., 2006).

decision-maker are 1) is the proposed action legal? and, 2) does it maximize shareholder value?[50] But the query does not stop there as we will see.

In most transactional activity, the business relationship is competitive, or seen as competitive. Think of a contract with a supplier. The supplier wants to sell goods at the highest price possible; the buyer wants to buy the goods at the cheapest price possible. However, there are other goals in this relationship besides the competition over the price of goods: ensuring a continuous and ready supply of goods; maintenance of a long-term relationship; assurance of a customer.

In other words, there is also a collaborative aspect to this transactional relationship. This collaborative relationship, as exemplified in stakeholder theory, can enhance the self-interest of the business. Bagley ironically notes that "[e]ven economist Michael C. Jensen, a staunch believer in shareholder primacy, acknowledged… '[i]n order to maximize value, corporate managers must not only satisfy, but enlist the support of, all corporate stakeholders—customers, employees, managers, suppliers, local communities.'"[51]

It is this collaborative dynamic, best operationalized in stakeholder theory as argued in this paper, which serves the business' self-interest. Moreover, the Bagley schematic alluded to above lays out how such a collaborative approach is manifested in a decision-tree approach:

Is the proposed action legal? -> No – then don't do it!

Is the proposed action legal? -> Yes – then, does it maximize shareholder value?

If it does not maximize shareholder value, would it be ethical to refrain from this action? (To answer, weigh the harm or cost that would be imposed on shareholders against the costs for benefits to other stakeholders).

If yes, don't do it.
If no, take the action but disclose the effect of the action to shareholders.

If it does maximize shareholder value, is it ethical? (To answer, weigh the effect on customers, employees, community, environment, and supplies against the benefit to the shareholders).

If yes, do it.
If no, don't do it.[52]

The point of this collaborative approach is indeed in the self-interest of the business. "The very nature of capitalism itself is putting together a deal, a contract, or a set of relationships among stakeholders so that **all can win** continuously over a period of time[53] (emphasis added).

3) Social Contract

In 1971, Harold Johnson characterized a socially responsible business as "…one whose managerial staff balances a multiplicity of interests. Instead of striving only for larger profits for its stockholders, a responsible enterprise also takes into account employees, suppliers, dealers, local communities, and the nation."[54] George Steiner contemporaneously augments Johnson's observation by arguing that "[business]…does have responsibilities to achieve it basic goals and does, therefore, [have] social responsibilities."[55]

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[50] Bagley, s*upra* note 38 at 100.

[51] *Id*. at 91 *citing* Michael C. Jensen, *Value maximization, stakeholder theory, and the corporate objective function*, J. APPLIED CORP. FIN. 8-9 (2001).

[52] Bagley, *supra* note 38.

[53] EDWARD R. FREEMAN, JEFFREY HARRISON & ANDREW WICK, MANAGING FOR STAKEHOLDERS 4 (2007).

[54] H. L. JOHNSON, BUSINESS IN CONTEMPORARY SOCIETY: FRAMEWORK AND ISSUES 50 (1971).

[55] G.A. STEINER, BUSINESS AND SOCIETY 164 (1971).

The nature of the modern corporation emphasizes the social nature of the enterprise, even from a classical and tradition perspective. Freeman, often characterized as the founder or articulator of modern stakeholder theory, notes:

> Corporations have ceased to be merely legal devices through which the private business transactions of individuals may be carried on. Though still much used for this purpose, the corporate form has acquired a larger significance. The corporation has, in fact, become both a method of property tenure and a means of organizing economic life. Grown to tremendous proportions, there may be said to have evolved a "corporate system"—which has attracted to itself a combination of attributes and powers, and has attained a degree of prominence entitling it to be dealt with as a **major social institution**.[56] (emphasis added).

The interplay of society, government, and business coalesces here within the context of "social contract." As an agent of society, government serves in its regulatory role as a means to advance social expectations. In this way, the "coping strategy" argument intertwines with social contract argument for the adoption of stakeholder theory.

The social contract approach also utilizes the collaborative nature of stakeholder theory. Freeman et al. argue that:

> Corporations are just the vehicles by which stakeholders are engaged in a joint and cooperative enterprise of creating value for each other. Capitalism, in this view, is primarily a cooperative system of innovation, value creation, and exchange. Indeed, it is the most powerful method of social cooperation we have ever invented. Competition is a second-order, emergent property that adds fuel to the fire of innovation. Business works in this "stakeholder capitalism" view, because people want to innovate and create together, not simply because they are competitive.[57]

4) Fundamental Fairness

This rationale for adopting a stakeholder approach to business decision-making is arguably the most "philosophical" in nature. This rationale draws upon both social contract theory as well as shades of legalistic reliance theories. It also draws upon the very nature of the market itself.

As noted above in the Coping Strategy discussion, "[i]n short, markets do not exist in some ideal state of nature. They are human inventions that rely are underlying rules and enforcement mechanisms that specify property rights, correct market failures, address social goals, and provide structure to the economic game."[58] Humans expect underlying rules to govern their contexts. Clearly, if the rule of law did not support the notion of property rights or the enforcement of contractual obligation, there would be no reason to enter into market activities.[59]

Along the same line, "fairness" is a requirement for the maintenance of the market. Nobel Prize winning economist Amartya Sen finds normalism implicit in the work of Adam Smith himself. Thus, according to business ethicist Robert Solomon, "Without fairness as the central expectation, there are few people who would enter into the market at all."[60] Fairness, however, must extend to all market participants, not just owners and investors. Fairness, by its very nature, is not selective but universal.

Having now argued for the adoption of stakeholder theory as the means for business decision-making, this paper moves to the question of how to structure the decision-making matrix.

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[56] R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation*, 3 PERSP. BUS. ETHICS 144 (2001); *See also* W.M. Evan and R.E. Freeman, *A Stakeholder Theory of the Modern Corporation: Kantian Capitalism, in* ETHICAL THEORY AND BUSINESS 97-106 (3rd ed., T.L. Beauchamp and N.E. Bowie, Eds., 1988); and Edward R. Freeman, *The Politics of Stakeholder Theory*, 4 BUS. ETHICS Q. 4 (1994).

[57] EDWARD R. FREEMAN, JEFFREY HARRISON & ANDREW WICK, MANAGING FOR STAKEHOLDERS 6 (2007).

[58] *Supra* note 28.

[59] *Supra* note 49 at 3: "Without a system for creating and protecting property rights, individuals would have little, or even no, incentive to invest time and resources into the production of goods and services."

[60] ROBERT SOLOMON, IT'S GOOD BUSINESS: ETHICS AND FREE ENTERPRISE FOR THE NEW MILLENNIUM 40 (1997).

VI. Operationalizing the Stakeholder Decision-Making Model

In order to fully develop the stakeholder model, there is an imperative for "managers to act as follows:

1) Identify the full range of stakeholders for a given firm and decision;
2) Identify the stakes at issue in the decision;
3) Assess the legitimacy of the stakes;
4) Allocate priority among conflicting stakeholder claims;
5) Identify strategic options for responding to the legitimate stakes having priority;
6) Assess the viability of the options within the framework of corporate governance, including any special considerations to be given to the interests of the stakeholders; and
7) Make a final decision."[61]

From a structural perspective, the model appears to be a classic matrix illustrated something like this:

Stakeholders→ Perspectives ↓	Owners	Customers	Employees	Supply Chain/Creditors	Society	Market
Financial, or bottom line, profit						
Legal, or compliance						
Ethical						

The empty cells represent the implications on each stakeholder from each perspective.

With this model presented, the natural questions must be: Why these stakeholders? Why these perspectives?

The Stakeholders

One of the criticisms of stakeholder theory is the unwieldiness of ascertaining the actual stakeholders themselves.[62] This model answers that criticism by incorporating the entire universe of the stakeholder groups into six manageable categories.

<u>Owners and Employees</u>

Internal to any business functionality are two discrete, though arguably similar, interests: those who monetarily invest in the venture (and their managerial agents) and those who non-monetarily invest by virtue of employment commitment; in other words, owners and employees. In the literature, few, if any, dispute the validity of listing owners and employees on the list of traditional stakeholders. However, the model above does collapse an often-cited stakeholder into the owner category, and that is "management." Management represents the interests of the business organization itself and as such, at least when squaring that with the legal model of fiduciary obligation, means that management represents the interests of the owners.

If managers, or collectively "management," acts in a way to protect their own jobs, they fall into the "employee" stakeholder group and their employment becomes the primary variable in decision-making activities. As a discrete group, management represents either owners in an agency relationship or represents a facet of employee interests, i.e. their own.

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[61] THOMAS DONALDSON & THOMAS DUNFEE, TIES THAT BIND: A SOCIAL CONTRACTS APPROACH TO BUSINESS ETHICS 236 (1999).

[62] *See, e.g.*, Philip Coelho, James McClure & John Spry, *The Social Responsibility of Corporate Management: A Classical Critique*, 18 MID-AMER. J. BUS. 15-24 (2003).

Customers, Supply-Chain/Creditors

It is this category of stakeholder that the greatest latitude is taken by this paper for the sake of model efficiency. "Customers" include all external constituencies (owners and employees are "internal") that have a contractual relationship with the business and whose relationship, at least legally, is controlled by that contract. This would naturally include a whole host of discrete entities: any supply-chain buyers, suppliers, vendors, and/or creditors.

The consideration here by the business decision-maker is the long-term business relationship that both parties are likely anticipating and which they likely were cognizant of when forming the initial contractual relationship. Much like employees, "customers", as defined here, invested not money but the anticipation of a continued business relationship. The investment goes beyond whatever contract is at hand and looks to the future relationship as well.

Society

Society is the stakeholder that has the most tenuous relationship back to the business decision-maker. While an external constituent, it has no legally contractual connection. Yet, when defined contextually as the "local" society, links become apparent. The previously-identified three stakeholders—owners, employees, customers—are members of society. The business in question is a member of this society. It does not take any stretch of logic or imagination to argue that the local community may well be affected by the business decision-making process. In light of current debate regarding social responsibility theories, there is strong argument for inclusion of society in the panoply of identifiable stakeholders.[63]

Market

Many stakeholder-theory proponents include "competitors" as a stakeholder group.[64] This seems a bit disingenuous in light of our underlying acceptance of a capitalistic market. If the paradigm of business decision-making is to give some degree of consideration to those constituencies which have a "stake" in the business, the disingenuity of giving consideration to one's competitors is even more obvious. However, what proponents of "competitor as stakeholder" are really articulating is the obligation that business decision-making owes to the competitive environment.

In other words, participants in business decision-making must be cognizant and nurturing of the dynamic that makes the entire activity possible: the relatively free and competitive market. The "market" is the dynamic or glue that holds the process together. As such, it forms the sixth and final constituency or stakeholder that needs to be considered in the matrix.

The Perspectives

The classic constraints on business decision-making have traditionally manifested themselves in two forms: investor expectation and statutory limitations. A third one is the ethical component which is espoused by this paper and supported by stakeholder theory.

Financial – Investor Expectation

The traditional view here is simply return on investment or bottom-line ramification. It is Friedmanesque in nature and simply espouses the capitalistic view that business decision-making must "take care of the bottom line." Clearly, the contrasts to such a view can be found in neo-Marxist economic theories and some theories of the not-for-profit firm. Nonetheless, the U.S. society is premised upon a for-profit and capitalistic model and as such, profit or the "financial" constraint is a viable perspective.[65]

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[63] *See, e.g.*, Kenneth E. Goodpaster and John B. Matthews, Jr., *Can a Corporation Have a Conscience*?, 1 HARVARD BUSINESS REVIEW 132-141 (1982), https://hbr.org/1982/01/can-a-corporation-have-a-conscience.

[64] *See, e.g.*, John Kaler, M*orality and Strategy in Stakeholder Identification*, 39 J. BUS. ETHICS 91-99 (2002).

[65] G. Bennett Stewart III, *EVA™: Fact and fantasy*, 7 J. APPLIED CORP. FIN. 71– 84 (1994); MARIA BONNAFOUS-BOUCHER & JACOB DAHL RENDTORFF, STAKEHOLDER THEORY: A MODEL FOR STRATEGIC MANAGEMENT (SpringerBriefs in Ethics 1st ed. 2016).

Legal

As with the financial constraint, the legal constraint is one that both stakeholder and shareholder proponents may agree upon. The legal perspective is reflected by governmental statutory regulation at both the federal and state level. This perspective is characterized as a compliance matter. In other words, this perspective is manifested in Friedman's admonition to "maximize owners' wealth and obey the law."[66] Other than for anarchists, this constraint, just as the financial constraint dictates, is also a constant variable that must be considered in business decision-making.

Ethical

The ethical perspective provides the point of departure for the stakeholder proponents and the shareholder proponents. Friedman's dual variable model is reflected by consideration of the financial and legal perspectives. The sum of those two results in the Friedman "ethic."

This paper has argued an ethical position that espouses not only the consideration of stakeholder interests but a consideration of an ethical perspective in addition to the financial and legal perspectives. This paper has also argued the validity of such a perspective. However, it has not proposed from what sources such a perspective may originate. Express manifestation of business or corporate positions serve as a starting point: mission statements, value statements, corporate credos, personnel handbooks, even advertising campaigns serve as express statements of values which can serve as the touchstone for business decision-making ethical perspective.[67] Board of director directives can also fall into this category.

Balancing Stakeholder Interests

To operationalize the Donaldson and Dunfee model as illustrated above,[68] the practical model or flowchart would be as follows:

1) Framing or identifying the question, problem or issue posed that requires a decision or course of action;
2) brainstorming for all possible solutions to the issue posed;
3) identifying the affected stakeholder(s) in light of the proposed solutions;
4) evaluating each effect on each stakeholder from first the financial, then legal, then ethical perspectives; and
5) identifying complimentary and competing interests and beginning the balancing process.

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[66] *See*, MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962); Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, NEW YORK TIMES MAGAZINE (Sept. 13, 1970), http://www.umich.edu/~thecore/doc/Friedman.pdf.

[67] *See, e.g.*, John A. Pearce & Fred David, *Corporate Mission Statements: the Bottom Line*, 1 ACAD. MGMT. EXECUTIVE, 109-16 (1987); James Krohe, *Do We Really Need a Mission Statement?*, 32 ACROSS THE BOARD 16 (July-August 1995); Fred R. David., *How Do Companies Define Their Mission*, 22 LONG RANGE PLANNING, 90-97 (1989); Christopher K. Bart, *The Impact of Mission on Firm Innovativeness*, 11 INT'L. J. TECH. MGMT. 479-93 (1996); Daniel J. Herron & Daniel Haughey, *P&G and Unilever: A Mission Statement in Action*, 20 MIDWEST LAW REVIEW (2006).

[68] *See, e.g.*, MILTON FRIEDMAN, CAPITALISM AND FREEDOM (1962); Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, NEW YORK TIMES MAGAZINE (Sept. 13, 1970), http://www.umich.edu/~thecore/doc/Friedman.pdf; and Philip Coelho, James McClure & John Spry, *The Social Responsibility of Corporate Management: A Classical Critique*, 18 MID-AMER. J. BUS. 15-24 (2003).

However, as a threshold exercise, this model has been proposed:

Stakeholder Analysis[69]

Stakeholder	Group name/Representatives
Interest	List specific interests
Level of interest	Estimate level of interest (e.g. low to high)
Resources available	What can the stakeholder bring to the process (e.g., legitimacy, financial support, volunteers)?
Who does the stakeholder represent?	For example, citizens, business interests
What does the stakeholder want?	Protect interests, gather information, and so on
Type of stakeholder	Player, would-be player, curious, defensive monitor, opportunist
Issue position	Supportive, mixed, antagonistic, unclear, etc.
Preferred form of communication	For example, e-mail, social networking, postal, telephone

There is nothing inherent in this model that compels the decision-maker to weight any one stakeholder more than another. The model does not compel the decision-maker to place owners' at a disadvantage vis à vis other stakeholders. What the model minimally does is force the decision-maker to consider all constituent interests in the decision-making dynamic.

However, the crux of the matter rests in the evaluation process. What weight is given each of the stakeholder considerations? How are the effects of proposed solutions to posed issues considered in relation with each other?

A number of models have been proposed. The "win-win" matrix of four cells representing two "competing" stakeholder interests as win-win, win-lose, lose-win, lose-lose, is one model. The goal of the business decision-maker is to find the solution that is encapsulated in the win-win cell.[70] Other models include prioritization of competing stakeholder interests[71] and majoritarian determination among the identified stakeholders.[72]

An interesting approach, though, to how weight is given to each stakeholder's position is determined though economic game theory.[73] Consider any number of classic game theory dilemmas—the Prisoners' Dilemma or the Stag Hunt—where the foci of the dilemma is anticipating what the other player or players will do and how that anticipation then influences your position. However, in collaborative models, full information must be available.

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[69] SHANNON K. ORR, ENVIRONMENT POLICYMAKING AND STAKEHOLDER COLLABORATION 128 (2014).

[70] *See* Duane Windsor, *Can Stakeholder Interests Be Balanced?* Unpublished paper delivered at the International Association for Business and Society Annual Conference, Paris, France (June 1999*) citing to* PETER F. DRUCKER, MANAGEMENT CHALLENGES FOR THE 21ST CENTURY (New York, Harper Business 1999).

[71] *Id*.

[72] *Id.*; *see also* SHANNON K. ORR, ENVIRONMENT POLICYMAKING AND STAKEHOLDER COLLABORATION 128 (2014) for a comprehensive articulation of various strategies and descriptions for collaborative models.

[73] *See generally*, BRIAN SKYRMS, EVOLUTION OF THE SOCIAL CONTRACT THEORY (Cambridge Univ. Press, 1996).

In game theory parlance, the collaboration must be cooperative as opposed to non-cooperative. Consider that three players each has four choices: A, B, C, or D. "A" provide players #1 and #2 with 100% of what they want, but gives player #3 0%. "B" gives everyone 30% of what they want. "C" gives player #3 100% of what she wants but gives 0% to players #1 and #2. "D" gives #3 60% but only gives players #1 and #2 30% each.

Solutions=> Players	A	B	C	D
#1	100	30	-0-	30
#2	100	30	-0-	30
#3	-0-	30	100	60
TOTAL RETURN	200	90	100	120

The difficulty here is that if "D" is selected, do players #1 and #2 feel "cheated" since player #3 gets twice the return as they do? Yet, under solution "B" players #1 and #2 receive no more nor less than "D." This difference we may call the cost of "social justice." Yet, if the collaborative culture can inculcate the notion that everyone should get the maximum possible without reducing the maximum return of another player, then the demands of social justice will be satisfied. The key here concept is proportional balance.

However, this does not take into account a model where there is a zero sum outcome, i.e. the total return is always 100% and thus each return is indeed based comparatively to the other player's positions. Hence, we could envision a problem laid out as:

Solutions=> Players	A	B	C	D
#1	50	40	-0-	35
#2	50	30	-0-	35
#3	-0-	30	100	30
TOTAL RETURN	100	100	100	100

Here, player #1 would advocate for the "B" solution since "A" and "C" are once again eliminated due to the 0% for one or more players. Player #3 likely doesn't care if the option chosen is "B" or "D" since she receives 30% under either solution. Player #2 of course advocates for solution "D" since "D" gives her 5% more than "B."

So, the dilemma is that we are confronted with a situation where we may not be able to find unanimity. However, if we amend the maxim just postulated above that "everyone should get the maximum possible without reducing the maximum return of another player, unless a reduction reduces the difference between the largest and smallest return."

We draw from these three threshold premises: 1) parties agree in advance that the solution chosen should provide the maximum return for each player; 2) full information as to the ramifications of the proposed solutions must be disclosed; 3) the difference between the highest return and the smallest return is as small as possible. In other words, there must be trust, good faith, and as sense of equality or at the very least some form of equity. The discussion below under social contract theory premises this argument with the statement that "fraud and manipulation" must be set aside.[74]

[74]*See* ABBASS F. ALKHAFAJI, A STAKEHOLDER APPROACH TO CORPORATE GOVERNANCE: MANAGING IN A DYNAMIC ENVIRONMENT 108 (1989); *See also* Lorenzo Sacconi, *CSR as Contractarian Model of Multi-Stakeholder Corporate Governance and the Game-Theory of its Implementation*, 68 J. BUS. ETHICS 259-281 (2006) (for a fuller discussion of game theory application to stakeholder collaboration).

Corporate Governance Issues—Structure of the Process

Perhaps the most efficient manner to accomplish this prioritization or balancing of stakeholder interests lies not in the weighing of those interests per se, but in the process for the weighing of those interests, i.e. ensuring that those competing interests are represented in the decision-making process. One option would be to include representatives from the various stakeholders into the management structure and/or even the board of directors of the firm. Such a change in corporate governance could be voluntary, through a change in the current corporate culture or through governmental mandate via regulations. As is often the case when the market fails to respond to societal concerns, "government might be called in to fill the gap between society and business, which could result in additional governmental regulations." [75]

Much like the evolving literature on corporate governance in areas of shareholder rights "vis à vis" stakeholder rights[76] or much like negotiated contractual rights between labor and management,[77] corporate board composition may be legally mandated to include stakeholder representation. However, as one commentator notes that if such governmental regulation occurs, "the organization will have to oblige and conform to the rules… [h]owever, by recognizing the various stakeholders present, the organization can eliminate the excess cost of regulations and benefit from a higher rating by society, perhaps in the form of profits."[78]

Freeman argues, though, that the legislatively-imposed board composition requirements could be detrimental to the board functioning and advocates for voluntary recognition of stakeholder interests. He argues for a board-level management process in which "directors and managers can achieve the goals of the reformers voluntarily while keeping a substantial amount of control over their own future." [79] He adds that, "to conceive of board structure in other than these process terms, is to run the risk of legislating 'mechanical structures' which will do far more harm than good in terms of ensuring the responsiveness of the corporation to its stakeholders." [80]

However, to mitigate Freeman's concerns of mechanical structures, an approach may be Sacconi's social contract approach.[81]

> As an ethical criterion, I suggest the 'social contract' among the stakeholders of the firm. By 'social contract' I mean not any whatever real-life bargain but a 'touchstone' from which point of view to assess the diverse outcomes of day to day practical running of the firm. In others words, the social contract is the agreement that would be reached by the representatives of all the firm's stakeholders in a hypothetical situation of impartial choice. Corresponding to the notion of 'social contract' is the following multi-stage deliberative procedure which generates impartially acceptable agreements.[82]

Sacconi emphasizes three premises by which stakeholder collaboration can be operationalized:

1. Force, fraud, and manipulation must be set aside;
2. Each party comes to the bargaining table with only its capacity to contribute and its assessment of the utility of each agreement and non-agreement proposed (dispensing with any form of threat other than its possible refusal to agree);

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[75] ABBASS F. ALKHAFAJI, A STAKEHOLDER APPROACH TO CORPORATE GOVERNANCE: MANAGING IN A DYNAMIC ENVIRONMENT 108 (1989).

[76] *See, e.g.*, Craig Ehrlich & Dae-Seob Kang, *U.S. Style Corporate Governance in Korea's Largest Companies,* 18 UCLA PAC. BASIN L.J. 1 (2000); OECD PRINCIPLES OF CORPORATE GOVERNANCE, http://www.oecd.org/daf/governance/principles.htm (1999); Dan Galai & Zvi Wiener, *Stakeholders and the composition of the voting rights of the board of directors*, J. CORP. FIN. 107-117 (2008).

[77] 5 U.S.C.S. § 7101.

[78] ABBASS F. ALKHAFAJI, A STAKEHOLDER APPROACH TO CORPORATE GOVERNANCE: MANAGING IN A DYNAMIC ENVIRONMENT 108 (1989).

[79] R. EDWARD FREEMAN, STRATEGIC MANAGEMENT 112 (1984).

[80] *Id.*

[81] Lorenzo Sacconi, *CSR as Contractarian Model of Multi-Stakeholder Corporate Governance and the Game-Theory of its Implementation*, 68 J. BUS. ETHICS 259-281 (2006).

[82] *Id.* at 14, ("It is quite evident the debt of this contractarian view on the theory of firm to the works of both John Rawls and David Gauthier…").

3. The bargaining *status quo* must be set at a level such that each stakeholder's results are immune against the cost of its specific investments—that is, each stakeholder must obtain from the social contract at least reimbursement of the cost of the specific investment…[83]

This third point is crucial in that each party must not feel "cheated" nor "taken advantage of." It also underscores the first point that fraud and manipulation cannot exist in any kind of social construct.

To this end, we return then to the initial focus or emphasis of this paper: the utilization of stakeholder theory in managerial decision-making supported by changing the corporate decision-making culture to a stakeholder-based model.[84] This metamorphosis must be initiated top-down with boards of directors committed to this approach. Moreover, it also requires a change in both statutory and common law rules of fiduciary duty. To what degree may the board shift or share its fiduciary duty to investors to other stakeholders as well. This change is actually occurring as many states are statutorily adopting a multi-stakeholder fiduciary model.[85] Only with directors embracing this broad concept will the corporate culture change and be conducive for mid- and lower-level managers to base decisions within a stakeholder framework.[86]

Practical Application of Collaborative Methods

Sacconi's points are crucial in that each party must not feel "cheated" nor "taken advantage of." It also underscores the first point that fraud and manipulation cannot exist in any kind of social construct. It begs the question though has to how, specifically, to address these conclusions or goals with practical approaches to ensure these results. Some suggestions include:

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[83] *Id.*

[84] The debate here, which is clearly being begged, is that the common law development in agency theory of the "fiduciary" obligation of agent to principal interferes, to a great degree, with the altering of the shareholder exclusivity rule. Under the common law (and reinforced in countless legal precedent) is the requirement that the agent owes his/her principal exclusive duty (read: corporate board of directors as the agent of the shareholders). However, the question being begged here is whether that exclusivity can accommodate primacy. So long as the agent (i.e., business decision-maker) only incorporates other stakeholders into the decision-making matrix and does not exclude the shareholder, will this fiduciary duty be satisfied? Another way to look at this would be that shareholders retain primacy in the pantheon of stakeholder but do not retain exclusivity.

[85] Ryan J. York, *Comment: Visages Of Janus: The Heavy Burden Of Other Constituency Anti-Takeover Statutes On Shareholders And The Efficient Market For Corporate Control*, 38 WILLAMETTE LAW R. 187 (2002) *citing to* footnote 13 ("*See* Michael Bradley et al., *Challenges to Corporate Governance: The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROBS. (1999). The following statutes permit directors to consider the interests of non-shareholder constituencies in any appropriate context: Conn. Gen. Stat. 33-756(d) (1997) (mandating consideration of non-shareholder constituencies); Fla. Stat. ch. 607.0830(3) (Supp. 1999); Ga. Code Ann. 14-2-202(b)(5) (Supp. 1998); Haw. Rev. Stat. 415-35(b)(1)-(4) (1997); Idaho Code 30-1702(1996); 805 Ill. Comp. Stat. 5/8.85 (West 1993); Ind. Code 23-1-35-1(d) (1995); Iowa Code 491.101B (1991); Me. Rev. Stat. Ann. tit. 13-A, 716 (West Supp. 1998); Mass. Gen. Laws Ann. ch. 156B, 65 (West Supp. 1998); Minn. Stat. 302A.251(5) (Supp. 1999); Miss. Code Ann. 79-4-8.30(d) (1998); Nev. Rev. Stat. 78.138(3) (1994); N.J. Stat. Ann. 14A:6-1(2) (West Supp. 1998); N.M. Stat. Ann. 53-11-35(D) (Michie 1997); N.Y. Bus. Corp. Law 717(b) (McKinney Supp. 1999); N.D. Cent. Code 10-19.1-50(6) (Supp. 1997); Ohio Rev. Code Ann. 1701.59(E) (Anderson 1993); Or. Rev. Stat. 60.357(5) (Supp. 1999); 15 Pa. Cons. Stat. 515 (1995); Wis. Stat. 180.0827 (1992); Wyo. Stat. Ann. 17-16-830(e) (Michie 1997).The following statutes permit directors to consider the interests of nonshareholder constituencies in the context of transactions for corporate control: Ala. Code 10-2B-11.03(c) (1994);Ariz. Rev. Stat. 10-2702, 10-1202(c) (1996) (sale of assets); Ark. Code Ann. 4-27-1202(C) (Michie 1996) (sale of assets); Colo. Rev. Stat. 7-106-105(7) (reverse splitting of shares), 7-111-103(3), 7-114-102(3) (1998) (authorization of dissolution after issuance of shares); Ky. Rev. Stat. Ann. 271B.11-030(2)(b), 271B.12-020(3) (Banks-Baldwin 1989) (sale of assets);La. Rev. Stat. Ann. 12:92(G) (West 1994); Mo. Ann. Stat. 351.347 (West 1991); Mont. Code Ann. 35-1-815(3), 35-1-823(3) (1997) (sale of assets); N.H. Rev. Stat. Ann. 293-A:11.03(c), 293-A:12.02(c) (Supp. 1996) (sale of assets); N.C. Gen. Stat. 55-11-03(c), 55-12-02(c) (1990) (sale of assets); R.I. Gen. Laws 7-5.2-8 (1992); S.C. Code Ann. 33-11-103(c), 33-12-102(c) (Law. Co-op. 1990) (sale of assets); S.D. Codified Laws 47-33-4 (Michie 1991); Tenn. Code Ann. 48-103-204 (1995); Tex. Bus. Corp. Act Ann. art. 5.03 (West Supp. 1999); Utah Code Ann. 16-10a-1103(3) (1995); Vt. Stat. Ann. tit. 11A, 11.03(c), 12.02(c) (1997) (sale of assets); Va. Code Ann. 13.1-718(C) (Michie 1993); Va. Code Ann. 13.1-724(C) (Michie Supp. 1998) (sale of assets); Wash. Rev. Code 23B.11.030(3), 23B.12.020(3) (1994) (sale of assets)").

[86] An excellent example of such legislative modification of traditional corporate fiduciary law is the UK COMPANIES ACT (2006), http://www.legislation.gov.uk/ukpga/2006/46/section/172. Article 172: Duty to promote the success of the company.(1)A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—(a)the likely consequences of any decision in the long term,(b)the interests of the company's employees,(c)the need to foster the company's business relationships with suppliers, customers and others,(d)the impact of the company's operations on the community and the environment,(e)the desirability of the company maintaining a reputation for high standards of business conduct, and(f)the need to act fairly as between members of the company.(2)Where or to the extent that the purposes of the company consist of or include purposes other than the benefit of its members, subsection (1) has effect as if the reference to promoting the success of the company for the benefit of its members were to achieving those purposes.

1) A round table: one-upmanship is a sure-fire way to begin any collaborative meeting poorly. Placement at a rectangular-like table creates a hierarchy. A round table lessens that hierarchical feel. It also promotes a sense of fairness and equality.[87]

2) Empathy training: collaboration is needed in contentious situations; friendly or non-contentious situations already have some degree of collaborations built-in. In order to facilitate this, pair seeming adversaries up (this can be done in advance by seating them next to each other).[88] Take an issue, either one from the reason you are actually meeting, or a made up one in which the individuals in pairs will likely be on the opposite sides. Have them explain each other's position to each other and then ask for each one to argue their partner's position against their own. Use a simple empathy training model such as:

> **a. Put aside your viewpoint, and try to see things from the other person's point of view.**
> When you do this, you'll realize that other people most likely aren't being evil, unkind, stubborn, or unreasonable – they're probably just reacting to the situation with the knowledge they have.
>
> b. **Validate the other person's perspective.**
> Once you "see" why others believe what they believe, acknowledge it. Remember: acknowledgement does not always equal agreement. You can accept that people have different opinions from your own, and that they may have good reason to hold those opinions.
>
> **c. Examine your attitude.**
> Are you more concerned with getting your way, winning, or being right? Or, is your priority to find a solution, build relationships, and accept others? Without an open mind and attitude, you probably won't have enough room for empathy.
>
> **d. Listen**
> To the entire message that the other person is trying to communicate.
> Listen with your ears – what is being said, and what tone is being used?
>
> Listen with your eyes – what is the person doing with his or her body while speaking?
>
> Listen with your instincts – do you sense that the person is not communicating something important?
>
> Listen with your heart – what do you think the other person feels?
>
> **e. Ask what the other person would do.**
> When in doubt, ask the person to explain his or her position. This is probably the simplest, and most direct, way to understand the other person. However, it's probably the least used way to develop empathy. It's fine if you ask what the other person wants; you don't earn any "bonus points" for figuring it out on your own.[89]

3) Throw out the extremes: have each participant find the perfect goal for each of them; i.e. "if you could get 100% of what you want, what is it?" Once they articulate that, for each one, say, "ok, now you are not going to get that…period…..let's start thinking of what could substitute for that, maybe at 70% or 60% or 50%." Emphasize that collaboration is not competition but, instead, getting as much as you want while the other side or sides gets as much as they want.

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[87] Rui Juliet Zhu & Jennifer Argo, *Exploring the Impact of Various Shaped Seating Arrangements on Persuasion*, JOURNAL OF CONSUMER RESEARCH 336-349 (2013).

[88] Rui Juliet Zhu & Jennifer Argo, Exploring the Impact of Various Shaped Seating Arrangements on Persuasion, J. CONSUMER RES. 336-349 (2013).

[89] MINDTOOLS, https://www.mindtools.com/pages/article/EmpathyatWork.htm.

Democracy: emphasize at every opportunity a number of points: i) collaboration is democratic; ii) "my way or the highway" is autocratic; iii) win-lose has to become win-win; iv) compromise is the bedrock of collaboration.[90]

VII. The Relationship with 20th Century Democratization

The 20th century has been referred to as the "democracy" century.[91] However with the rise of democracy as the predominant global political form, "[t]he central question of modernity has been how to reconcile capitalism and mass democracy…"[92] Socialism attempts to model market economies on political function---government for the masses; market for the masses. As history has taught us, it fails. Perhaps the failing is that 20th century socialism, presented through communism, is that it was only democratic in pretext while actually being authoritarian. Perhaps the more appropriate model to scrutinize is the Scandinavian model of true socialistic democracy where the political system is democratic and the market predominately, though not exclusively, capitalistic especially in areas of governmentally-supported fundamental societal rights as education, medicine, and social welfare.

Yet, it is clear that "[t]roughout the past century, great tension has thus existed between the American hope of making the world safe for democracy, and the Americans' determination to make the world open for their particular types of economic enterprises." This tension would characterize the "Americanization" of the twentieth century. However, this tension is just that, a "tension." Democracy and capitalism are fundamentally at odds despite a century-long attempt by the United States to reconcile the two.[93]

Nonetheless, with the bookend events of World War I and the collapse of the Soviet Union, the western world saw, in the twentieth century, the emergence of more so-called democratic nations than any other time in human history. The end of World War I witnessed the collapse of the many of the great European monarchies: the Hapsburgs, the Hollenzollerens, the Romanovs, and the Ottomans. With the collapse of these imperial houses came the rise of the ethnic-based nations that would form the basis of modern Europe. With the fall of the Soviet Union in 1989, there was a reemergence of many of these ethnic-based nations from the former Soviet "republics."

While the twentieth century may indeed have given birth to the largest number of democratic states, it was hardly the first century to recognize democracy. From the ancient Greeks, to the Roman republic to the Swiss Confederation to the American Revolution, the fundamental concepts of democracy were being forged throughout western history. The mainstream of western political thought recognizes democratic principles as universally preferable to alternative political forms. The principles we recognize are universal: self-determination, personal accountability, participatory governance, engaged citizenship.

With this in mind, the central sociological question becomes why we fail to incorporate such ideals and attributes into other significant social institutions which govern our lives. If we consider that "government" is one large aspect of our life, we also recognize that work, education, family, and religion comprise other significant aspects. Yet, we resist applying democratic ideals to those aspects.

The current wave is indeed a capitalistic one as we see various iterations of capitalism sweeping through the former Soviet republics,[94] making inroads in China,[95]and re-entrenching itself into the traditional western democracies.[96]

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[90] J. C. Adamson, *We Need a Third Party Think Tank…Collaboration and Consensus*, THE MUSER, http://www.greatreality.com/3p/governance/colcon.htm (last visited July 3, 2019).

[91] FREEDOM HOUSE, *Democracy's Century: A Survey of Global Political Change in the 20th Century* (Dec. 7, 1999), www.freedomhouse.org/reports/century.htm.

[92] Gideon Rose, Making Modernity Work: The Reconciliation of Capitalism and Democracy, FOREIGN AFFAIRS, Jan/Feb 2012, at 6.

[93] Walter LaFeber, *The Tension Between Democracy and Capitalism During the American Century*, 23 DIPLOMATIC HISTORY 263 (Spring 1999) ("The success of capital has been the reason why the twentieth and probably twenty-first centuries can be characterized as American. The gravest danger to the American Century occurred in the 1930's when capital self-destructed. The New Deal and the Truman Cold War policies put the U.S. capital system back together in new forms….the market has worked its wonders…but the prerequisites of democracy have not automatically advanced.").

[94]Tomi Ovaska & Russell S. Sobel, *Entrepreneurship in Post-Socialist Economies*, 21 J. PRIV. ENTERPRISE 8-28 (2005).

[95] Shaomin Li, et al., *The Road to Capitalism: Competition and Institutional Change in China*, 28 J. COMP. ECON. 269-292 (2000).

[96] Gøsta Esping-Andersen, *Politics without Class; Postindustrial Cleavages in Europe and America*, *in* CONTINUITY AND CHANGE IN CONTEMPORARY CAPITALISM, (Herbert Kitschelt, Peter Lange, Gary Mark, and John Stephens, eds. 1999).

The lingering question then is how is capitalism, and especially global capitalism, with its focus on efficiency and profit, can be reconciled with our fundamental views of political democracy. Can we interject our society's core value of democracy with our society's core economic dynamic of capitalism? How do we bring democratic principles to business decision-making? Then how do we bring business to the table to help, if not lead, in solving global issues utilizing collaborative and democratic processes.[97] This paper argues that a readily available means to reconcile democracy and capitalism is the instillation of stakeholder theory into a global decision-making process. However, this requires commitment from the global market, political resolve, and a realization that our democratic principles are the bedrock of our society, our entire society, not just our political environment. The great test of the early twenty-first century is to determine if we indeed have that commitment, resolve and realization.

[97] ALICE A. KORNGOLD, A BETTER WORLD INC. (2014); Alice A. Korngold, *The Guardian*, January 7, 2014 ("The agenda for the world's business leaders, gathering this month at the World Economic Forum in Davos, reads much like that of an NGO conference. Priority concerns include wealth disparity; climate change; the degradation of water, forests and arable land; the failure to adequately educate the world's children; healthcare; and human rights. Increasingly, companies are crossing many of the boundaries, both legal and political, to confronting these global challenges. Indeed, it's multinational corporations, and not governments or non-profits, that have the vast human and financial capital, advanced technology, international footprint, market power and financial motivation to solve the world's the world's most daunting problems. … But I'm not arguing that we abdicate global problems to businesses. Rather, I point out in my book that many companies are starting to understand that energy efficiency, poverty reduction and access to healthcare, for example, are preconditions to their success and also offer rewarding business opportunities. Furthermore, customers, employees and investors are driving corporate accountability, transparency and adherence to labor and environmental norms.").