SECTION I

Foundations of Corporate Political Responsibility: Metrics for Disclosure and Good Governance

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Excerpt
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1 *The Meaning of Corporate Political Responsibility*

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To America's watch-me-woke-it-up CEOs I say: When the time comes that you need help with a tax break or a regulatory change, I hope the Democrats take your calls, because we may not. Starting now, we won't take your money either.

Senator Ted Cruz (R-TX)[1]

This may be the most openly corrupt thing any Senator has said. It's the part everyone knows: these crooks sell access. Others have the sense not to admit it. This is why our republic is broken. Immoral politicians selling power we've entrusted to them like it's theirs to sell.

Walter Shaub, Former Director, Office of Government Ethics[2]

1.1 Introduction

It is commonly said that business is a "game" and that the role of a "player" (business firm) is to "win" (maximize profits) subject to playing by the "rules of the game" (whatever is legal). The implicit idea is that business and politics are separate realms, the first designed to serve private interests through the provision of goods and services, and the second to serve public interests through the provision of national security, a functioning set of legal and political institutions, efficient rules for market competition, and a healthy natural environment. Yet as the abovementioned epigraphs suggest, business and politics are far from separate; they are deeply intertwined through flows of money and information, and business often plays a key role in setting the rules of the game it plays.

1 https://twitter.com/tedcruz/status/1388111012008706057?lang=en
2 Ted Cruz's warning to "woke CEOs" blasted by former government ethics boss, The Independent, May 3, 2021. www.independent.co.uk/news/world/americas/us-politics/ted-cruz-woke-ceo-republican-b1841356.html

In theory, if the public sector sets appropriate rules, then aggressive pursuit of self-interest by the private sector produces socially beneficial outcomes, as Adam Smith (1776) argued two centuries ago, Kenneth Arrow and Gerard Debreu (1954) proved mathematically seventy years ago, and Milton Friedman (1970) preached in the *New York Times Magazine* fifty years ago. Yet despite a constant flow of rhetoric about the wonders of the "free market," Americans increasingly question whether their system of capitalism is delivering the goods. They see average Americans struggling to get by, while the media debate when the world's richest man, Jeff Bezos, will become the world's first trillionaire (Molina, 2020). They see government providing tax cuts to corporations and the rich and seeming impotent to rein in the market power of technology titans like Amazon, Apple, Facebook (now Meta), Google (now Alphabet), and Twitter. They are convinced the system is rigged against them, and that money buys favors in Washington, DC.

In the face of all this, it is not surprising that there is a growing movement to demand more accountability from business about its role in politics, that is, to demand corporate political responsibility (CPR) as a key complement to corporate social responsibility (CSR) (Lyon et al., 2018). More and more companies face proxy votes on disclosing their political spending. Institutional investors with concerns about environmental, social, and governance (ESG) issues are demanding more information about corporate spending on politics, and what it accomplishes. Activist groups increasingly call for companies to put their professed "purpose" into action by aligning their political activity with their mission, vision, and values. Environmentally conscious consumers want to know whether the companies they patronize for their "net zero" commitments secretly lobby against regulations to address climate change. As a recent article put it: "Ready or not, the era of corporate political responsibility is upon us" (Lyon, 2021).

In common parlance, the word "responsibility" has two very different meanings. The first reflects causality, that is, the extent to which one thing causes another. The second reflects character, that is, the extent to which an individual or organization is mature and wise in its actions. The two meanings are related, in the sense that a responsible adult takes into account the impacts of his or her actions on others. In legal usage, a "responsible adult" is a guardian of a minor, who is expected to act on behalf of the well-being of the minor. More generally, a responsible adult grants others some degree of moral weight in decisions that may involve personal gains at the expense of costs imposed on others.

Both meanings of responsibility are relevant for CPR. If corporations have no influence on political outcomes, they can hardly be held responsible for them. But if corporations have no influence on politics, why do they spend billions of dollars each year on campaign contributions and lobbying? Thus, the second meaning is of primary interest here. What would it mean for corporations to be responsible participants in the political process? Is it appropriate for them to lobby for policies that would increase their profits at the expense of the broader public?

This chapter offers an initial exploration of the meaning of CPR, from both perspectives. It seeks to open rather than to settle a profound conversation about the appropriate role of business in our modern political system and about the appropriate form of capitalism itself. It begins by defining a set of key terms, and then turns to the first definition of responsibility, briefly surveying the evidence of corporate influence on government policy. It pivots to the second definition of responsibility, highlighting three key pillars that are essential if business is to fulfill its role as a "responsible adult" in the political realm: transparency, accountability, and responsibility. Finally, it provides an overview of the remainder of the volume.

1.2 Defining Key Terms

Although definitions seldom make for riveting reading, it is important to define some key terms before proceeding.

Corporate political activity (CPA) includes any attempts by a company to influence the political process. When ordinary people think of corporate political engagement, they often use the term "lobbying" as a blanket word to capture any attempts to influence government. That usage is far too broad, however, and it is necessary to make additional distinctions about influence activities. CPA encompasses a wide range of influence tactics, as shown in Figure 1.1.

Political spending is composed of a variety of different types of financial contributions to political campaigns and independent expenditures, or "outside spending," all meant to influence the electoral process. As outlined by OpenSecrets.org, these can include, but are

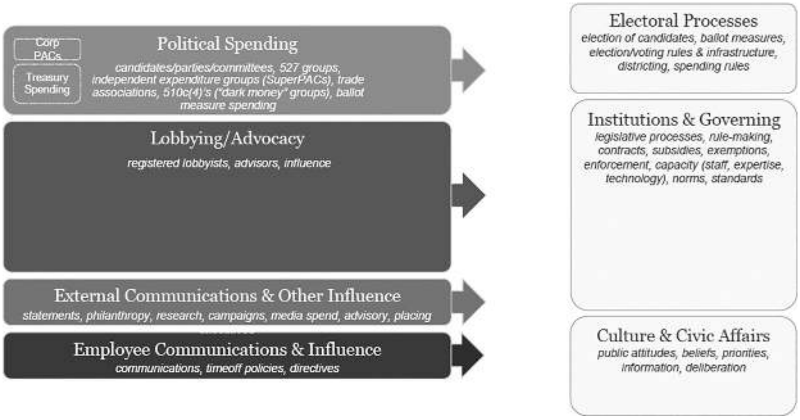

Figure 1.1 Forms of political influence

not limited to, contributions to political action committees (PACs) and so-called Super PACs, different types of political committees that raise and spend money to support or defeat candidates or legislation. Social welfare organizations (501(c)(4)s), which can engage in political action as long as that is not their "primary" activity, labor and agricultural organizations (501(c)(5)s), who generally spend some, but not all, of their money on political activities, and business leagues (501(c)(6)s), like the US Chamber of Commerce, which, like social welfare organizations, may not make political action their "primary" activity, are all active in the political arena, and are often referred to as "dark money groups" for their lack of donor disclosure requirements. Their political activity ramped up after the *Citizens United v. Federal Election Commission* ruling in 2010, which held that the use of independent expenditures by corporations, like money spent from corporate treasuries for electioneering communications, is protected speech. Figure 1.2 shows that outside spending has grown sharply since the Supreme Court's *Citizens United* decision in 2010, from about $500 million in the 2010 election cycle to about $3.3 billion in the 2020 election cycle, nearly a factor of 7. The vast bulk of this spending is done by "Super PACs" organized under section 527 of the tax code. These organizations are required to disclose their spending and their donors. However, the figure underemphasizes the role of 501(c)(4) "social welfare" organizations and 501(c)(6) trade associations, both of which can raise unlimited amounts of cash anonymously, but have

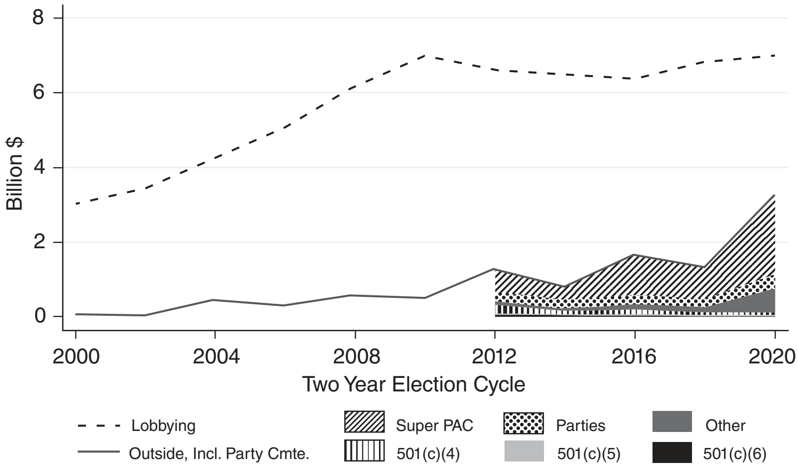

Figure 1.2 Lobbying expenditures and outside spending by election cycle
Notes: Only includes outside spending reported to FEC. 501(c)(4): social welfare; 501(c)(5): unions; 501(c)(6): trade associations. Other includes "corporations, individual people, other groups, etc."
Source: OpenSecrets.org.

to ensure their overtly political activities are not seen as their "primary" activity in order to keep their tax-free status. Thus, they are often used as a way to raise "dark money" which they then give to a 527 Super PAC to do the actual spending, without triggering disclosure requirements. Companies may also spend unlimited amounts to influence the outcomes of ballot measures.

The other form of CPA included in Figure 1.2 is lobbying expenditures, which dwarf campaign spending. These funds are spent on either a firm's internal lobbyists or a third-party lobbying firm, both of whose main goals are the provision of information to government officials. As lobbyists attempt to convey the likely effects of proposed policies and to shape these policies to benefit their clients, they are required to submit to some basic disclosure requirements. These mandated disclosures show that lobbying expenditures have increased dramatically since the early 2000s, with business interests dominating this arena (Drutman, 2015). Moreover, the figures probably greatly underestimate true spending on lobbying, as they do not include the "shadow lobbying" industry, composed of individuals who perform essentially the same tasks as lobbyists, but categorize themselves as "advisors" and escape mandatory lobbying disclosure rules; although data are scarce, it is estimated that the "shadow lobbying" business may be as large as the disclosed lobbying business (Thomas and LaPira, 2017).

Meanwhile, external communications and other outreach can include spending on "informational" campaigns to shape public opinion, such as the organized doubt creation orchestrated by members of the oil industry (Oreskes and Conway, 2011) or "grassroots" lobbying groups (astroturf lobbying) that appear to be spontaneous uprisings of individuals, but are actually funded and directed covertly by business groups (Lyon and Maxwell, 2004; Walker, 2014). Support for think tanks, some of which are simply partisan advocates (Chiroleu-Assouline and Lyon, 2020) and philanthropic giving, which may be deployed strategically by companies in need of political support (Bertrand et al., 2020), serve as two other methods of influence, while ballot initiatives, which can be influenced by most of the above-mentioned methods, have their own distinct dynamics of influence.

Lastly, employee communications and influence that encourages employees to be politically active is yet another way for corporations to influence the political process. Some of these efforts may be politically neutral "get out the vote" messages, but after *Citizens United*, there is no federal protection for workers against employer pressure to fund or vote for particular candidates or take public positions viewed as beneficial to the company.

Although public disclosure policies vary across the different types of CPA, as discussed in more detail by Lyon and Mandelkorn (2023), in general, these policies are so lax that it is impossible to get an accurate assessment of total spending on CPA. Nevertheless, publicly disclosed data provide a lower bound on spending on political influence.

With caveats regarding the limitations of available data, it is clear that the role of money in US elections continues to grow. As shown in Figure 1.3, the total cost of federal elections (i.e., spending by candidates' campaigns, political parties, and independent interest groups) grew steadily from the 2000 election cycle through the 2016 election cycle, from about $3 billion to $6 billion, and then jumped sharply upward to $14 billion during the 2020 election cycle. In general, total spending on congressional races exceeds that for presidential races. Figure 1.3 also shows that lobbying spending has grown apace with electoral spending, from about $3 billion total across 1999 and 2000

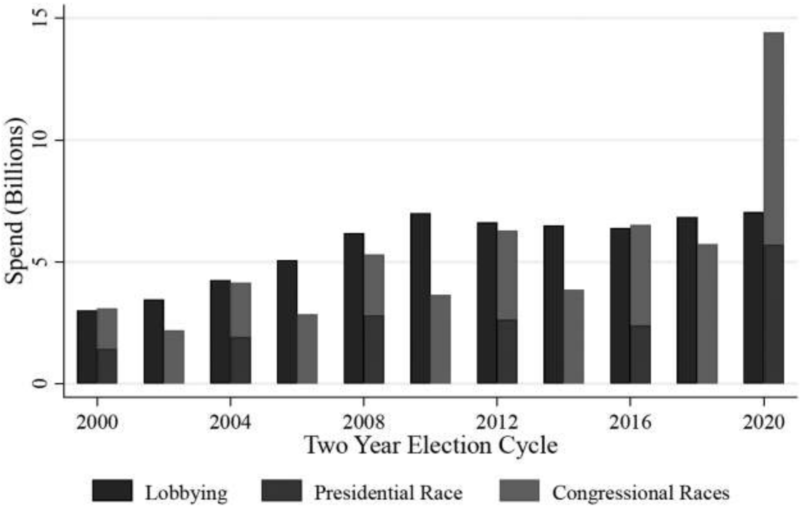

Figure 1.3 Lobbying and election spending
Source: OpenSecrets.org.

to about $7.5 billion total across 2009 and 2010, and stayed around $7 billion per two-year election cycle through 2020.

Corporate social responsibility means corporate efforts that go beyond compliance with legal requirements on either the environmental or social dimensions of performance. This could include corporate commitments to reduce greenhouse emissions or achieve "net zero" carbon emissions by a certain date, initiatives to create opportunity for historically underrepresented minorities, or policies to support human rights in developing countries.

CPR means transparency and accountability of corporate lobbying and other political influence, as well as a commitment to advocate publicly for policies that sustain the systems upon which markets, society, and life itself depend. The latter would include advocating for the elimination of market failures and special-interest subsidies, which undermine the performance of the capitalist system, and for the maintenance of the Earth's climate, a functioning representative political system, and planetary biodiversity.

Political corporate social responsibility (PCSR) holds that firms have a responsibility to fill in gaps in global regulatory governance where the nation-state has failed to do so and to make "a more intensive engagement in transnational processes of policy making and the creation of global governance institutions" (Scherer and Palazzo, 2011, p. 910). Thus, firms may provide public health benefits, address AIDS, and promote societal peace and stability. PCSR emphasizes Habermas's concept of "deliberative democracy," which explores the formation and "transformation of preferences" through dialogue and analyzes the conditions under which deliberation "will lead to more informed and rational results, will increase the acceptability of the decisions, will broaden the horizon of the decision maker, will promote mutual respect, and will make it easier to correct wrong decisions that have been made in the past" (Scherer and Palazzo, 2007, p. 1107). The authors distinguish PCSR from mere corporate responses to stakeholder pressure, arguing that PCSR calls for moral leadership from companies.

Relative to CPR, PCSR is a broader and more encompassing concept, and includes corporate participation in both private and public politics. CPR, in contrast, focuses on corporate engagement in public politics. An example that illustrates the difference is the Forest Stewardship Council (FSC), which puts forward voluntary standards for forest management that many companies have adopted. Companies also participate in the governance of the FSC and the articulation of the standards it promotes. Scherer and Palazzo (2007) use this as an example of PCSR, but it would not be an example of CPR because it does not involve the public political process. Scherer and Palazzo (2007) laud corporate engagement with FSC as "a corporate move into the political processes of public policy making" (Scherer and Palazzo, 2007, p. 1110), but we do not consider FSC to be a public policy process at all because there are no governments involved. Moreover, simply engaging with a voluntary standards organization provides no assurance that a firm is actually enhancing sustainability outcomes. Instead, it may simply be driving standards down, which would not count as CPR, in my view.

Corporate citizenship (CC) means "the role of the corporation in administering citizenship rights for individuals" (Matten and Crane, 2005, p. 173). They elaborate:

> With regard to social rights, the corporation basically either supplies or does not supply individuals with social services and, hence, administers rights by taking on a providing role. In the case of civil rights, the corporation either capacitates or constrains citizens' civil rights and, so, can be viewed as administrating through more of an enabling role. Finally, in the realm of political rights, the corporation is essentially an additional conduit for

the exercise of individuals' political rights; hence, the corporation primarily assumes administration through a channeling role. (p. 174)

This conception is quite different from the conception of CPR as describing the way in which a corporation exercises its own rights within the political system.

1.3 Is Corporate Political Activity Responsible for Government Outcomes?

In practice, the worlds of business and politics are not neatly separated, despite appeals for business to stay out of politics altogether (Reich, 1998). There is a widespread perception that the US political system has been corrupted by money and corporate influence, so that the "players" are setting the rules, to the detriment of the rest of society. Politicians from across the political spectrum decry the capture of our government by the wealthy. Independent Bernie Sanders says, "A few wealthy individuals and corporations have bought up our private sector and now they're buying up the government. Campaign finance reform is the most important issue facing us today, because it impacts all the others."[3] At the other end of the political and credibility spectrum, Republican Donald Trump also claims "the system is rigged," at least whenever he loses. And closer to the middle of the political spectrum, Democratic Senator Sheldon Whitehouse warns that "corporations of vast wealth and remorseless staying power have moved into our politics to seize for themselves advantages that can be seized only by control over government."[4]

Ordinary Americans largely agree with these assessments. Even in 2009, before the *Citizens United v. FEC* ruling removed constraints on corporate political spending, 80 percent of Americans agreed with the following statement: "I am worried that large political contributions will prevent Congress from tackling the important issues facing America today, like the economic crisis, rising energy costs, reforming health care, and global warming." In the first presidential contest after the *Citizens United* decision, 84 percent of Americans agreed that corporate political spending drowns out the voices of average Americans, and 83 percent believed that corporations and corporate

[3] "Better World Quotes – Bernie Sanders on Campaign Finance Reform" n.d.
[4] "Corporate Capture Threatens Democratic Government" n.d.