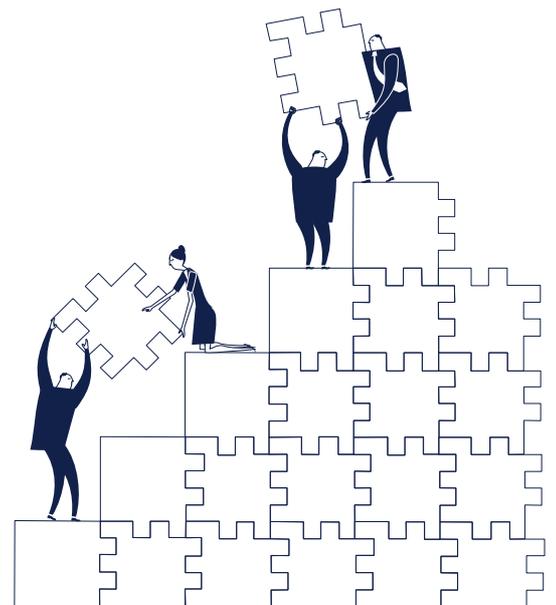


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# Firms, Citizens, and Claims about the Responsibilities of Firms

Laurence Cranmer  
*Saïd Business School, University of Oxford*



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## **Firms, citizens, and claims about the responsibilities of firms<sup>1</sup>** **Laurence Cranmer<sup>2</sup>**

### **1. The public debate about the responsibilities of firms**

We can make a broad observation: there is a public debate about the activities of firms. This debate takes a variety of forms. For example, firms provide public justifications for their actions, and for the outcomes of these actions. The reasons for providing public justifications include a formal response to legal or regulatory requirements, or as a way of marketing products, or in response to public concern. Citizens and other parties scrutinise these justifications, in some cases directing criticism at the justifications or at the firm's activities.

The public debate reveals differences between the parties that extends beyond the substantive issues involved. These differences include questions about the nature of the activities of firms as a whole, and in particular about the firm's responsibilities. In some cases the differences between the parties are substantial.

The multiple parties to the public debate include individual citizens, individual firms, groups of firms, civil society organisations including campaigning groups and the media, politicians, public policy makers, and legislators. Firms are concerned about how this debate goes for various reasons including as part of a direct response to public concern, or to address aspects of the firm's strategic and operational environment, or to anticipate legislative and regulatory changes, or as an aspect of a firm's reputation. These reasons often overlap.

The public debate suggests that the actions and outcomes of firms matter to people, and that these actions and outcomes have an ethical significance. This in turn suggests that firms may have *some* responsibility for these actions and outcomes.

The public debate may be *initiated* by substantive issues along a spectrum from the most specific to the most wide ranging aspects of a firm's activities.

Issues at one end of this spectrum concern *specific* aspects of a firm's activities, and raise specific issues of concern. One example is the use of animal testing in product development and production. This type of issue is reasonably amenable to items of regulation and legislation.

Issues at the other end of this spectrum concern a *range* of aspects of a firm's activities, and may cover the whole of a firm's operations. One example is the emission of greenhouse gases (and in particular carbon emissions) and the potential impact of these emissions on changes to the climate. Greenhouse gases are emitted to some extent by most firms during their activities, with some firms involved in potentially high emission products (for example, car manufacturers) or in the extraction of materials identified as producing greenhouse gases (for example, oil, gas and coal companies). This type of issue is less amenable to specific items of regulation and legislation, and any resolution is likely to require multiple approaches and involve multiple parties.

There is a significant overlap along this broad spectrum of issues, and all raise complex and contested empirical and ethical questions. This paper uses the issue of greenhouse gas emissions and climate change to illustrate how the analysis developed in the paper can be applied to practical issues. The vigorous public debate about this issue is articulated in multiple publications and public statements. The following are a few examples of the type and range of material generated by this debate. Nicolas Stern's *Why Are We Waiting? The Logic, Urgency, and Promise of Tackling Climate Change*<sup>3</sup> provides a survey of the broad thinking on this subject, and the policy context within which firms operate. Naomi Klein's *This*

*Changes Everything: Capitalism vs. the Climate*<sup>4</sup> suggests a critique of firms, industry sectors, and the current boundary of a firm's responsibility. John Broome's *Climate Matters: Ethics in a Warming World*<sup>5</sup> provides a philosophical analysis of the implications of climate change that underpins the arguments made by citizens and firms. A series of talks, statements and interviews by Paul Polman, Chief Executive Officer (CEO) of Unilever since 2009<sup>6</sup> suggests the types of arguments that firms make about greenhouse gas emissions and other responsibilities.

These examples suggest some dimensions of the public debate about climate change as just one issue. This paper does not address the *particular* arguments developed in these examples.

## **2. The approach of this paper: an analysis of claims**

With this sketch of the public debate in mind, we can ask: how can we make sense of the arguments involved. This paper suggests one approach: an analysis of the various *claims* made by the parties about the responsibilities of firms. The paper will consider the claims made by two of the parties in particular: *citizens* and *firms*. A first step is to identify the *types of claim* made by citizens and firms. Once identified, the claims are analysed to work out the implications for the parties. As the analysis develops, some suggestions are made about *public reasoning*<sup>7</sup> about the claims.

This approach forms the analytical structure of the paper. This requires the simplification of a series of complex arguments and ideas, including the following: the idea of a *claim* describes an argument presented in the public debate, and does not capture the range of specific meanings of a claim (for example, a legal claim); the descriptions of the *types of claim* are summaries of various concepts that are not fully developed, and are intended to provide analytical categories for the paper (for example, *responsibility*, *marketing*, and *justice*); and, terms such as *firm* and *citizen* refer involve a bundle to ideas that are not examined.

The approach of the paper, and in particular the analytical structure, aims for clarity in the analysis of the claims. However, this approach has significant limitations, including the following: the identification of the *types of claims* is incomplete and does not fully capture the substance of the public debate creating inaccuracies in the subsequent analysis; the *substantive examples* are only partially developed, and further analysis will reveal limitations and inaccuracies in the identification and analysis of the claims that these examples prompted; and, the focus on *claims* means that the wider empirical and theoretical context in which these claims are made is only partially examined and requires a greater depth of analysis.

The overall aim of the paper is to make a contribution to understanding the public debate about the responsibilities of firms, and to support collaboration between the parties to arrive at constructive resolutions to the issues raised.

## **3. Marketing claims and direct responsibility claims**

We can analyse the types of claims that firms and citizens make about a firm's actions and outcomes, including its products, in the following way.

We begin with the claims made by firms. Firms make various claims about their products bounded by the core responsibilities of the firm, summarised as operating within the law (based on a legal principle) and operating to make a financial return (based on a financial principle)<sup>8</sup>. These claims are directed to customers and investors in particular, but also to other parties including citizens, regulators, policy makers, and legislators. These claims can be described as *marketing claims*.

The description *marketing claim* recognises, and is derived from, a firm's practical activities undertaken to market and sell products. The use of marketing claim here does not refer to any particular set of practical marketing activities.

We can make a distinction between marketing claims and the claims made by firms about their *direct* responsibility for all of the firm's actions and outcomes, including its products. The latter claims can be described as *direct responsibility claims*. We can describe marketing claims as *indirect* responsibility claims because they involve claims about the core responsibilities of the firm. However, it is useful to establish the distinction between the two descriptions by using the terms *marketing claim* and *direct responsibility claim*.

Citizens make claims about a firm's actions and outcomes, either in response to the claims made by firms, or as part of the wider public debate about these actions and outcomes. As with the claims made by firms, we can distinguish between two types of claim.

In a market situation, citizens respond to *marketing claims* through expressing preferences and making investment and purchasing decisions based on these preferences. Where a citizen makes a *specific* claim about these preferences we can also describe this as a *marketing claim*. This reflects the similarity between this claim by citizens and a firm's marketing claims. These claims are bounded by the core responsibilities of the firm, under the legal and financial principles.

Citizens may also make *direct* claims about the ethical significance of all aspects of a firm's actions and outcomes, including the firm's products. These claims are not bounded by the core responsibilities of the firm. These can also be described as *direct responsibility claims*, reflecting the similarity between these claims and a firm's direct responsibility claims.

We can clarify the distinction between claims made by *firms* and claims made by *citizens* from outside of the firm. These can be described as *internal* marketing or direct responsibility claims, and *external* marketing or direct responsibility claims respectively. When a firm makes claims about its actions and outcomes, we can describe these as *internal claims*. When a citizen makes claims about a firm from outside of the firm as a legal entity (either from within a jurisdiction or across jurisdictions) we can describe these as *external claims*. The distinction between a citizen and a firm as the originator of these claims may not be straightforward, for example when an individual is both a citizen and part of a firm. In addition, a firm may make *internal* direct responsibility claims about its own actions and outcomes, and may make *external* direct responsibility claims about the actions and outcomes of other firms.

Although the distinction between *internal* and *external* claims is useful we can simplify the use of terms by dropping the distinction for much of this analysis. The central distinction between the two claims is then as follows. *Marketing claims* are bounded by the core responsibilities under the legal and financial principles, and are made about a firm's products in most cases. *Direct responsibility claims* are not bounded by these core responsibilities, and are made about the ethical significance of all of a firm's actions and outcomes, including its products. The *originator* of these claims can be identified as a *citizen* or a *firm* as required. The use of *internal* and *external* can be reserved for the analysis of particular claims.

The distinction between direct responsibility claims and marketing claims suggests an initial account of *public justification*. Direct responsibility claims appeal directly to the ethical significance of a firm's actions and outcomes, and so form part of a wider public justification for these actions and outcomes. Marketing claims do not form part of public justification on the grounds that these are claims about how products meet customer preferences in a market, and are *not* direct claims about the ethical significance of these products. However, marketing claims may also be described as *indirect* responsibility claims, and so do appeal to ethical

significance. It may be useful to make a distinction between *minimal* and *maximal* public justification. On this view, direct responsibility claims contribute to maximal public justification, and marketing claims to minimal public justification.

Marketing claims and direct responsibility claims may also overlap. This is also a basis for marketing claims forming a part of public justification. An example of a marketing claim that overlaps with a direct responsibility claim is as follows. A car manufacturer claims that a particular model operates with lower carbon emissions than similar models made by other firms (or by the same firm) in order to appeal to a group of customers. This claim is supported by further claims that the provenance of the product has been accurately researched, is subject to appropriate assurance, and is subject to proper public representation by the firm. The overlap (or apparent overlap) occurs because the issue of greenhouse gas emissions forms both part of a purchasing decision by a customer, and is also matter of public concern independent of the claims made by firms.<sup>9</sup>

#### 4. Further types of claims made by firms and citizens

An analysis of the claims made by firms and by citizens identifies multiple distinctions between different types of claim, and a series of these distinctions is analysed in the following sections (i) to (v). These distinctions reflect aspects of the public debate about a firm's actions and outcome.

For clarity, the distinction between *marketing claims* and *direct responsibility claims* will remain central to the analysis that follows sections (i) to (v), with the further distinctions referred to as required.

##### i. Legal responsibility marketing claims

We can describe a *legal responsibility marketing claim* as a claim that appeals to the legal responsibilities of a firm. This type of claim makes an explicit statement of legal compliance a distinctive feature of a product for a particular firm. The full extent of the legal responsibilities of firms may not be well known or understood by citizens. The distinctiveness of this claim may reduce over time as the legal responsibilities involved become more widely known. If all firms in fact operate within a set of legal responsibilities, and are known to do so, then these legal responsibilities will no longer be a distinctive feature of a product or of a particular firm. So, the *content* of the legal responsibility claim does not extend beyond the content of a marketing claim.

A firm's appeal to a claim of this kind can be described as part of *minimal public justification*. In this case, public justification is a restatement of a firm's legal responsibilities. These responsibilities are already established prior to the restatement, and so the restatement does not add to the content of a firm's responsibilities, although it makes these responsibilities explicit.

In making legal responsibilities explicit, a firm may add further claims about the *manner* in which legal responsibilities are discharged. The following are three example of these further claims. First, a firm claims that it *fully* discharges its legal responsibilities, and that discharging these responsibilities makes significant demands on the firm. Second, where there is ambiguity about the interpretation of legal responsibilities, a firm claims to operate within the most demanding interpretation of these responsibilities. This may overlap with the first claim. Third, a firm operating across multiple jurisdictions claims that, as a minimum, it does not exploit these differences and that it operates on the basis of the legal responsibilities required in the most demanding jurisdiction.

One view of these further claims is that they involve an extension of a firm's responsibilities *beyond* the marketing claim. On another view, these claims fall within legal responsibilities on the basis that the further claims are *aspects* of discharging these responsibilities. On the latter view, the content of each version of the claims is fully described by reasonable interpretations of legal responsibilities, even if there are differences between firms in the way in which these legal responsibilities are in fact discharged.

A firm's legal responsibilities for greenhouse gas emissions can be used as an example. We can describe a firm's claims as marketing claims if the content of these claims is fully described by the legal responsibilities of the firm. An investigation of these claims will determine whether the claims involve any extension of the firm's responsibilities beyond legal responsibilities. However, the range of *interpretations* of legal responsibilities may leave open the question of whether these are direct responsibility claims or marketing claims.

## ii. Commercial responsibility marketing claims

We can make a distinction between a *marketing claim* and claims made in a situation in which a firm takes a commercial aspect of a product and uses it as the basis for an explicit claim about the firm's responsibilities.

In the case of greenhouse gas emissions, a firm may claim that it exceeds its legal responsibilities in one or more areas. These kinds of claim can be described as *commercial responsibility marketing claims* where the product meets a market demand for a product with low emissions. In this case, a firm may claim that low emissions (or possibly zero net emissions) have been achieved across the whole supply chain from raw materials to finished products. This claim only makes sense for products for which higher emissions might otherwise have been expected, for example where similar products involve higher emissions or the same product produced by other firms involves higher emissions. A firm may also claim that low emissions have been achieved from a particular date in the development of the product, and that higher emissions were involved at an earlier stage of product development.

Some commercial responsibility marketing claims collapse into marketing claims. A firm may add a commercial responsibility marketing claim to a product as a feature of the product on the basis of the preferences of the customers. The extent to which this is *also* a direct responsibility claim can be investigated empirically, for example to determine how the claims were *in fact* appealed during the development of the product. Where a direct responsibility claim is an aspect of product development along with other features of a product, the direct responsibility claim may be a marketing claim.

This can be further investigated by tracking how the direct responsibility claim is protected by the firm independently of customer preferences. Where the claim is maintained and relaxed to meet customer preferences this supports the view that it is a marketing claim.<sup>10</sup>

## iii. Product origin responsibility claims

A marketing claim may overlap with a direct responsibility claim based on the recognition of the ethical significance of the issues involved in the marketing claim. One version of this arises from identifying the *original intention* for developing the product. This may be attributed to a particular individual or to a small group of individuals. A direct responsibility claim forms the whole or part of the reason for developing a product prior to any direct reference to customer preferences and to the actual development of the product to meet these preferences (although some idea of customer preferences based on the general need for the product may be referred to).

For example, an individual forms an intention to develop a low (or zero) emissions car on the basis of a claim about the ethical significance of climate change. This intention is the basis for the direct responsibility claim for the product once the product had been developed. The direct responsibility claim is then the basis for, and overlaps with, the subsequent marketing claim, but the two claims remain distinct. We can describe this as a *product origin responsibility claim*.

Product origin responsibility claims can be described along a spectrum from strong to weak. A *strong* claim is sustained whatever the actual customer preferences and market conditions encountered by a firm. For example, even if high (or positive) greenhouse emissions are accepted by some or all customers of car manufacturers, the firm maintains the direct responsibility claim and maintains low (or zero) emissions for its products. A *weak* claim will be subject to change or dilution based on customer preferences and market conditions. For example, a firm allows higher emissions than originally intended, or the firm diversifies to include some product lines with high (or positive) emissions and some products with low (or zero) emissions. It may be argued that only the *strong* version can be described as a *direct responsibility claim*, with the weaker version collapsing into a *marketing claim* even if the product origin includes a direct responsibility claim at an earlier stage.

A *strong* claim may lead a firm to cease trading rather than change or dilute the direct responsibility claim (in the form of a product origin responsibility claim). In this case, even if a firm makes a marketing claim for its products, this claim is subordinate to the direct responsibility claim. In addition, a firm may *anticipate* that the direct responsibility claim cannot be sustained in a market situation. In these cases, to sustain a direct responsibility claim may require a change in organisation structure from a firm structure based on the core responsibilities under the legal and financial principles. Two examples of such organisational structures can be described in general as a *charity structure* and a *social enterprise structure*.

A *charity structure* may be considered when there is a low expectation of making a financial return in a market. In this case, income is wholly or partly independent of customer preferences in a market situation. A *social enterprise structure* may be considered in order to sustain a product origin direct responsibility claim as a direct responsibility claim in a market situation. In this case, income from investors and customers is supplemented by other forms of funding, at least in the early stages of the development of the social enterprise, with the expectation that in the longer term the direct responsibility claim can be sustained in a market situation. There are other organisational structures (for example, community interest partnerships) as well as hybrids and combinations of organisational structures.

The revenue to these types of organisation includes donations and grants from various sources such as individuals, government, and firms. The reason for providing these funds is based on a direct appeal to the ethical significance of the product based on the *product origin direct responsibility claim* and the continuing *direct responsibility claim*.

In addition to strong and weak versions of the product origin direct responsibility claim, we can distinguish between a direct responsibility claim and other claims that form part of the product origin. At least two further types of claim may be identified. First, a *commercial product origin claim* based on the expectation that a product will meet customer preferences once developed and launched into a market. This claim forms one basis for entrepreneurial and product development activity in market situations. Second, a *financial product origin claim* based on the expected financial return from a product. This overlaps with the first type of claim, but it is useful to separate out this claim, for example in order to specify the financial return to a particular entrepreneur or investor.

#### iv. Market development responsibility claims

A firm may develop a product with the intention that customers *change* their preferences, and so change the market based on this product. This is a marketing claim insofar as the product is sustained by a firm only if it makes a financial return. However the reason for developing the product is based on a direct responsibility claim. We can describe this as a *market development responsibility claim*. This may overlap with a product origin responsibility claim.

One example is a firm that seeks to change customer preferences, and potentially to change the a market as a whole, by developing and launching products with low or zero greenhouse gas emissions. Although these products are sustained only if a market is established, a firm makes the claim that it intends, and would prefer that, these products succeed based on a direct claim about the ethical significance of climate change.

Another example suggests a further version of the claim. A firm develops a product in anticipation of *future* customer preferences in the direction of that product. There is an overlap between seeking to change *current* preferences and anticipating *future* preferences; for example, the expectation that the former will succeed may be encouraged based on the potential suggested by the latter. These versions of the claim can be described as *current* and *future market development responsibility claims* respectively.

#### v. Rule of law responsibility claims

A firm may argue that all of its marketing claims are bounded by the legal principle. In addition, it may be argued that the financial principle is subordinate to the legal principle based on the rule the law, and so *all* of the firm's actions and outcomes are bounded by the legal principle. On this basis, a firm may make an overall direct responsibility claim about *all* marketing claims that appeals to the rule of law. This can be described as a *rule of law responsibility claim*.

A rule of law responsibility claim covers *all* marketing and direct responsibility claims. This reflects the argument that the financial principle is subordinate to the legal principle. For marketing claims, it is apparent that all such claims can be described as within the legal principle, and on this basis are subject to an overall rule of law responsibility claim. For direct responsibility claims this is less clear. Some actions extend, or appear to extend, the responsibilities required by the legal principle. However, even in these cases, although the actions may not be *required* by law, the actions are *permitted* by law (assuming that the actions are not *illegal*), and so subject to the legal principle and covered by a rule of law responsibility claim.

A rule of law responsibility claim supports the argument that *both* marketing and direct responsibility claims can form part of a firm's *public justification* for its actions and outcomes. This may overcome the argument that marketing claims are excluded from public justification on the grounds that these are claims about how products meet customer preferences in a market, and are not *direct* claims about the ethical significance of the product.

### 5. Exclusionary and inclusionary views of marketing claims

The distinction between *marketing claims* and *direct responsibility claims* will be used in the analysis that follows, with the further distinctions discussed in sections (i) to (v) referred to as required.

Direct responsibility claims may collapse into *marketing claims* when made by firms operating in a market situation. We can identify at least two versions of this argument.

First, as part of operating within the financial principle, the competitive environment of a market situation results in the requirement that all of a firm's actions and outcome support making a financial return within the law.

Second, some views about operating within the legal principle suggest that firms have a fiduciary duty to take actions that are in the best interests of the firm's shareholders (including as part of ensuring the success of the company), and that these interests align with making a financial return within the law. In some cases shareholders express a particular view about how to discharge the firm's fiduciary duties. This can be described as a particular instance of discharging a fiduciary duty, rather than a separate type of claim<sup>11</sup>. In this case an *assumed* view about the interests of shareholders is complemented or replaced by an *expressed interest*, but that the firm continues to act on the basis of these interests. It may also be argued that the legal duties of the firm extend beyond fiduciary duties to shareholders, and that there is some indeterminacy about how fiduciary duties are discharged; however in these cases a firm continues to operate within the law.

The two versions of the argument suggest that firms operate in a situation in which the core responsibilities (under the legal and the financial principles) rule out an appeal to direct responsibility claims. This appeals to the nature of the market and the nature of the law, and suggests that direct responsibility claims (if these extend beyond the legal and financial principles) collapse into marketing claims. We can examine the limits of this argument along a spectrum.

At one end of this spectrum, the core responsibilities are dominant over all other responsibility claims, and any reasonable interpretation of the core responsibilities rules out further direct responsibility claims. This supports the view that all direct responsibility claims made by firms collapse into marketing claims. This limit can be described as an *exclusionary view* of marketing claims. The exclusionary view suggests that given certain legal and market conditions, it is not possible *in practice* for a firm to make further direct responsibility claims. This may be based on a claim about a legal limit to direct responsibility claims (for example, linked to fiduciary duties to shareholders), or a further claim that highly competitive market conditions make it impossible for a firm to make direct responsibility claims.

The other end of this spectrum *stresses* the contingent nature of the market (for example, based on making more or less of a financial return) and the legal situation (for example, based on reasonable interpretations of what the law permits or requires) in which the firm operates, and suggests that some relaxation of the exclusionary view is possible. Firms are free to act as private institutions in a market, including the option to make and sustain direct responsibility claims that do not collapse into marketing claims. This limit can be described as an *inclusionary view* of marketing claims.

## 6. Making a direct responsibility claim

We can analysis a citizen making a *direct responsibility claim* about a firm. This appeals to the ethical significance of an aspect of the firm's actions and outcomes.

A firm may respond to this claim with an appeal to the firm's core responsibilities under the legal and financial principles. This may involve a public statement or restatement about the product itself based on information that the firm has previously made public as part of the product description. This can be described as a *product marketing claim*. The firm may also respond with a more detailed description of the internal processes by which the product was produced. This can be described as a *process marketing claim*.

In general, a firm makes *product marketing claims* about its actions and outcomes to customers, and *process marketing claims* to citizens as a whole (including customers), based on the core responsibilities under the legal and financial principles. Although the distinction between these types of claim is useful, both can be referred to as *marketing claims* on the basis that the principles appealed to in both cases are the same, and that the content of the claims is similar.

The situation described involves a citizen making a *direct responsibility claim* about a firm, and the firm responding with a *marketing claim* to the citizen. This suggests that two different *types* of claim have been made. The marketing claim does not directly address the issues raised by the direct responsibility claim, or does not address these issues fully or explicitly. This suggests the potential for dissatisfaction from both parties. We can analyse the roots of this dissatisfaction.

Both claims appeal to *further* claims about ethical significance. The *direct responsibility claim* makes a *direct* appeal to some aspect of a firm's actions and outcomes, for example that a particular product involves high (or positive) greenhouse gas emissions and that climate change (resulting from these emissions) is considered a bad outcome in this claim. The *marketing claim* appeals to the legal and financial principles. Under the legal principle, the firm operates within the law, which is in turn based on prior agreement about an ethical position about greenhouse gas emissions arrived at through the legislative process. Under the financial principle, the firm is operating to make a financial return (within the law) which is based on prior agreement about the legal structure of the firm. We can describe these as *indirect* claims about ethical significance.

A citizen making the direct responsibility claim expects a response to this claim based on the *direct* claim about the ethical significance of the issues involved. Where the firm responds with a *marketing claim*, the citizen may argue that the *direct responsibility claim* has not been addressed.

A firm responding to the claim may argue that the direct responsibility claim *has* been addressed through stating or re-stating the legal and financial principles under which the firm operates. This involves *indirect* claims about the ethical significance of these principles. In addition, the principles appealed to as the basis for both product and process marketing claims are the same (legality and financial return). There may also be a similarity of content between the product marketing claim and the process marketing claim, although the former may be less detailed and involve more of an overlap with the advertising content designed for customers.

The combination of an *indirect claim* about ethical significance, and the *similarity of content* between product and process marketing claims, may lead to a citizen to argue that the direct responsibility claim has not been fully addressed by the firm.

## 7. Relationships between citizens and firms

A citizen making a claim about a firm's actions and outcome may stand in various relationships to the firm. This can form the basis for articulating different types of claim that can be analysed in addition to direct responsibility and marketing claims. These types of claim will overlap and are not mutually exclusive.

A citizen may not stand in any *direct* relationship with an individual firm other than as a citizen of a jurisdiction common to both the citizen and the firm. The claims made on this basis can be described as *jurisdictional claims*. A citizen may make claims about a firm that originates or operates across multiple jurisdictions, or about a firm's actions and outcomes

within a specific jurisdiction that is not a jurisdiction shared by the citizen and the firm, or about a firm's actions and outcomes that affect multiple jurisdictions or all jurisdictions. There are differences between these types of claim, but this group of claims can be described as *multi-jurisdictional claims*.

A citizen may have a number of specific relationships with an individual firm. A citizen may have a *role* within the firm, for example as a manager or an employee. A citizen may have a *commercial* relationship with the firm, for example as a customer, investor or supplier. A citizen may have a relationship with a firm in a particular locality as part of a *community*. Where a citizen makes a claim on the basis of one (or more) of these relationships the claim can be described as a *managerial, employee, customer, investor, supplier* or *community claim* respectively; this group of claims can be described as *role based claims*.

An analysis of the types of claim based on the *relationship* between a firm and a citizen can be combined with an analysis of the types of claim based on the firm's actions and outcomes.

For example, a citizen may make an direct responsibility claim about a firm on the basis of a customer relationship. This can be described as an *customer direct responsibility claim*. This can be distinguished from an *investor direct responsibility claim*. In both cases a citizen raises an issue of ethical significance, however the citizen will have encountered the issue in different ways and is likely to have a different interest in the firm's activities. As a result, the citizen will expect a different kind of response from the firm in each case.

A similar distinction can be made between a *customer marketing claim* and an *investor marketing claim*. These claims forms part of the purchasing and investment decisions of a citizen.

We can proceed with the analysis of claims on the basis of the core distinction between a *direct responsibility claim* and a *marketing claim*. This requires a simplification of the various relationships between citizens and firms.

## 8. Direct responsibility claims and empirical issues

Direct responsibility claims and marketing claims appeal to a range of *empirical* information. We can distinguish between two overlapping kinds of empirical information. The first concerns the particular facts about the actions and outcomes of the firm, for example the nature and level of greenhouse gas emissions attributed to the firm's operations, products and supply chain. The second concerns the wide range of background facts relevant to these actions and outcomes, for example the empirical basis for the impact of greenhouse gas emissions on the climate.

Citizens and firms making direct responsibility and marketing claims may have access to the same empirical information and may agree about the interpretation of this information, for example both parties may agree about the nature, extent and impact of greenhouse gas emissions. This agreement forms a basis for addressing the ethical claims involved.

However, the difference between the two types of claim may include a disagreement about the use of empirical information, in particular about the first kind of information concerning the firm's actions and outcomes. A citizen may expect that the response to a direct responsibility claim includes a full disclosure by the firm of these facts. This can be described as a *public disclosure claim*.

A firm may argue that it has fully discharged its obligations by providing the legally required information about its activities to the citizen making the direct responsibility claim. A firm may also argue that it has fully discharged its *legal* obligations to report on, audit, and enable

inspection of all of its activities as appropriate, including where the actions involved are not publicly disclosed. For the firm, discharging these obligations forms part of a process marketing claim. A firm may argue that there are reasonable limits to the information that it is required to investigate and to disclose based on the legal principle. This can be described as a *legal disclosure claim*.

Any difference in view between the citizen and the firm about disclosure claims has at least two implications. Firstly, the empirical basis for the ethical debate between the parties becomes unclear. Second, a citizen may argue that a firm has failed to fully engage with the direct responsibility claim. The firm may argue that the citizen is claiming an unreasonably high a level of information and disclosure beyond that which is legally required.

Reaching agreement between the parties on disclosure claims may be more straightforward than addressing the ethical issues involved in the direct responsibility claim. This will involve agreement on information that is publicly available prior to the direct responsibility claim, or that is made publicly available as part of addressing this claim.

Agreement between the parties on the disclosure claims may not resolve the issues raised by the *full range* of relevant empirical information. In the case of greenhouse gas emissions there may be disagreement about the nature of the relevant information, and about how this information is to be interpreted. These and other claims involve *further* ethical issues in addition to the central ethical issues involved. In the cases of greenhouse gas emissions this includes the wider interpretation of the empirical information about the impact of these emissions on the climate.

## 9. Recognition of types of claim

The distinction between direct responsibility claims and marketing claims suggests situations in which the parties making the claims are unable to resolve the issues raised because the two types of claim appeal to different principles. For example, a citizen raises an issue about greenhouse gas emission based on a direct responsibility claim. The citizen is not expressing a *preference* based on a marketing claim, but appealing directly to a *claim* about the *ethical significance* of greenhouse gas emissions (based on further claims about the impact of these emissions on the climate).

A firm may argue that it is not required to respond to this claim beyond the requirements of the legal and financial principles. There may be elements of the law that *include* a requirement to provide certain types of response to a responsibility claim, and a firm will provide this response under the legal principle. Indeed, a citizen may seek this type of change to the law as part of following up a direct responsibility claim. A firm may also respond to a direct responsibility claim based on the financial principle, for example to maintain a customer relationship or to protect reputation. A response under the financial principle can be described as less formal than a response under the legal principle. Some citizens may be satisfied by these responses by the firm under the legal and financial principles.

Other citizens may not be satisfied by this response to a direct responsibility claim. However, a firm may have no *requirement* beyond the legal and financial principles to respond to the citizen, and on this basis the citizen has no basis to claim that the firm *should* respond to a direct responsibility claim. This suggests a limit to the requirement for the firm to provide a public justification for its actions and outcomes.

A firm may have *some* obligation to respond to a direct responsibility claim, even where this does not form part of the legal and financial principles. A minimal response may be based on a claim about the *recognition* of the direct responsibility claim as distinct from a marketing claim. This includes a recognition that the direct responsibility claim makes a direct appeal to

ethical significance. A *thin* version of recognition does not include an obligation to respond to the specific *content* of the direct responsibility claim. A *thick* version of recognition includes an obligation to recognise the specific content of the direct responsibility claim, and to provide information about the issues raised, but also does not include a requirement to take any action on this content.

The recognition of direct responsibility claims is a form of *minimal public justification*. A citizen may find recognition, even thin recognition, to be a satisfactory response because it establishes a basis for further investigation by the citizen of the ethical issues involved, and supports a public debate about these issues. However, a citizen may be unsatisfied by recognition on the basis that ethical claims usually raise issues that require some resolution and include some expectation of a practical response from the other parties involved in the claim. This applies in particular to ethical claims based on an ethical evaluation by the citizen that can be described as a *deep* ethical claim.

The recognition of direct responsibility claims by firms suggests a corresponding claim that citizens recognise that firms are making marketing claims on the basis of the legal and financial principles. The *mutual* recognition that firms and citizens make different types of claims can be described as part of public reasoning on these issues.

Seeking mutual recognition of the types of claims by firms and citizens may be an informal obligation of the parties or it may be strengthened into a specific duty. The latter may be described as a *duty of civility* between all citizen participants.<sup>12</sup> The firm can be described as an institutional participant in civil society, and as comprised of citizens. This way of describing a firm suggests a basis for an engagement between citizens both within the firm and external to the firm.

A *duty of civility* between citizens suggests how a minimal obligation to recognise types of claim can be developed. An *extension* of thin recognition into thick recognition includes the recognition of the specific content of the claim, and the provision of information about the issues raised. This extension does not (in this form) require a firm to respond to the ethical issues involved, but may require firms to provide *sufficient* information for the citizen to make an informed purchasing decision and to argue for changes in the law.

## 10. Recognition of types of claim and the balance between the parties

The issue of the *balance* of resources and power between the parties suggests one basis for strengthening a mutual obligation for the recognition of claims into a *duty of civility*.

An analysis of resources and power can start with a limiting case: a single citizen with limited resources making a direct responsibility claim about a large firm with significant resources. The imbalance between the parties in this case supports the mutual recognition of types of claim as a *minimal* characteristic of public reasoning. This recognition does not require any further practical action by the firm. A *duty* to recognise the direct responsibility claim provides a basis for a dialogue between the parties, even if participating fully in this dialogue is not described as a *requirement* for either party.

For the firm, the citizen is recognised as making a direct responsibility claim rather than as making a purchasing decision based on a marketing claim. For the citizen, the firm has recognised the direct responsibility claim, even if no further response is made by the firm, and the citizen recognises that the firm may respond with a marketing claim under the legal and financial principles. This suggests that a balance has been established for a *dialogue* between the parties, even where there is an imbalance in the *situation* of the parties.

A duty of civility that includes mutual recognition of the types of claim applies across the full range of resource and power balances between the parties. For example, groups of citizens may be organised into various organisational types (including firms) and may have access to significant resources, or a single citizen or group of citizens may have relatively limited financial resources but be able to make a significant public impact on a firm through a public campaign. Firms may range from very small companies to large multi-national corporations.

In general, a balance between the parties established through a duty of civility is an aspect of public reasoning on the claims involved. An imbalance between the parties that is justified on other grounds (for example, as a consequence of reasonable forms of economic and market organisation) does not then limit or prevent the parties from presenting claims to each other as the basis for entering into a dialogue, and for these claims to be taken seriously by all parties based on a mutual recognition of the types of claims made.

### 11. Converting claims

Where the parties appeal to different types of a claim that are *not* recognised by the other party, the parties may convert these claims into a type that the other party does recognise. One argument for *converting* claims is a duty of civility that accepts the situation of both the citizen and the firm, and seeks a means for resolution between the parties. The following are some examples of converting claims.

First, a citizen converts a direct responsibility claim into a marketing claim that is recognised by the firm. The basis for this conversion is that the citizen recognises that the firm is discharging its core responsibilities under the legal and financial principles. The citizen recognises that the legal principle establishes the legal boundaries within which the firm operates, and that no further formal responsibilities apply. The citizen converts a direct responsibility claim into a marketing claim that requires a response from the firm on the basis of the financial principle. However, converting a claim in this way may not be satisfactory to a citizen because it removes the *direct* claim about ethical significance that is the basis for a direct responsibility claim.

A limitation of converting a claim is that the converted claim may collapse into the original claim. This may happen in at least two ways. Where citizens act privately, the firm is not aware that the conversion has been made, and the claim presented to the firm is indistinguishable from a marketing claim. Where the firm is aware of the conversion, the firm may in fact understand the claim as a direct responsibility claim; however, since the claim is *presented* by the citizen as a marketing claim, the firm may respond publicly to the claim as a marketing claim, and this response may not be satisfactory to either party.

Second, a firm converts a marketing claim into a direct responsibility claim. This conversion may be made in at least two ways. A firm argues that the marketing claim is based on discharging the core responsibilities described by the legal and financial principles. The marketing claim is derived from these responsibilities, and on this basis is an *indirect responsibility claim*. This makes the ethical significance of the content of the legal and financial principles explicit, including the wider significance of the rule of law and the specific content of the firm's actions and outcomes based on the legal and financial principles. The firm argues that this type of conversion responds to the citizen's direct responsibility claim, even where the firm's response takes the form a marketing claim (that can also be described as an indirect responsibility claim).

Or, the firm may argue that the marketing claim does in fact *directly* appeal to claims about the ethical significance of the firm's actions and outcomes. This requires that the firm makes a direct and explicit appeal to ethical significance, and that this appeal is sustained. Where the appeal is not sustained, this type of conversion collapses back into a marketing claim (that does not appeal directly to ethical significance).

A further dimension to converting claims involves both parties engaging in a dialogue about the claims made, and includes the parties moving between types of converted claim. This may result in a breakdown in the dialogue and a stalemate where neither party recognises that a conversion of claims has been made. However, it is possible that the dialogue is successful on the basis of that the claims are *partially* converted. This raises problems for a formal analysis of the claims, but may be a reasonable outcome for the parties, at least in the short term. One way to describe this dialogue is as an aspect of public reasoning. As a minimum, the parties recognise the *intention* to convert claims even where the attempt is not successful, and the parties may consider this attempt a basis for sustaining the dialogue.

An advantage of converting claims is that it enables the parties to recognise the claims made in situations where the appeal to direct responsibility claims and marketing claims is not recognised or is found to be unsatisfactory.

A disadvantage of converting claims is that the parties may view the conversion as compromising the original claims made. Firms may argue that citizens are making unreasonable demands based on the converted claims, and citizens may argue that firms are not in fact responding to the substance of a converted direct responsibility claim. This may lead the parties to withdraw from the attempt to convert claims, and to re-establish the original claims.

## 12. Multiple views about direct responsibility claims within a firm

A firm may respond to a direct responsibility claim with a marketing claim and, at the same time, *recognise* that the citizen's claim is a direct responsibility claim. Recognition of the direct responsibility claim involves a combination of understanding the content of the claim as involving a direct appeal to ethical significance, and accepting the legitimacy of this direct appeal. One reason for this response is that the direct responsibility claim will be received by individuals within a firm as *citizens*. These individuals recognise the ethical significance of the claim, and hold a range of views about the ethical issues raised by the claim. This suggests that a range of responses to the direct responsibility claim coexist within a firm.

The views of some individuals within a firm may differ from the firm's marketing claims. Individuals in a firm may make a distinction between a personal response to the direct responsibility claim as *citizens*, and a response as an individual with a role in, and obligations to, the firm. These individuals may include the chief executive, the board, or senior managers. The authority of these individuals suggest that if these *personal* views are expressed publicly they may appear to reflect the position view of the *firm* on the direct responsibility claim.

The firm may respond to the coexistence of a range of views in various ways, including the following.

First, the firm establishes a clear and publicly articulated response based on a marketing claim. This is not a public response to the ethical significance of the direct responsibility claim even where all or part of the direct responsibility claim is recognised internally.

Second, the firm responds with a marketing claim, but publicly *recognises* the direct responsibility claim. The firm argues that the marketing claim is a sufficient and reasonable response, but accepts that some citizens find this response unsatisfactory. The firm may express sympathy for the direct responsibility claim, but argue that the marketing claim fully discharges the firm's responsibilities.

Third, the firm makes a distinction between the marketing claim made by the firm about its actions and outcomes, and a response to the direct responsibility claim made by the firm as

part of a wider public debate. For example, the firm argues that while it fully complies with the current legal requirements for greenhouse gas emissions, it also supports wider industry, governmental, or civil society action to resolve the ethical issues raised by the direct responsibility claim about these emissions.

Fourth, the firm accepts all or part of the direct responsibility claim, and accepts that a response to the ethical issues requires the firm to act beyond the marketing claim, even though the marketing claim fully discharges the firm's legal and financial responsibilities. This is likely to require the firm to make significant changes to some aspects of its operations.

### 13. Direct responsibility claims in a market situation

Where a citizen makes a *direct responsibility claim* about a firm and the firm responds with a *marketing claim*, the debate between the parties has at least two dimensions. First, the *content* of the claim, for example greenhouse gas emissions, and second, the *type* of claim, for example the distinction made between a direct responsibility claim and a marketing claim. We can analyse how these are worked out in a market situation.

The direct responsibility claim makes a direct appeal to the ethical significance of a firm's activities. The marketing claim responds with an appeal to the legal and financial principles. This response is based primarily on the legal principle, and may be informed by a claim about the ethical significance of the legal principle, and a claim about the ethical significance of the rule of law, even where these latter two claims are not appealed to directly. The financial principle is not be appealed to directly, except as an aspect of the legal principle, because the citizen is expressing a preference in the form of a direct responsibility claim that is already *distinct* from the expression of a preference in a market situation.

Where a citizen expresses a preference in a market situation, the citizen will either purchase or decline to purchase a firm's products. This purchasing decision is based on a range of reasons, including the *ethical significance* that direct responsibility claims appeal to. If this reason informs a *purchasing decision* rather than a direct responsibility claim, the firm will not be aware that a direct responsibility claim is the reason for the purchasing decision. In this case the citizen has made a *marketing claim* as far as the firm is concerned (although this is in fact based on a direct responsibility claim). There is no requirement for further engagement between the citizen and the firm, and no requirement for further public justification.

Where the purchasing decision is made on the basis of a claim about the ethical significance of some aspect of the product, this suggests the *potential* for a direct responsibility claim to be made. For citizens, this is the basis for an explicit articulation of a direct responsibility claim. For firms, this is useful information about both potential purchasing decisions and potential direct responsibility claims by citizens.

One view of a market situation is that *potential* direct responsibility claims are initially articulated as marketing claims through the purchasing decisions of citizens. Firms respond to purchasing decisions and change products or aspects of products accordingly, based on the financial principle. This resolves the ethical issues through a market mechanism. Where this process does not lead to a resolution of the ethical issues, citizens may seek a resolution through a change in legislation, based on the legal principle.

The combination of changes made on the basis of the legal and financial principles may resolve the ethical issues for citizens and for firms. The firm responds directly to the marketing claim on the basis of the financial principle, and continues to operate on the basis of legal principle. The latter may form part of a wider public debate. This debate includes arguments for changes to legislation, and so may not require firms to provide further public

justification for their actions and outcomes based on *current* legislation. The firm may be involved in the public debate about legislation as a participant in civil society.

Where a firm is involved in the public debate, this will include the ethical issues. This can be described as an aspect of public reasoning. To take the example of greenhouse gas emissions, a firm states the basis for the actions it currently takes on the basis of the legal and financial principles. The firm is not *required* to present these arguments as direct responsibility claims. However, as the wider ethical arguments (in this case about climate change) are being publicly debated, it may be difficult to distinguish clearly between engagement in this public debate and a response to a direct responsibility claim.

#### 14. Aligning ethical significance with the financial principle

A marketing claim is based on an appeal to the legal principle and to the financial principle. A citizen's direct responsibility claim is based on a direct claim about the ethical significance of an aspect of a firm's actions and outcomes. The difference between the types of claim suggests that a citizen may seek to *align* the appeal to ethical significance with a marketing claim. The two principles that the marketing claim appeals to suggests options to align ethical significance with either the *financial principle* or with the *legal principle*. We can first consider aligning a direct responsibility claim with the financial principle.

A citizen's refusal to purchase the products of the firm. This accepts the financial principle and engages with one basis for the marketing claim. As an individual, a citizen refuses to purchase a specific product (or products using a specific process) that raise ethical issues under the direct responsibility claim, or refuses to purchase any products from the firm. The citizen may take these actions privately without the knowledge of the firm. This is a *private refusal to purchase*.

A citizen refuses to purchase the product as an individual and, in addition, organise a wider campaign to promote refusal to purchase specific products or products from a specific firm. A campaign may range from a single public action to a global campaign. This is a *public refusal to purchase*.

The issue of greenhouse gas emissions can be used as an example. The citizen's actions range from a private and individual purchasing decision possibly based on information about the product (there may be a legal requirement for the firm to provide some information of this information), through to a wider campaign to encourage all citizens to refuse to purchase any of the firm's products, based on wider information about these products.

These actions reflect the financial principle underpinning the marketing claim. The actions of the citizen are informed by a claim about ethical significance appealed to as part of a direct responsibility claim. *Aligning* the direct responsibility claim with the financial principle has similarities with *converting* this claim into a marketing claim, however in this case the claim has not in fact been converted. Insofar as the citizen's refusal to purchase, or the campaign to encourage other citizens to refuse to purchase, has an impact on the firm, then the citizen's alignment with the financial principle will have been successful for the citizen.

Even a *private refusal to purchase* is effective for the citizen insofar as it reduces revenue to the firm. However, the impact may be very small and so not change the aspect of the firm's activities that the citizen is concerned about. In this case a citizen's purchasing decision is similar to any revealed preference in a market situation. The difference is that a citizen has made this purchasing decision based explicitly (for the citizen) on a *direct responsibility claim* about an ethical issue of concern (rather than on a *marketing claim* that can also be described as an *indirect responsibility claim*).

All purchasing decisions involve issues of ethical significance. All of the preferences of citizens in a market are informed by ethical claims of various kinds about the products purchased. In the example of greenhouse gas emissions, the purchase of a car may be based on a range of claims about what is ethically significant to a citizen, for example a claim about the benefits of independent travel. The recognition of the overlap across the range of issues of ethical significance forms one basis for aligning a direct responsibility claim with a marketing claim based on the financial principle.

This overlap may also form the basis for a firm's response to a citizen's preferences, including where the citizen has based these preferences on a claim about the ethical significance of an aspect of the product. A firm is concerned about issues of ethical significance in part because these concerns inform customer preferences and purchasing decisions.

We can link the idea of *alignment* of a claim and *converting* a claim in the following way. Some citizens move through an explicit process of making a direct responsibility claim, finding this claim is unsuccessful, aligning the claim with the financial principle, and then *converting* the claim into a marketing claim. Alternatively a citizen may not follow this process, but include a claim about the ethical significance of the product directly as part of a purchasing decision.

Citizens make multiple claims about ethical significance as part of a single purchasing decision. For example, a citizen may include the benefits of independent travel as part of the decision to purchase of a car, and also have concerns about the greenhouse gas emissions involved in the production and operation of the car. One of these claims may be decisive, or there may be a balance between the different claims. One way to differentiate between the range of ethical claims is an appeal to the *depth* of the ethical claims involved.<sup>13</sup>

Arriving at a purchasing decision involves a general process for decision making that includes ethical claims; one process is reflective equilibrium<sup>14</sup>. Even if this or other processes are disputed, there is likely *some* way to make at least a practical distinction between different ethical claims, and for taking into account and balancing these claims, for example the benefits of independent travel and the greenhouse gas emissions involved in using a car.

The distinction between a *marketing claim* and a *direct responsibility claim* can be used to make the primary distinction required for the analysis of a firm's claims. The marketing claim is informed by the ethical claims that underpin legality and making a financial return based on meeting the preferences of customers in a market situation. The direct responsibility claim is informed by further ethical claims that are not *directly* covered by legality and financial return, although these claims are covered indirectly by these principles.

This is not a distinction between *deep* or *shallow* ethical claims, or between claims made after more or less *reflection*, for example through a process of reflective equilibrium. Although the ethical claims informing legality are *deep* claims under most descriptions, some of the ethical claims informing customer preferences are also deep claims. These distinctions for both firms and citizens may be described more fully as distinctions across a spectrum. The spectrum will reflect both whether these or existing or new ethical claims (the former may be more or less settled), and the depth of the claims involved.

## 15. Aligning ethical significance with the legal principle

Refusal to purchase a product is one way in which a citizen aligns ethical significance with the financial principles. We can next consider aligning a direct responsibility claim with the legal principle.

Some citizens seek to change the *content* of the law, based on the legal principle. This accepts the legal principle as one basis for the marketing claim. By refusing to purchase a product, a citizen seeks to have a direct impact on the firm, albeit a small impact if this a private refusal to purchase decision. Changes to the law may not have a direct impact on the firm in the short term, but have a significant impact over the longer term, and an impact that may be greater than either a private or a public refusal to purchase decision.

The process by which a citizen seeks to change the law appeals to a further series of claims about democracy including claims about *democratic citizenship*. This is an example of the connection between the idea of citizen and the wider democratic context in which the citizen is located. There are various ways by which a citizen may seek to change the content of the law, including the following two examples.

The citizen may seek a *direct* route and present the direct responsibility claim to the citizen's democratic representatives. The processes involved will range from making contact with a member of the relevant legislative institution (for example, a parliament), through to petitions, lobbying and other forms of communication with representatives, political parties, or governments. This route may not directly involve the firm.

If this process extends beyond an individual claim and becomes increasing public, the direct responsibility claim will have an increasing impact on the firm. The publicity generated may be similar to a citizen's alignment of the direct responsibility claim with the financial principle because of the potential impact on purchasing decisions. This overlap may support an attempt by citizens to align a direct responsibility claim to the financial principle and the legal principle at the same time, or to maintain a direct responsibility claim through seeking a change in the content of the law while *also* converting this claim into a marketing claim.

This approach to aligning a direct responsibility claim to the legal principle can be described a *democratic representation claim*.

The public nature of the democratic representation approach to changing the content of the law to address a direct responsibility claim suggests a second approach. Some citizens may organise a campaign that focuses directly on the issues of ethical significance, for example the greenhouse gas emissions associated with a product. This is based on an appeal to the ethical issues raised by the direct responsibility claim. The aim of this campaign is to change the balance of views held by citizens about these issues, including the views of democratic representatives and the views of citizens within a firm, and to bring about a change to the content of the law. Campaigns will use multiple media to communicate with citizens.

This approach to aligning a direct responsibility claim to the legal principle can be described a *democratic campaigning claim*. A democratic campaign involves the engagement by one citizen with other citizens about the ethical claims involved in the direct responsibility claim, and seeks *indirectly* to change the content of the legal principle.

## **16. Applying ethical significance directly to a firm**

The alignment of ethical significance with the financial principle and the legal principle suggests potential changes to the responsibilities of the firm. Where these arguments are developed by a citizen they involve an attempt to change the boundaries within which a firm operates. This overlaps with arguments that underpin the direct responsibility claim.

A citizen making these claims may not be satisfied that the actions and outcomes of the firm have changed sufficiently to address the ethical issues raised by the direct responsibility claim. The difference in views between the citizen and firm on the matters of ethical significance involved persists, for example the firm continues to produce or market products

that involve greenhouse gas emissions beyond a particular level while operating on the basis of the legal and financial principles.

The disagreement between citizens on matters of ethical significance is a feature of democratic political societies. Disagreement may be a feature of *all* political societies and *all* social groups, but in *democratic* political societies this disagreement is publicly articulated, recognised, accepted and encouraged.

This context has at least two features relevant to the situation of citizens and firms. First, the continuing coexistence of multiple views about matters of ethical significance; this is a claim about *pluralism*. Second, that some views about ethical significance may be incompatible in principle; this is a claim about *incommensurability*. Both claims require agreement on reasonable and legitimate procedures for addressing disagreements, even where disagreement about the content of the ethical issues remains; this is a *procedural democracy claim*.

In cases of continuing disagreement a citizen may make a *further* appeal to the firm about the ethical significance of an issue through a direct responsibility claim, after the issue has been addressed through the processes of procedural democracy. We can describe this of the citizen *aligning* ethical significance directly with the actions and outcomes of the firm. This suggests a direct engagement between the citizen and the firm, and may produce a range of outcomes, including the following.

The firm accepts the direct responsibility claim and makes changes consistent with the ethical issues raised. These changes exceed the boundaries of the firm's responsibilities established by the legal and financial principles.

The firm rejects the direct responsibility claim, and the citizen accepts the reasons for this rejection. This includes accepting that the marketing claim establishes a reasonable boundary to the firm's responsibilities. In some cases the citizen gives up some or all of the basis for the direct responsibility claim following further reflection on the ethical issues involved. In other cases the citizen accepts that the direct responsibility claim will not be pursued through alignment with the firm's action and outcomes and will pursue other routes, for example through democratic representation or democratic campaigning.

In some cases, the firm and the citizen accept elements of the claim of the other party. For example, the firm *recognises* the direct responsibility claim, but not the requirement to act on the basis of the ethical issues involved, and the citizen *recognises* the marketing claim as reflecting a reasonable boundary of the firm's responsibilities. On this basis, the parties may agree to pursue longer term changes based on the legal and financial principles that take into account both claims.

### **17. Direct justice claims**

The actions and outcomes of a firm are bounded by responsibilities based on the legal and the financial principles. Direct responsibility claims appeal to claims about ethical significance that are not currently included as part of these responsibilities. Disagreement and debate about ethical significance forms part of the relationship between citizens in a democratic political society, including debate about the claims made by citizens and firms. The terms of this debate are bounded by a duty of civility. Public reasoning about these claims suggests that the parties involved are, as a minimum, explicit about the *content* of the claims and the *types* of claim involved.

Some citizens make direct responsibility claims about the ethical significance of the actions and outcomes of firms that extend *beyond* the current content of the law. Citizens may base these claims on an appeal to justice that the citizen argues has not been included in the current

content of the law; although this does not involve challenging the *legal principle*. This requires both the identification of the claim about justice involved, and an account of how an aspect of a firm's actions or outcomes (or all of a firm's activities) are outside a boundary set by this claim. We can describe this type of direct responsibility claim as a *direct justice claim*.

Direct justice claims appeal to *further* claims that are complex and disputed. All or some of these further claims will be debated as part of the procedures that have produced the current content of the law within a democratic society. These procedures form part of the presumption of the rule of law. All citizens (including citizens within firms) are expected to operate within the rule of law. It may be argued that this is based (in part at least) on the general claim that the content of the law is derived from, and incorporates claims about, justice.

Debates about ethical significance may include direct justice claims; and direct justice claims are central to this debate in some cases. Many direct justice claims refer to overall institutional arrangements (for example the legal structure of the firm) that require legislation to change. Legislative change on these matters is arrived at through a democratic process.

It is demanding, but may not be unreasonable, for citizens and firms to engage in a debate about, and seek to resolve, direct responsibility claims that include direct justice claims as an aspect of public reasoning.

In some cases, a firm responds to a direct justice claim with a marketing claim or a direct responsibility claim. The former may be unsatisfactory for the citizen on the basis that this claim does not engage directly with the issues of ethical significance involved. The latter may be unsatisfactory for the citizen on the further grounds that stating, restating or even extending the firm's responsibilities does not fully address the issue of basic justice claimed by the citizen. It is problematic for the parties to resolve the issues involved in this type of claim. A duty of civility is a basis for a debate between the parties about direct justice claims. We can describe this as public reasoning about direct justice claims.

An overarching issue for public reasoning is the distinction between the application of a direct justice claim to *all* firms, and the application of this claim to a *particular* firm. The parties to the debate may agree that the citizen has a reasonable and legitimate direct justice claim, but that this claim concerns the institutional arrangements (including market arrangements) within which all firm's operate. One resolution is for the citizen to pursue democratic change in these arrangements (for all firms) through changes to the content of the law. The citizen may engage with one or more firms in this process.

An example of a direct justice claim made by citizens is the claim about the emission of greenhouse gases. A citizen argues that the emission of greenhouse gases by a firm contributes to changes to the climate. This may apply to all of the emissions by the firm, or to emissions that are not part of a planned reduction over time. The claim suggests that these emissions cause harm to specific communities of people in the present or the near future (for example, people in coastal areas in developing economies subject to rising sea levels), or to all people in the longer term (for example, due to an average increase in temperature above 2 degrees C), or to the natural world as a whole (for example, due to changes to habitats). These effects may be separated out as a series of specific direct justice claims.

One general form of this claim is that: it is unjust to pursue actions with the foreseeable outcome that harm will be caused to people, in particular where these effects are indiscriminate and not subject to compensation or redress.

A firm may respond to this direct justice claim in various ways. Two clear responses are for the firm to accept or to reject the basis for the direct justice claim. Acceptance of the direct

justice claim is likely to require changes to the firm's operations. This is similar to acceptance of any direct responsibility claim. Rejection of the direct justice claim may involve, using this example, the rejection of the evidence about greenhouse gas emissions or the impact of these emissions on the climate, or the rejection of further claims about ethical significance or the balance of ethical significance that the direct justice claim appeals to. The firm may argue that rejection of the direct justice claim means that no further action is required by the firm on this issue.

Where the firm accepts all or a part of the direct justice claim, the firm may respond in various ways including the following. The firm makes a marketing claim (for example, seeking to develop low greenhouse gas emission products) or a direct responsibility claim (for example, through developing an emissions reduction plan that exceeds the requirements of the law). The firm may also respond through engaging in the public debate with citizens, for example to shape legislation and global agreements to reduce the greenhouse gases emissions resulting from the activities of *all* firms.

A firm may argue that acceptance of the direct justice claim does not mean that the firm's *current* activities are unjust. The firm may argue that the responsibilities based on the legal and financial principles are also based on claims about justice. These claims have been subject to a process of democratic deliberation that has established both the legal structure of the firm and the market situation in which the firm operates. The firm may also argue that the direct justice claim about greenhouse gas emissions is subordinate to the claims about justice based on the legal and financial principles. The firm may argue that a reasonable balance between the various direct justice claims suggests the retention of the legal and financial principles, but that the content of the law is amended to reflect the claims about foreseeable harm caused by changes to the climate.

Direct justice claims involve disputed and controversial ethical and empirical issues. A duty of civility requires that, as a minimum, direct justice claims are explicit and specific about the claims about justice appealed to as a basis for public reasoning between citizens about these claims.

## 18. Concluding remarks

This paper starts with a broad observation: there is a public debate about the activities of firms. This debate reveals differences between the parties that extends beyond the substantive issues involved. These differences include questions about the nature of the activities of firms as a whole, and about the firm's responsibilities.

In order to understand this debate, the approach of this paper is to identify and then to analyse the various *types of claim* made by *citizens* and *firms* about the activities of firms, and in particular the *responsibilities of firms*. The paper identifies various types of claim, with a central distinction made between *marketing claims* and *direct responsibility claims*; all of the types of claim identified are defined for the paper. As the analysis develops some suggestions are made about *public reasoning* about these claims.

This approach creates the analytical structure of the paper; this aims for clarity, but it is recognised that the approach has significant limitations. It is hoped that the analysis *so far* makes a contribution to understanding the public debate about the responsibilities of firms, and supports collaboration between the parties involved to arrive at constructive resolutions to the issues raised.

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<sup>1</sup> An earlier version of this paper was presented as a seminar to the London Centre for Corporate Governance and Ethics (LCCGE), Birkbeck, University of London, 8th May 2015 as *Corporate responsibility claims and public reasoning*. I am very grateful for the discussion with the seminar participants, both prior to and during the seminar, in particular with Blanca Grey. The paper has been revised in 2017-18.

<sup>2</sup> Associate Fellow, Saïd Business School, University of Oxford

<sup>3</sup> Nicolas Stern, *Why Are We Waiting? The Logic, Urgency, and Promise of Tackling Climate Change*, MIT Press, 2015

<sup>4</sup> Naomi Klein, *This Changes Everything: Capitalism vs. the Climate*, Simon & Schuster, 2014

<sup>5</sup> John Broome, *Climate Matters: Ethics in a Warming World*, W. W. Norton & Company, 2014

<sup>6</sup> <https://www.unilever.com/> as at January 2018

<sup>7</sup> An idea of ‘public reasoning’ is used in this paper. This idea will not be fully developed as part of the paper, and can form part of subsequent analysis. One source for this idea is the work of John Rawls in *A Theory of Justice*, Oxford, 1973 and *Political Liberalism*, Columbia, 1996, and other works.

<sup>8</sup> A discussion of these principles is included in various previous working papers by Laurence Cranmer at: <http://ssrn.com/author=2378191>

<sup>9</sup> A further example is the claim by a firm that animal testing has not been used in the development of a product produced for customers who are vegetarians.

<sup>10</sup> For example, a ban on animal testing for a cosmetics product may be developed as a product feature in a similar way to the colour or texture of the product, and will be maintained or relaxed as customer preferences for this product feature change.

<sup>11</sup> This situation raises interesting questions about the ways in which current and future investor preferences inform marketing claims.

<sup>12</sup> The idea of a ‘duty of civility’ is used in this analysis, but is not developed further in this paper. This is based on the idea developed by John Rawls. As part of a wider discussion Rawls defines a duty of civility as follows, ‘And since the exercise of political power itself must be legitimate, the ideal of citizenship imposes a moral, not a legal, duty – the duty of civility – to be able to explain to one another on those fundamental questions how the principles and policies they advocate and vote for can be supported by the political values of public reason. This duty also involves a willingness to listen to others and a fairmindedness in deciding when accommodations to their views should reasonably be made’, John Rawls, *Political Liberalism*, Columbia, 1996, p. 217.

<sup>13</sup> This distinction is useful, but is not essential for the current analysis.

<sup>14</sup> The idea of reflective equilibrium is developed in particular by John Rawls, *A Theory of Justice*, Oxford, 1973 and T. M. Scanlon, *Being Realistic About Reasons*, Oxford, 2014