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Societal, Managerial, and Legal Perspectives on Corporate Social Responsibility—Product and Process*

By Edwin M. Epstein**

Introduction

The present symposium is concerned with corporate social responsibility as it relates to the “structure and governance of the modern American corporation.” This focus is wise; for the public policy debate about whether and how to increase the social responsiveness and public accountability of the contemporary large business corporation in the 1980’s, will, most likely, revolve around the interconnected issues of corporate structure and corporate governance. The symposium’s contributors will examine the prospects for enhancing corporate responsiveness and accountability through both the internal restructuring of the corporate governance process and the development of innovative methods of external social control. My assignment, however, is somewhat different. The editors of this Journal have asked me to provide an analytical overview and framework on the concept of social responsibility which might aid the reader to better consider the thrust of the symposium. In Part I, I shall discuss the reasons why people in the United States have been particularly preoccupied with the social responsibilities of business enterprise and will relate this American preoccupation to our political history and pattern of economic

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** A.B., 1958, University of Pennsylvania; LL.B., 1961, Yale University; M.A., 1966, University of California, Berkeley. Professor of Business Administration and Chairman of the Political, Social and Legal Environmental Group, School of Business Administration, University of California, Berkeley. Member, California and Pennsylvania Bars.
development. I shall then argue that Corporate Social Responsibility is not simply an end result or a Product of correct corporate decisions. Rather it is a Process, a method of decisionmaking whereby corporate managers take account of the total consequences of their decisions in determining company policies and practices (consistent with the limitations of imperfect information and lack of omniscience as to distant ramifications).

In Part II, I shall explore such important subsidiary issues as: whether corporations are the proper parties to be invested with carrying out public purposes; whether corporate goals need to be altered in the light of such purposes; and whether corporations have responded to public interest challenges, and have, in fact, altered their goals and activities because of such challenges.

I will analyze these issues specifically as they relate to corporate structure and governance. Further, I will recommend only those comprehensive changes that facilitate the institutionalization within the megacorporation\(^1\) of Corporate Social Responsibility both as Product and as Process.

### Part I

**Corporateness, Size and Social Responsibility**

Like such intellectual constructs as the economist's mythical "firm" or the social and behavioral scientist's "organization," the term "corporation" is a broad conceptual category encompassing highly diverse entities with widely differing societal roles.\(^2\) The City of Berkeley (a municipality), the United Way of the Bay Area (a nonprofit association), and Blue Cross Blue Shield (a private insurance company) are all corporations. As the size and complexity of corporations grow, it becomes increasingly difficult for individuals to understand the motives and actions of the corporation. Consequently, social responsibility becomes a matter of public concern.

\(^1\) The term "megacorporation," which first appeared a decade ago, has been popularized by two recent books, P. Blumberg, *The Megacorporation in American Society* (1975) and M. Eisenberg, *The Structure of the Corporation* (1976). It refers to the very largest business corporations which comprise the annual *Fortune* magazine lists and constitute, both individually and in aggregate, the most important structures for the conduct of economic activity within the United States and worldwide.

tion), the University of California (a public body), Barrister, Solicitor and Advocate, P.C. (a professional grouping), Mom-and-Pop Corner Store, Co. (a neighborhood business), and the Standard Oil Company of California (a multinational energy producer) are all corporations incorporated under the laws of the State of California. Although all of these entities are engaged in the production and distribution of socially useful goods and services, each performs a very different social task, has different constituencies, affects widely divergent sectors of the public, has different human and capital resources, and poses substantially different issues of corporate power and accountability. "Corporate-ness" per se therefore indicates very little about an institution's social role and responsibilities. Given that fact, three important and related points should be considered.

First, social responsibilities, however we may define them, arise not from an organization's incorporated status but, rather, from the societal power it possesses as a consequence of its normal, ongoing organizational activities. Were each of the above-named entities unincorporated bodies (as, indeed, some governmental units, law firms, businesses, and charitable and educational institutions are), the necessity to examine their relationships and responsibilities to other sectors of society, would remain.

Second, although the discussion of corporate social responsibility in the United States has been primarily concentrated on "private" (shareholder-owned) business corporations, many of the issues that have given rise to this discussion apply to nonbusiness corporations as well. Publicly owned power and light companies have polluted air and water, as have their investor-owned counterparts. Universities, governmental bureaucracies, and not-for-profit agencies often have been found as wanting in their affirmative-action efforts as have business corporations. If social responsibility is viewed as Product, or the end result of an organization's operations (i.e. specific actions that an organization takes or does not take), all significant social institutions, business and nonbusiness alike, are subject to judgments regarding whether they have acted responsibly or irresponsibly. Similarly, if social responsibility is considered to be a Process, or means of decision-making whereby managers take into account the total consequences of organizational policies and actions, then virtually all substantial organizations must confront the reality that what they do may affect wide sectors of society.

Third, the size of a corporation does not dispose of the issues relating to its social impact and responsibilities. All corporations, great and
small, affect other sectors of society by their operations and, consequently, pose questions regarding their responsibilities. While the precise character of these responsibilities may differ, the existence of responsibilities, in both the Product and Process senses, does not. Both the City of San Francisco and the City of Emeryville have responsibilities to their citizens, although the precise character of these responsibilities may vary as a result of their differing population bases, sizes, financial resources, and unique municipal problems. Similarly, Alameda First National Bank and the Bank of America are both commercial banks with responsibilities to employees, customers, and the communities where they operate although, because of their vastly different sizes and scopes of operations, the nature of their other responsibilities may differ.

Thus, all social organizations, irrespective of their size, have responsibility to other sectors of the society in which they operate; social responsibility does not derive from corporate status per se or from a certain corporate category: it inheres in the functional role and societal impact of a particular institution.

A More Limited Context for Analyzing Corporate Social Responsibility: The Megacorporation

The concept of Corporate Social Responsibility in the United States arises from and refers specifically to the operations of the very largest business firms, virtually all of which are incorporated, which are the primary producers and distributors of socially valuable goods and services. I refer here to General Motors, Bank of America, American Telephone and Telegraph, and the other members of the investor-owner, publically listed group that populate the Fortune lists and are the institutional leaders of American commerce and industry.3 It is the modern emergence of a relatively limited number of very large corporate business enterprises as the institutional structure for conducting the nation’s most essential economic activities that has brought with it

3. These firms constitute but a very small percentage of the nearly 1,970,000 active business corporations that filed federal income tax returns in 1974. Consider that only 3,755 corporations (.002% of the total population) reported assets of $100,000,000 and only 1,800 corporations (.001% of the total population) reported assets of $250,000,000 or more in 1974. Table 914, Active Corporations by Asset Size and Industry: 1950 to 1974, U.S. Bureau of the Census, Statistical Abstract of the United States 560 (1977). Only 242 industrial firms in 1977 had sales of $1,000,000,000 or more. See The Fortune Directory of the 500 Largest U.S. Industrial Corporations, FORTUNE, May 8, 1978, at 240-48. Only an estimated 1,800 corporations in the early 1970’s had 3,000 or more shareholders. M. Eisenberg, The Structure of the Corporation 42 (1976).
the necessity of dealing with the question of corporate social responsibility. The United States is virtually unique in that this issue of social responsibility is the basis for much of the philosophical discussion concerning the relationship of business to society. The characteristic European debate, in contrast, has concerned the comparative virtues of Capitalism, Socialism and Communism. This peculiarly American focus upon corporate social responsibility arises out of both our political heritage and the crucial role that large business corporations have played in our national economic development.

The Corporate Enigma

The large business corporation is an enigma to the American constitutional tradition of carefully delimited and tightly constrained power. Although the largest of these firms possess diverse organizational resources that make them significant economic, social, and political factors both domestically and, in their multinational form, internationally, these corporations and their managers historically have been restricted by both law and other more informal systems of social control far less than governmental or quasi-governmental bodies and the public officials who run them. Accordingly, the emergence of an economic system based upon the large-scale business corporation has raised, the fundamental issue of the power and legitimacy of the corporation within the American political tradition. Charles E. Lindblom concluded his Politics and Markets, one of the most widely discussed works on the American political economy written during the 1970's, by saying: "It has been a curious feature of democratic thought that it has not faced up to the private corporation as a peculiar organization in an ostensible democracy. . . . The large private corporation fits oddly into democratic theory and vision. Indeed, it does not fit." Less dramatically but with considerable cogency, legal historian James Willard Hurst has stated, "[W]e had yet, as of 1970, to achieve explicit, comprehensive criteria of the legitimacy of power held by large business cor-

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5. This point is developed in Epstein, The Historical Enigma of Corporate Legitimacy, 60 CALIF. L. REV. 1701 (1972).


7. Id. at 356.
Hurst goes on to observe that while the dominant political opinion has continued to accept the large business corporation as a legitimate constituent element, society lacks confidence that we have reached "a durable relation of such private power to the general constitutional tradition of the society." Recent surveys suggest that public confidence in big business (as well as in big labor and big government) has declined during the near decade since the Hurst book appeared. The legitimacy of the American megacorporation remains an important and pregnant issue.

Corporate Power and Legitimacy Reconsidered

The corporate legitimacy question arises from a democratic society's need to define the reciprocal rights and obligations of important social institutions. Hurst suggests that to be legitimate an institution must be viewed by individuals and groups both within and without it as rightful and proper; it must meet tests of utility and responsibility. The utility criterion is a pragmatic one and is determined by how well the corporation "gets on" with its essentially economic job of producing and distributing desired goods and services. Responsibility requires that institutional power be accountable to the judgment of someone other than the power holder. In a democracy, the issues of legitimacy and responsibility are inevitably linked in the context of power.

It is analytically useful to divide the issue of corporate legitimacy into two distinct components. First, there is the question of internal or intra-corporate legitimacy which bears on the way in which large incorporated businesses are governed. This question raises such subsidiary issues as the manner of selection and removal and the basis of authority of corporate managers; the identity and rights of corporate constituen-

9. Id. at 153.
11. Hurst, supra note 8, at 58.
cies; and the compatibility of the corporate governance system with democratic norms. The second, or external, question concerns the obligations and accountability of the corporation to diverse segments of the society within which it operates. This external issue is what has been popularized within the United States over the past two decades as the “social responsibility” question.

**Corporate Legitimacy: internal and external**

In a report published in early 1978, the chairman of the American Bar Association’s Section of Corporation, Bank and Business Law, summarized a number of the frequently alleged inadequacies of the current internal system of corporate governance:

- Corporations fail to anticipate reasonable public expectations regarding their business activities and violate the law with impunity;
- The corporate decision-making process is secretive and tightly controlled, unresponsive to points of reference without the corporation itself;
- Management, primarily through the Chief Executive Officer, runs the corporation without accountability to the corporate board;
- Outside directors fail in large part to discharge their legally assigned duties and responsibilities;
- Court application of state corporation codes defining director responsibility fail to meet reasonable public expectations; and finally,
- The entire matter must be addressed at the federal legislative level to assure uniformity of application and accountability.\(^1\)

A virtual cornucopia of recent proposals for restructuring the corporate governance process have been offered as response to these allegations. These proposals include: (1) calls for passage of a Federal Chartering Act or of Federal Minimum Standards legislation; (2) the development of a two-tiered board system or other forms of “co-determination” with the objective of enhancing the quality of “workers’ participation”; (3) the requirement that company boards include “Fulltime,” “Professional,” “Independent,” “General Public” and “Special Public” Directors; (4) the extensive use of outside directors on important board committees (such as Audit, Nominating and Compensation; (5) the prohibition of corporate management except for the Chief Executive Officer from serving on company boards; (6) nationwide public election of corporate directors and; (7) reform of shareholders’ proxy and other voting rights to achieve a greater degree of shareholder democracy.\(^2\)

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14. These and other proposals are presented and critiqued in *Running the American Corporation* (W. Dill ed. 1978); M. Eisenberg, *The Structure of the Corporation*
These and similar suggestions have been made so frequently and forcefully that, in January 1978, the Business Roundtable, a group of 180 chief executive officers of major United States corporations, felt obliged to issue a statement dealing with the "Role and Composition of the Board of Directors of the Large Publicly Owned Corporation."\footnote{15}{The Role and Composition of the Board of Directors of the Large Publicly Owned Corporation—Statement of the Business Roundtable, reprinted in 
33 Bus. Law. 2079, 2083 (1978).} The statement, which eschewed setting forth detailed prescriptions and dealt only with principles or guidelines, addressed the issues of (1) corporate legitimacy and power, (2) the proper functions of the board, (3) the establishing of systems and procedures for providing adequate information to the board, and (4) the organization and composition of the board.

While the Roundtable statement recognized the need for some changes in prevailing corporate board practices, such as giving an increased role and authority to outside or nonmanagement directors both on the board and on key committees, it has hardly satisfied advocates of a bold restructuring the corporate governance process. As Kenneth R. Andrews of the Harvard Business School has noted, however, the value of the Roundtable document may not be so much "substantive as catalytic"; it may energize members of the Roundtable to implement the recommendations within their own companies.\footnote{16}{Andrews, The Roundtable Statement on Boards of Directors, Harv. Bus. Rev., Sept.-Oct. 1978, at 24, 30.} The definitive critique of the structure of corporate governance has yet to be issued by either representatives of the business community or their critics. The issue of the internal legitimacy of the corporation will continue to be a key feature of the great debate concerning the social role of American business.

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It is, however, the external legitimacy question—the "corporate social responsibility" question—that most pointedly raises the issue of business's obligations to other sectors of society. Large business corporations, more than virtually any other social institution, have aroused apprehension regarding the nature, extent, and legitimacy of the power of nongovernmental institutions. Power and responsibility are reciprocally correlated concepts in American society. The existence of the former inevitably raises issues concerning the character of the latter. Similarly, freedom and responsibility are inextricably linked values in a democracy; ideally the freedom of an institution should be proportional to its responsible use of power.

What has been described as the "Gospel of Social Responsibility," an ideological emphasis within the business community upon objectives and obligations other than profit maximization, dates from the late 1950s and early 1960s. A deeper, more fundamental, concern about business responsibility, however, emerged during the late nineteenth century, when the American industrial economy was assuming its modern form. In the first volume of the *American Journal of Sociology* published in 1895, Albion W. Small, one of the leading figures in early American sociology, threw down a symbolic gauntlet to the Age of Enterprise when he wrote, "[N]ot merely public office but private business is a public trust." Few of his contemporaries, particularly among businessmen, were prepared to accept such an all-encompassing and challenging notion of business responsibility. Those bred in an atmosphere of laissez-faire capitalism, a curious admixture of classical economics, Neo-Calvinism, Social Darwinism, Lockian Political Philosophy and a large component of antistatism, do not easily adapt to a new relationship between business and society. Nevertheless, Small's writing reflected deepseated concern over the emergence of the megacorporation. This concern included both a fear of the rapidly spreading economic, political, and social power of these giant business organizations and a need to render these businesses accountable to the public.

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Corporate Social Responsibility: The Limitations of Legal Processes

With a few notable exceptions such as Louis D. Brandeis\textsuperscript{20} and John P. Davis,\textsuperscript{21} lawyers in the earlier period of United States industrialization were not developing new concepts of corporate social responsibility. During the early 1930s, however, Adolf A. Berle, Jr. and E. Merrick Dodd, Jr. conducted their classic debate in the pages of the \textit{Harvard Law Review}\textsuperscript{22} over the trusteeship obligations of corporate managers. This debate, together with Berle's and Gardner C. Means', \textit{The Modern Corporation and Private Property},\textsuperscript{23} shaped the discussion of corporate social responsibility for both lawyers and nonlawyers for more than a generation.

While lawyers themselves made relatively few conceptual contributions, the legal process, on a more pragmatic level, has constituted the primary means by which the public has imposed evolving standards of corporate social responsibility and has sought to render business accountable for an ever-widening sphere of activities. During the past ninety years, and particularly since the 1930s, federal and state legislation, judicial decisions, and administrative regulations have dramatically redefined the obligations of business to employees, competitors, customers, suppliers, creditors, minority groups and women, the physical environment, various levels of government, and the general public.

The law has served to develop new standards of corporate responsibility in both the Product (end result) and Process (means of decision-making) senses. Legal standards regarding employees' wages and hours, industrial health and safety, consumer protection, and anti-trust and trade regulation pertain primarily to the outcomes or consequences of corporate behavior. Laws concerning collective bargaining, affirmative action, and shareholder protections under federal securities laws are essentially process oriented: They deal with the manner in which corporate management makes decisions affecting key constituencies and the factors that management must consider in arriving at these decisions. It is, however, sometimes difficult to determine whether legal standards bearing on corporate social responsibility affect business operations as Product or Process. Environmental legislation and regula-

\textsuperscript{20} L. BRANDEIS, OTHER PEOPLE'S MONEY AND \textit{How THE BANKERS USE IT} (1914).
\textsuperscript{21} J. DAVIS, \textit{CORPORATIONS} (1905).
\textsuperscript{23} A. BERLE \& G. MEANS, \textit{THE MODERN CORPORATION AND PRIVATE PROPERTY} (1933).
tions, for example, at once seek particular end results (cleaner air or water or less noise) and specify standards and methods of decision-making behavior (the gathering of information and the issuance of reports about the “environmental impact” of business activity). The Product-Process distinction is useful, however, in both the legal and nonlegal contexts, in understanding two quite different approaches to the question of corporate social responsibility.

It should be recognized, however, that, with the exception of securities law, the ongoing legal effort to define corporate responsibilities has not, typically, focused on the corporation per se. Rather, it has been addressed to all business organizations irrespective of their legal status or size. It is, however, the megaenterprise functioning in the corporate form that has generated the problems that have resulted in resort to the legal system. Oddly enough, with the exception of securities law, it is only recently that legal efforts to define and stimulate socially responsible corporate behavior have paid much attention to corporate structure and corporate governance. There is today a widespread recognition (ironically, most fully developed among lawyers) that the legal process, while essential, cannot adequately define the societal role of business institutions or make them truly responsible to the public. Christopher D. Stone’s recent work provides compelling documentation of the inherent inadequacies of legal mechanisms to deal with the complex and dynamic relationships between business and society. Legal accountability cannot be the exclusive means of determining the responsibilities of American business. Law can only set a minimum standard of responsible business behavior in those areas in which society has evolved a clear standard of accountability. Beyond these agreed-upon minimums, however, the law’s inherent inability to respond to novel situations has, if anything, exacerbated the argument over corporate social responsibility.

Other Key Factors in the American Search for Corporate Social Responsibility

Other factors in addition to the national preoccupation with corporate power and legitimacy, help explain the long-standing American concern with the social responsibilities of business. One factor is this country's strong ideological preference for “private” rather than “public” (state) action. This preference has meant that large business organizations perform many essential economic functions that in other
countries are usually performed by state-owned entities. The provision of basic transportation, communications, military production and raw materials are illustrative. A dependency relationship between the business community and other sectors of American society has therefore arisen. In Western Europe, and in Great Britain in particular, the focus has not been upon the question of social responsibility per se, but, rather, on the more generic debate over the public ownership of essential economic resources. Further, in many European countries, important societal leadership functions have been preempted by traditional nonbusiness elites, including a titled, landed aristocracy and an established church; business is a relatively new arrival on the scene. In the United States, however, such traditional elite structures were much less extensive, and business elites have assumed public leadership roles from the very beginning. Historically, American business institutions and their leaders have been given more scope and taken them far more seriously than elsewhere. As a consequence Americans have expected much more from business. When these expectations have not been met, a sense of relative deprivation, a feeling that business has somehow let the public down, has arisen.  

Finally, and somewhat ironically, there has been rather wide acceptance in this country of an idea propagated for several decades by the business community itself: business management is not simply an occupation, but a profession. An important component of the concept of professionalism is that of a responsibility to the public that ultimately transcends the responsibility owed to an organization or to a client. The idea has developed, therefore, that professional managers have an obligation to examine fully the implications of their actions and to take account of the impact of their decisions upon the "public interest." It is as a result of the factors discussed above, that the legitimacy of corporate behavior in the United States has been increasingly evaluated by performance criteria that consider the total societal impact of the firm and not simply its ability to maximize profits.


Corporate Social Responsibility: The Search for Parameters: Product and Process Examined

A general notion or ideology of corporate social responsibility has achieved general acceptance during the past two decades within both the American business community and the general public. There are, however, no precise operational parameters for the concept. To be sure, certain minimum standards are recognized; no one urges business to act in a patently irresponsible or illegal manner, or to flagrantly disregard contemporary community standards of behavior. However, beyond that minimum, there is no agreement regarding what constitutes socially responsible behavior. The nature of social responsibility as an issue, as opposed to an ideology, remains unresolved.

One of the salutary developments of the 1970s has been the recognition by students of American business that it is not feasible to develop a single, universal or eternal delineation of the societal role of the business enterprise. Even the commonly accepted criterion of evaluating a firm's corporate social responsibility on the basis of whether it legally and efficiently produces and distributes socially useful goods in conformity with national public policy, is subject to exceptions and qualifications. Consider the following examples: (1) microeconomic efficiency may dictate the widespread substitution of machinery for human labor thereby increasing the productivity of the firm but causing substantial regional unemployment in the process; (2) obeying the law may require the firm to engage in governmentally mandated racial discrimination, such as is the case in South Africa or Rhodesia; (3) conforming company interests to national public policy may require a business firm to provide materials for an unpopular war. Thus, a firm's actions, although efficient, legal, and in conformance with national policy, may still have certain socially undesirable consequences.

Social Responsibility as Product

Much of the difficulty we have experienced in arriving at a widely acceptable and, more importantly, operationally useful definition of corporate social responsibility inheres in our insistence in viewing so-

27. Even Milton Friedman, who has been one of the most articulate spokesmen of the "minimalist" position regarding corporate social responsibility, acknowledges the obligations of the firm "to stay within the rules of the game, which is to say, [to engage] in open and free competition without deception or fraud," as it acts upon its one and only social responsibility—"to use its resources and engage in activities designed to increase its profits." M. FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962); Friedman, The Social Responsibility of Business as to Increase its Profits, N.Y. Times, Sept. 13, 1970, Magazine at 122.
social responsibility solely in Product terms. The Product approach considers social responsibility in terms of outcomes—whether management has done the “right” thing or has achieved a recognizably “good” result by making the “correct” decision. The following outcomes illustrate what might currently be regarded as “socially responsible” company behavior under the Product approach: reducing or eliminating the amount of toxic effluents a firm puts into the environment, increasing the proportion of high level jobs held by female, minority, and handicapped employees, improving the quality and increasing the longevity of a company’s products, and contributing company monies to support good works within the community. All of these are, however, current or contemporary notions of corporate social responsibility. The Product or outcome analysis of social responsibility is both inherently dynamic and value-laden. It reflects a society’s stage of economic development, its most pressing societal needs, the specific configuration of its political economy and the interrelationship of its key institutions, prevalent ideologies, and cultural ethos. Former Indian Prime Minister Indira Gandhi illustrated the relativistic and variable character of the Product-oriented view of social responsibility when, at the 1972 United Nations Conference on the Human Environment in Stockholm, she admonished participants from the highly industrialized western countries by asserting that, while the curtailing of environmental pollution resulting from industrial production and other sources might be an important problem to them, India and other less-developed nations were grappling with the precedent, and for them much more pressing, problem of development and supplying their populations with the necessities of life. Important as the reduction of environmental pollution may be, Gandhi argued, it was a third level concern for less-developed countries. They would prefer the environmental pollution and the industrial production and the employment as first steps in addressing their most pressing societal needs. Only when the development and employment problems are largely solved could developing nations turn their attention to the pollution problem. Today’s concept of social responsibility as a Product is different for a manufacturing firm in Delhi than for its counterpart in Detroit.

This discussion of the nature of social responsibility as Product has focused upon the macro, or systemic, level of all large corporations. Let us now turn to the problem of determining the social responsibilities of a single firm when social responsibility is defined in problem-solving terms as an end result or Product of corporate behavior. Just as at the macro-level, the small firm’s stage of development, the nation’s
political economy, and the prevalent social values will alter its social responsibilities. Factors affecting a firm's perception of its social responsibilities include:

(1) its specific economic task,
(2) its competitive position,
(3) its unique relationship to any given social problem,
(4) the urgency of that problem,
(5) the availability within the firm of human,
(6) financial, and technological resources to address the problem,
(7) the availability of alternatives other than action by the firm,
(8) the likely consequences to the firm and to other social interests of acting or failure to act in a given situation,
(9) the competing societal pressures and priorities faced by the firm, and
(10) prevalent social values both within and without the firm.

The specific corporate responsibilities of a regional bank, for example differ, substantially from those of an integrated multi-national oil producer. Moreover, the societal obligations of a particular company vary over time, depending upon changing circumstances within the firm and the shifting character of its operating environment.

Such a relativistic approach to corporate social responsibility may not satisfy corporate critics or those line managers who seek total certainty in the standards by which their operating behavior is judged. An absolutist, Mosaic Decalogue, carved into stone, prescribing a clear code of conduct applicable at all times in all places would, undoubtedly, better serve their purposes. As students of Jewish law are fully aware, however, the seemingly clear and precise Ten Commandments have generated, over the period of three millenia, literally millions of pages of Rabbinic commentary and interpretation arising out of the case-by-case application of Mosaic law to specific factual circumstances. Similarly it is not possible to specify unalterable universal standards of socially responsible business behavior. Stone's excellent book offers a thoughtful listing of the various "attitudes desirable in connection with each of the various social roles that the corporation plays." These include the roles of: citizen, producer, employer, resource manager, investor, neighbor, competitor, and social designer.28 Stone provides a series of guidelines for each category.

The "corporation as employer," for instance, is concerned with the safety of the work environment, the emotional well-being of its workers, and in hiring and dealing with its employees in a nondiscrimina-

These are laudable rules of thumb to which I fully subscribe. Some years ago, I drew up my own set of principles of corporate social responsibility and presented them at a meeting of senior business executives. I suggested that each firm has the following responsibilities:

1. To produce socially useful goods or provide a needed service in as economically efficient a manner as is possible;
2. To carry out this task lawfully and in a manner compatible with the ethical standards and democratic values of American society;
3. To do the above in a manner that best satisfies the material and psychological needs of the work force in terms of health, safety, dignity, opportunity for job satisfaction, organizational "due process," financial security, and career advancement;
4. To further the technology or "state of the art" within the industry;
5. To absorb the social costs ("externalities") attendant to its operations so that they become part of the "cost of doing business." These cost include safeguarding employees' industrial health and safety, and abating air, water, and noise pollution;
6. To be aware that the firm's operations affect individuals, groups, and communities in noneconomic ways;
7. To conform company interest with the evolving "national interest" and to further the national interest through its activities;
8. To achieve a rate of profit which will enable the enterprise to survive and grow, thereby assuring that the firm's economic task will be continued in the future, and that investors and creditors will receive financial returns adequate to generate future investment;
9. To work cooperatively with governmental and nongovernmental groups and institutions to bring about the realization of that elusive national goal, the "Good Society."

The inherent limitation to both my approach and Stone's is that each admonition can have meaning only in the specific context of a

29. Id. at 231.
given company’s relationships with its unique operating environment. Nevertheless a substantial number of companies have developed, over the past few years, codes of socially responsible or ethical behavior.

An important strength of both formulations is that corporate social responsibility as a Product is not judged by corporate philanthropy, it is part of the day to day business of the firm.

**Social Responsibility as Process**

Corporate social responsibility can be usefully thought of as a Process: a system of decisionmaking whereby corporate managers try to anticipate and consider the total consequences of business policies and operations before they act. What managers consider to be relevant to formulating and implementing corporate policy encompasses not only economic factors but also the social, political, environmental, and cultural consequences of corporate action. This broader decision-mak-

31. Lee E. Preston and James E. Post have offered a useful guideline for determining a firm’s societal obligations. See L. PRESTON & J. POST, PRIVATE MANAGEMENT AND PUBLIC POLICY: THE PRINCIPLE OF PUBLIC RESPONSIBILITY 94-98 (1975). Their “principle of public responsibility” holds that “the scope of managerial responsibility is not unlimited, as the popular conception of ‘social responsibility’ might suggest, but specifically defined in terms of primary and secondary involvement areas. Within the defined scope, the goals of managerial activity, their relative priority, and the criteria for appraising success and failure are defined both by the market mechanism and by public policy.” Id. at 95.

For Preston and Post, “[t]he area of primary involvement is determined by the specialized functional role of the organization, the role that defines its nature and social purpose and that provides the basis for exchange relationships between it and the rest of society . . . . The area of secondary involvement includes all those relationships, activities, and impacts of the organization that are ancillary or consequential to its primary involvement activities.” Id. at 95-96.

32. A recent survey of 168 very large United States corporations by the Foundation of the Southwestern Graduate School of Banking (Southern Methodist University) revealed that 75 out of 79 respondents had developed some form of policy statement of their social responsibilities. The study further suggests that the most useful of those policy statements have been those which set out fairly specific standards of company behavior. Working Paper for the Study of Corporate Policy and Governance, The Foundation of the Southwestern Graduate School of Banking, Southern Methodist University (R. Johnson, Project Director, June 1978). The SMU researchers identified seven distinguishable relationships between a firm and its constituencies that were treated in corporate ethical policy statements: (1) international relationships—between American corporations and foreign countries, governments and societies; (2) relationships to U.S. governments (federal, state, and local); (3) relationships to U.S. society and local communities with regard to environment, energy, community development, health, education, cultural activities, and charitable causes; (4) relationships to customers regarding product safety, utility, and quality; (5) relationships to suppliers concerning bribes, kickbacks, and competitive bidding; (6) relationships to employees with regard to equal opportunity and fairness; (7) internal standards of behavior for corporate employees and directors pertaining to conflicts of interest, insider information and the like. Id. at 2-6.
ing transforms social responsibility from a Product to an institutionalized Process. This institutionalization is an essential aspect of a Process view of corporate social responsibility. It requires that the firm build into and utilize in key aspects of its normal operating business practices (particularly areas unregulated by government) structure and practices that require it to consider decision criteria that were once thought "exogenous" or irrelevant. Within the last few years, for example, a number of corporate lenders have begun to review both their loan portfolios and individual loan decisions on the basis of the social consequences of their loan policies. One major Northern California-based bank, Wells Fargo, has established a senior management-level committee to review the social consequences of proposed loan packages. Both the institutionalization of broader nontraditional criteria into the corporate decision process and the establishment of approaches for facilitating socially responsible decisionmaking within the company are new developments. They appear, however, to indicate a trend.33

The Rationality of Corporate Responsibility

In our recent book, Rationality, Legitimacy, Responsibility: The Search for New Directions In Business And Society,34 Dow Votaw and I suggested that business's responsibility to society is conceptually linked with legitimacy and rationality. In this paper, I have indicated that business must be accountable to interests both within and without it. This accountability is essential to corporate legitimacy and to the preservation of a society that is democratic in fact as well as in theory. A strong argument can be made that socially responsible corporate decisionmaking in both the Process and Product senses represents rational business behavior.

Rationality in this context has two distinctive meanings. First, it denotes a decision process whereby the decisionmaker assesses all available information in determining corporate action. The end sought is the "better" decision; thus, makes "better" decisions—i.e. the deci-


34. Churchman, supra note 2, at 1-5.
sion where, to the fullest extent possible, managers are cognizant of the total ramifications of their policies and actions. We have examined this point in the context of corporate social responsibility as Process. Secondly, rationality connotes a perspective that ties the long-run well-being of business to the maintenance of an open, pluralistic, social and political system in the United States. The concept of corporate responsibility as Product conforms business behavior to ever-expanding societal expectations thereby minimizing further governmental controls and enabling business organizations to retain greater autonomy to the benefit of democratic pluralism.

Business behavior incompatible with emerging social norms has often resulted in government regulation: employment discrimination, environmental pollution, unfair labor practices, and restraints on market competition are illustrative. Such governmentally determined standards of corporate behavior may severely constrain managerial autonomy and discretion, and be far more onerous to business than self-regulation. Resort to the legal/political process to deal with areas of nonresponsible business behavior has led an ever-rising concentration of societal decisionmaking to be in the hands of governmental bodies, thereby concentrating decisionmaking power in a democratic society.35

A broadened perspective of corporate social responsibility is also rational in that it can buffer the firm from avoidable social dissonance which frequently has cost and profit implications for the firm, makes the manager's life more difficult, and subjects the organization to unnecessary and avoidable strain. Business firms that have been obliged to deal with disgruntled shareholders, customers, environmental groups, and ethnic minorities bear witness to the difficulties involved. The business community should not always wait to be caught in a reactive and defensive posture in which its zone of discretion becomes very limited. For business can develop its decisionmaking process, organizational structures, and societal relations in a manner that meets chang-

ing societal expectations without losing internal flexibility. Whether business does so or not will greatly affect the character and quality of America's political economy. Responsible corporate social behavior, in both the Product and Process senses, contributes to the legitimacy of the corporation within American society and to its rational interaction with other sectors of society.

I should now like to turn to the questions raised at the outset of this Article: Are corporations the proper parties to be invested with carrying out public purposes? Do corporate goals need to be altered? Have corporate goals and behavior changed as a result of public interest challenges?

Part II

Corporations and Public Purpose

Are business corporations the proper parties to be invested with carrying out public purposes? In a sense the question is misleading, for the word "invest" suggests that public purposes are exogenous to the "normal" activity of the corporation, and that the corporation's undertaking of the public purpose is discretionary. In fact, for both functional reasons, arising from the character of the American political economy, and historical reasons, public-purpose objectives are intrinsic to the modern large corporation in the United States.

The Functional Basis of Corporate Public Purpose

The functional basis of corporate public purpose inheres in the structure of the American political economy. Large organizations both in the United States and in other advanced industrial societies are the major mechanisms for producing and distributing essential goods and services. Differences clearly exist between, for example, the Ford Motor Company, an American based multinational corporation; Toyota, the Japanese industrial giant; British Leyland, a nationalized firm; and Zil Auto Works, a Soviet state enterprise. These differences include

36. For additional discussions of the concept of organizational rationality, see C. Churchman, Challenge to Reason 95-106 (1968); J. Pfeffer, Organizational Design 7-16 (1978); J. Thompson, Organizations in Action 14-24 (1967); Churchman, supra note 2; and Smelser, Reexamining the Parameters of Economic Activity, in Rationality, Legitimacy, Responsibility: The Search for New Directions in Business and Society 7-51 (E. Epstein & D. Votaw eds. 1978).

37. See e.g., N. Chamberlain, The Limits of Corporate Responsibility (1973); Heald, supra note 18; Social Responsibility and the Business Predicament (J. McKie ed. 1974).
their sources of capital, their relationships to state organs, the status and role of their workers vis-a-vis the management of the organizations, and the utilization of income or absorption of losses resulting from their operations. The common functional role that these organizations share is, however, more striking than their differences. Each of these entities performs the functionally identical task of aggregating and deploying human, capital, technological, and organizational resources to produce and distribute automotive products, an essential activity in all economically advanced nations. In his useful analysis of industrializing societies, Wilbert Moore notes that:

The integration of societies is more often functional than structural. Functions essential to the survival of societies are performed—but by patterns of action (structures) that have considerable variability from one society to another, or from one time to another in the same system. The general functional requirements for the persistence of any society set only very wide limits on the appropriate structural ways of accomplishing these requirements. This may be called the principle of structural substitutability which is the counterpart of the principle of structural suitability.38

Large American business corporations, although “private” enterprises, perform the great majority of essential economic tasks, which, due to their very essentiality, are in many countries undertaken by the state, either directly or through closely affiliated “public” entities. In this country, business corporations produce and distribute all forms of energy, (process all ferrous and nonferrous metals and derivative products, provide air, sea, motor, and, for the most part, intra-urban and inter-city rail transportation, maintain radio, television, telephone, and inter-continental satellite broadcasting services, and, finally, service virtually all of the essential financial needs of the nation. Although relying on this technically “private sector” as the basic mechanism for economic activity, and demonstrating a persistent ideological distaste for state assumption for such functions, American society has sought to both constrain our major businesses and render them accountable through a variety of public controls and incentives. In those areas where public regulation of business operations has been either unworkable or politically unattainable, diverse sectors of American society have articulated ever-escalating standards of what constitutes the socially responsible performance of business activities. However uncomfortable we may be with the attitude that “What is good for GM is good for the country,” it is not without basis. Millions of Americans are directly or indirectly dependent upon the decisions of General Mo-

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tors, and other megacorporations, for essential products and services, employment, the quantity and quality of U.S. military weaponry, regional economic stability, and environmental quality.

It is therefore the structure of the American political economy, which depends on large business corporations to perform society's most essential economic tasks, that freights the megacorporation with public purpose objectives. Indeed, it is in carrying out these concededly "normal" business activities that corporations confront the most important questions regarding their being invested with "public purpose" objectives. 39

The Historical Basis of Corporate Public Purpose

Let us turn now to the historical basis of corporate public purpose. In a recent article, historian Ronald E. Seavoy demonstrates that America's earliest business corporations, established at the end of the eighteenth and beginning of the nineteenth century, were founded for public service objectives 40 such as improving overland transportation through the establishment of turnpikes,41 stagecoach companies, and bridges; encouraging inland water transportation through the building of canals; the safeguarding of public safety through the creation of water companies and insurance corporations; providing a reliable source of credit and currency by forming urban money banks and rural land banks; and, finally, establishing manufacturing corporations to both stimulate the domestic economy and free it of dependence on British and other foreign industry. Public service and profit seeking were

39. Within the past decade, this point has received increasing recognition within the business community itself. See, e.g., Committee for Economic Development, Social Responsibilities of Business Corporations (1971); Bank of America Corporation, Code of Corporate Conduct (1978); Caterpillar Tractor Co., A Code of Worldwide Business Conduct (1974); Control Data Corporation, Social Responsibility Report (1978); Deere & Company, Green Bulletin Series (1975); Working Paper for the Study of Corporate Policy and Governance, The Foundation of the Southwestern Graduate School of Banking, Southern Methodist University (E. Johnson, Project Director, June 1978). These objectives arise from the structural role of large American business corporations, not as a consequence of any serious inclination by most business leaders to extend their sphere of influence beyond the normal operations of the firm.


41. The most frequently incorporated business in the first 30 years of the 19th century.
compatible in early American corporations.\textsuperscript{42}

Notwithstanding these public-service objectives, there was considerable suspicion of and hostility toward the corporation. This early antipathy did not derive from corporate status per se but from the monopoly privileges enjoyed by many corporations. Thus, as Hurst points out:

\begin{quote}
We delegated functions of broad public interest to private franchise holders in order to get jobs done. At the same time recognizing the potential power conferred—we were distrustful of our delegates precisely because their special privileges of action put them outside usual market disciplines and hence gave them some of the character of sovereignty.\textsuperscript{43}
\end{quote}

Notwithstanding these ambivalent feelings, by the end of the nineteenth century, general incorporation acts had replaced special charter procedures and the corporation became a ubiquitous business form. During the post-Civil War period, corporate law reflected the view that corporate status had no social relevance "save as a device legitimated by its utility to private business."\textsuperscript{44} The advent of the megacorporation, however, gave rise to concern about the societal role of the now omnipresent large business enterprise.

The late nineteenth and early twentieth century saw federal and state legislative efforts, many of them successful, to constrain corporate excesses and resuscitate the notion of responsibility as an essential criterion of corporate legitimacy. Regulatory law became the primary vehicle for redefining the relationship between the business enterprise and the employees, consumers, and other groups affected by corporate operations. Antitrust acts, industrial wage, hour, and safety statutes, and environmental legislation exemplify the efforts of our Progressive Era predecessors to render business enterprise more responsible and accountable to the public.\textsuperscript{45} According to Alfred D. Chandler, the dean of American business historians, the modern business enterprise "has had very little political support among the American electorate . . . [and] [a]t least until the 1940s . . . grew in spite of public and governmental opposition."\textsuperscript{46} Widespread public concern with the role of the modern business enterprise grew steadily, through a period marked by two world wars, the Great Depression and the rise of an

\begin{itemize}
\item \textsuperscript{43} Hurst, supra note 8, at 43.
\item \textsuperscript{44} Id. at 70.
\item \textsuperscript{45} See generally R. Hofstadter, The Age of Reform (1945).
\end{itemize}
effective labor movement, and peaked in the late 1960s and early 1970s. Historian Morrell Heald points out that: "What the nineteenth century lacked, and what the twentieth was to supply, was a rationale—a concept of the relationship of business to the community—in which social responsibility was clearly seen as a charge not merely upon individual conscience."\(^{47}\)

By the end of the 1970s we have almost come full circle. Just as the earliest corporations had an explicit public-service component, the operations and impact of modern large business enterprise have an inherently public nature. This public-service character results from the functional delegation within the American political economy of essential economic tasks to the modern large corporation, and a long-standing and deeply felt need of a significant element of the American public to limit corporate power and render it accountable. The primary mechanisms for constraining corporate power have been the regulatory laws established through the political process and the escalating public demand for "corporate social responsibility."

Given these historical origins and present character of the American political economy, large business corporations are now invested necessarily with carrying out public purposes.

Do Corporate Goals Need to be Altered?

The social function of the large corporation within the American political economy has been to produce and distribute necessary goods and services. As we have seen, to a degree not found in virtually any other advanced industrial society, the United States depends on the nonstate, investor-owned business corporation to perform the essential economic tasks required for societal preservation and well-being. Although this fundamentally economic end of corporate activity has remained constant for over a century, the means by which the corporate enterprise pursues its goals have changed. Corporations have been obliged to revise their short-term and intermediate objectives as societal expectations have changed. These changes have affected business operations in:

(1) the nature of the employment relationship, including the terms, conditions, and environment of work, together with the reciprocal rights and obligations of the work relationship.

(2) the relationship between producers/distributors and purchaser/consumers regarding the nature, quality and conse-

\(^{47}\) Heald, supra note 18, at 19.
quences of goods and services channelled through the marketplace.

(3) the character of the production/distribution process, especially as it pertains to the firm's impact on the physical environment.

(4) the relationship between the business firm and its shareholders, particularly as it involves the rights of the latter to assert claims against and to hold corporate management to high standards of performance.

(5) the standing and ability of diverse sectors of the public, including minority groups, women, and other persons affected by the operations of the firm, to assert claims against it by means of the class-action suit and other legal devices.

(6) what constitutes permissible forms of competition within the marketplace; both the legal process and changing trade customs and usage have altered standards of acceptable market behavior.

(7) the interaction of business organizations with all levels of domestic (local, regional, state and national) and foreign governments.

Virtually every element of business operations (both internal and external) has been affected by rapidly shifting societal expectations of corporate behavior.

Corporate reformers have proposed a variety of changes in the governance structure of the corporation. These proposals have included the mandatory federal chartering of corporations, the establishment of federal minimum standards legislation for corporations, requiring public, independent, employee, or constituency group directors on corporate boards, instituting of a two-tiered management board structure, such as that found in a number of Western European nations, and requiring that the business firm explain its multiple responsibilities, either through the corporate charter or by reporting to a government regulatory body. These suggestions seek to institutionalize new standards of conduct, nontraditional participants, and novel organizational objectives into the corporate decisionmaking process. Stone grasps the essential importance of this in his comment that "[t]he proponents of corporate responsibility do wrong to put so much emphasis on what corporations are deciding rather than on how they are deciding—the corporate decision process itself."48 This analysis is consistent

with viewing corporate social responsibility as a Process as well as Product. Proposed modifications in corporate structure and governance are, accordingly, attempts to change process ("how-to") goals rather than efforts to alter the fundamental economic and societal objective of the business corporation. The means used to pursue these economic objectives must encompass contemporary societal expectations. Thus, while the "profit orientation [is] a basic and inalienable fact of American corporate life," "sheer corporate hedonism" is no longer acceptable.49

The widely heralded statement, "Social Responsibilities of Business Corporations," issued by the Committee for Economic Development (CED) in early 1971, recognized the corporation's fundamentally economic raison d'etre. While setting forth a "fresh and enlightened point of view about the role of business as an important instrument for social programs in our pluralistic society," the CED's underlying assumption remained: "that business serves society mainly through carrying out its basic functions of producing goods and services and generating wealth that improves the nation's standard of living."50

A key objective of public policy vis-a-vis business corporations during the 1980s should be to preserve their basic economic functions while assuring a process that, to the fullest extent possible, eliminates the deleterious effects of corporate policies and practices. Proposed reforms in corporate structure and governance and suggestions for new controls of business activity should be judged by this public-policy objective. The fundamental societal goals of the business corporation have not altered in the past century nor need they do so in the foreseeable future. Rather, it is the means by which business firms pursue these goals, the complex process of corporate decisionmaking and action, that have changed and will continue to change as public expectations regarding what constitutes socially responsible business behavior in both the Product and Process senses expands.

Corporations and Public Interest Challenges

Recent literature pertaining to the modern corporation has attributed great importance to the attempts of diverse social interests to achieve more socially responsible business behavior.51 One study sum-

49. Id. at 230.
50. COMMITTEE FOR ECONOMIC DEVELOPMENT, SOCIAL RESPONSIBILITIES OF BUSINESS CORPORATIONS 9-10 (1971).
51. See, e.g., Ackerman & Bauer, supra note 33; L. Preston & J. Post, PRIVATE MANAGEMENT AND PUBLIC POLICY: THE PRINCIPLE OF PUBLIC RESPONSIBILITY (1975); D. Vo-
marizes their significance as follows:

[T]he activities of interest organizations largely determine the state of social responsibility of firms in modern urban society. They monitor the impacts of the firm on the constituents whom they represent, play a primary role in the mobilization and direction of social responses, interact directly and indirectly with the firm, seek concessions and reforms, communicate concerns and values, and review implementation. Most critically, interest organizations function as arbiters of social responsibility.52

Among the many factors that have required corporate managers to reconsider the social responsibilities of the business enterprise during the past two decades, few have been as dramatic as the activities of public-interest organizations. While disparate in constituency, number, and composition, operational methods and style, longevity, effectiveness, financial and other organizational resources, and specific goals each organization has a fundamental operating assumption that business must function in a manner compatible to some broader concept of public purpose.53 These public-interest groups come in many forms: not-for-profit law and accounting firms, church-related bodies, ad hoc organizations concerned with particular aspects of business performance (e.g. environmental pollution, affirmative action, investments in South Africa), and institutionalized entities such as the various “study groups” affiliated with Ralph Nader. Their techniques include law suits, mass-media publicity campaigns, shareholder proxy-solicitation drives, consumer boycotts, and direct and indirect political action.54


53. In his recent study, Andrew S. McFarland suggests the difficulties in giving a “re- ally good, analytical definition of public interest lobby,” and proposes a “usage definition” that defines the term according to the way it is used among politicians in Washington. A. McFARLAND, PUBLIC INTEREST LOBBIES: DECISION MAKING ON ENERGY 40 (1976) [hereinafter cited as McFARLAND]. In my discussion, I have adopted his highly useful, albeit still imperfect, “usage definition.” According to McFarland, “A public interest lobby is one that seeks to represent general interests or those of the whole public; does not chiefly represent some specific economic interest; and is not a lobby in one of the following traditional categories: religion, ethnic groups, race, regional interests, women’s rights, avocational groups and perhaps others. Id. at 40-41 (footnote omitted) (emphasis in original).

54. These and other public interest group efforts vis-a-vis American corporations are discussed in VOGEL, supra note 51; P. Blumberg, CORPORATE RESPONSIBILITY IN A CHANGING SOCIETY: ESSAYS ON CORPORATE SOCIAL RESPONSIBILITY (1972); R. Heilbroner, IN THE NAME OF PROFIT (1972); McFarland, supra note 53; Up Against the
Among the more spectacular, and best publicized, of recent public interest group undertakings have been activities intended:

1. to change or terminate American corporate operations in South Africa and Rhodesia;
2. to improve the percentages and levels of minority and female employment in U.S. corporations;
3. to curtail, eliminate or disclose certain forms of business political behavior (e.g. lobbying activities, election campaign contributions and expenditures, and foreign political payoffs and involvements);
4. to challenge the militarily-related activities of U.S. companies during the Viet Nam war;
5. to prevent American-based companies from complying with the Arab economic boycott of Israel;
6. to modify the composition and operations of corporate boards of directors; and
7. to prevent U.S. public utilities seeking energy alternatives to fossil fuels from developing nuclear reactor facilities.

Typically, public interest efforts have sought to "reform" the Product or end results of corporate activity. On occasion, however, they have been directed toward altering the Process of corporate decision-making. Examples of the latter phenomenon are Campaign GM and the successful effort by shareholders of both the Northrop Corporation and Phillips Petroleum, and their public-interest allies, to require a majority of outside directors on the company board; these moves followed the disclosure of illegal, company campaign contributions during the 1972 elections.55

It is relatively easy to document "public interest" initiatives because of the coverage they have received in the mass media and the reliable information available as a result of the monitoring activities of professional corporate-watcher groups such as the Washington D.C.-based Investor Responsibility Research Center and the Council on Economic Priorities in New York. It is difficult to determine whether corporations actually change their policies in response to public-interest challenges. Fortunately, studies by political scientists, Andrew S. McFarland and David Vogel,56 provide useful insights regarding the effi-
cacy of this “public interest” movement. McFarland examined the role of seven diverse, mass-membership, public-interest organizations in shaping U.S. energy policy during the decade 1965-1975. While recognizing that public-interest groups are the current manifestations of a tendency in American politics for citizens' collective action that dates back at least a century, McFarland points out that the amount of influence these groups have acquired in the relatively short period of roughly a decade is a new development. He notes the central role that public-interest organizations have had in delaying the Alaskan Pipeline, in changing the rules for financing election campaigns, and in securing passage of various forms of auto safety, environmental protection, and consumer legislation.

McFarland concludes that “public interest groups appear to have a significant impact on the process of making policy with respect to energy” and will continue to be influential in the near future. The primary constituency of public interest groups, college-educated, middle-class individuals, remains skeptical about the quality of American government. Both the leadership and the membership of these groups tend, moreover, to view politics according to a: “civic-balance system of beliefs—the belief that many policies are controlled by special interests and that the function of public interest groups is to counteract the power of special interests for the benefit of the public at large.” These groups often function together through the formation of ad hoc coalitions specific to particular policies and issues. Future public-interest groups, McFarland predicts, are likely to be dynamic, new types of organizations, mobilizing political attitudes and concerns not currently represented. While purporting to act for the public interest, notes McFarland, these groups usually do not represent all the public-interest positions on a given policy issue; indeed, there may be several “public interest” positions ranged on various sides of a question. Finally, he suggests that public-interest groups may accelerate the pace of social change within American society.

A consequence of this anticipated corporate-public-interest confrontation will be a further expansion of what Phillip I. Blumberg and David Vogel have designated as the “politicalization of the corpora-

57. Indeed, a half century after the founding of the American Republic, de Toqueville noted that “Americans of all ages, all conditions and dispositions constantly form associations” for their individual and mutual good. II A. DE TOQUEVILLE, DEMOCRACY IN AMERICA 114 (Random House ed. 1954).
58. MCFARLAND, supra note 53, at 107.
59. Id. at 108.
This politicalization is a manifestation of the widely-held view among social activists and middle-class citizens alike during the 1960s and 1970s that the megacorporation is primarily a social rather than economic entity, and that its behavior can be most effectively influenced by political techniques. These techniques range from disrupting corporate meetings and the physical destruction of corporate facilities to utilizing the mass media and corporate proxy machinery to change the policies of the corporate leadership or, failing that, the leadership itself. Politicalization therefore seeks to affect both the corporation's internal governance structure and its external behavior—the Product and Process of corporate activity.

A number of highly publicized challenges to the corporate community during the past decade and a half are generally regarded as victories for their public-interest protagonists. These include Campaign GM, an omnibus campaign directed at virtually the total spectrum of General Motors operations from automobile safety to the company's social policies in the United States and abroad; the confrontation during the mid-1960s between FIGHT, a black activist group, and its primarily church-affiliated allies and Eastman Kodak regarding the latter's employment and community-related policies; and the American Jewish Congress's efforts to persuade American corporations not to comply with the Arab economic boycott of Israel. Notwithstanding these and other triumphs for public-interest challenges two critical issues remain.

The first relates to the overall impact of public-interest activities upon corporate behavior; the second pertains to the implications of the corporate public interest movement for public control of the American business corporation. A recently published study by David Vogel deals with both of these points. Vogel examines a wide range of public-interest efforts during the 1960s and 1970s, including Campaign GM, FIGHT-Kodak and American Jewish Congress' challenge, and concludes:

All its brave rhetoric notwithstanding, the corporate accountability movement can hardly be regarded as a serious threat to corporate authority in the United States. What is most striking about the corporate accountability movement is the modesty of its demands on business. In reality, citizen pressures challenge the judgment of management, not its power.

61. Vogel, supra note 51.
62. Id. at 222-23.
These challenges, Vogel contends, do not address such fundamental issues as: the corporation’s “for profit” orientation, the existence of private property rights, the distribution of power within the corporation, and the relationship between the corporation and other sectors of society. Vogel posits that public-interest pressures have only been able to change corporate behavior “primarily to the extent to which their demands on business expand or complement those required by law.”

The support of the state, rather than the individual or collective efforts of citizens, has, according to this analysis, been the key factor in public-interest successes. This dependence on the state action is ironic since it was, presumably, business domination of many areas of governmental decisionmaking that led to the direct citizens’ efforts. Vogel argues that “direct intervention by the government” and more effective public control over the exercise of corporate economic power, not citizens’ action, are the sine quo non of corporate accountability. He concludes that the real significance of public-interest challenges to the corporation has been to influence public policy through citizen participation and publicity, not to effect direct changes in corporate decisions. McFarland’s and Vogel’s studies confirm my longstanding view that corporate managers respond to actual or anticipated societal pressures precisely to the degree they perceive as necessary to stave off or ameliorate challenges to their autonomy. Corporate managers are, to use Neil Chamberlain’s term, incrementalists. They will do what they perceive to be necessary to enable the firm to pursue its ordinary business activities with a minimum of unsettling interference from dissonant elements. As Jeffrey Pfeffer has pointed out in a recent book, an organization’s survival requires it to maintain “favorable exchange relationships with other groups and organizations in the environment.” Creative corporate management pursues a multi-faceted strategy to achieve those “favorable exchange relationships”: it seeks to reduce uncertainty about our environment, to enhance the corporation’s perceived legitimacy among pertinent constituencies, and, when necessary, to alter public policy through the political process. The objective of such “boundary spanning” activities is to enable the firm to pursue efficaciously the economic goals on which a business corporation’s survival depends and on which society relies.

Empirical research on the impact of public-interest groups upon

63. Id. at 224.
64. Id. at 225.
corporate goals and behavior suggests that these groups have only a marginal effect in altering business policies and practices. They have been significantly more successful, however, in indirectly influencing corporate objectives and operations by stimulating changes in public policies and energizing governmental bodies to implement existing standards. Public-interest organizations also have been quite helpful in monitoring corporate actions, in dramatizing instances of improper conduct, and in serving as independent sources of pressure for change. Finally, they have articulated the changing public expectations of the role of the megacorporation in contemporary society. Thus, although it is not as powerful or effective as both advocates and detractors suggest, the public-interest movement has, nevertheless, enhanced the quality of corporate social responsibility in the United States.

Conclusion: Corporate Social Responsibility During the 1980s

There is little likelihood that public concern regarding the social responsibilities of the megacorporation will fade away in the forthcoming decade. The large business corporation remains an anomalous institution within the American democratic tradition. Although public discussion concerning the power and legitimacy of the corporate enterprise is not nearly so strident today as it was a decade ago, the century-old underlying questions concerning the societal role of corporations remain. Indeed, given this country's complex set of social and political values, it is doubtful that the debate over corporate power and legitimacy can ever be concluded, absent a fundamental and, in the American context, profoundly revolutionary reordering of our political and economic institutions. There does not appear to be any present clamour for such a restructuring of the American version of capitalism. A recent study of public opinion in the United States by political scientists Seymour Martin Lipset and William Schneider indicates, “Even if the public has lost much of its faith in the people who run major corporations, they certainly have not abandoned hope in the free enterprise system itself.” Major corporations will continue to be the basic mechanism for producing and distributing goods and services. The American public does, however, want large business to subordinate self-interest to the more altruistic public interest. Further, according to the Lipset-Schneider analysis, there is a widespread feeling that “bigness” means “badness” and that the concentration of power in the

67. Lipset & Schneider, supra note 10, at 41 (emphasis in original).
hands of the self-interested is inherently dangerous.68 Although the Lipset-Sctneider study reveals that public confidence in “big labor” and “big government,” is also at a low ebb, large business firms will not be shielded from public pressure for responsible corporate behavior during the 1980s thereby. Paradoxically, in view of the public’s misgivings about the performance of “big government,” the state, in all its branches, will continue to play a crucial role in developing and enforcing standards of corporate social responsibility. Public expectations concerning acceptable business behavior will continue to escalate. Notwithstanding the traditional American ideological reservations about government “interference” with the activities of “private” institutions, state action will remain the primary mechanism for rendering corporations accountable. Public-interest groups will continue to play a significant role, both by catalyzing state action and by serving as independent sources of pressure upon the firm. Corporate social responsibility will continue to be on the agenda of public and business concerns.

Furthermore, the institutionalization of societally oriented corporate decision-making will undoubtedly one of the key features of the further development of the corporate social responsibility concept during the 1980s. Although hardly a panacea and subject to the criticism of tokenism and cooptation, incremental changes in the composition of corporate boards by the inclusion of various types of qualified “constituency” and “public” directors such as women, minorities, employees, or community leaders could serve both to broaden the base and widen the perspective of corporate decisionmaking. Similarly, a federal chartering act or federal minimum-standards legislation, if drafted sensibly, could facilitate effective governmental oversight of corporate action without impairing management’s ability to run the corporation profitably. It is imperative that corporate managers maintain a realistically comprehensive view of the impact of corporate institutions upon society. I share the view of Robert Ackerman and the late Raymond Bauer that “the overriding responsibility of the corporate leader to society and stockholder alike . . . is the development of policies and administrative skills that will enable the firm to respond effectively to social demands without destroying its capability to produce goods and services.”69 The ability of corporations and their managers to accomplish this objective while reconciling diverse, dynamic, and demanding constituencies will

68. Id. at 46.
69. Ackerman & Bauer, supra note 33, at 31 (emphasis in original).
be a crucial test of socially responsible business behavior during the 1980s. Firms must balance continually their traditional economic goals with ever-broadening social expectations.

Corporate reformers and managers alike must strive to institutionalize substantively and operationally useful changes in the structure and governance of the megacorporation that facilitate responsible corporate behavior, both as Process and Product. Only then will the large business corporations of the 1980s meet both our national economic needs and our societal expectations.