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Response

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Response

By ROBERT W. HAMILTON*

Until reading Dr. Hessen's essay, I never thought that it would be seriously argued that the continued vitality of the "concession" or "entity" theory of corporateness was a central issue in the debate over "social responsibility." At best, it was an argument—throwaway, almost—that routinely found its way into the debate but had little real relevance to the central issues. The theory also provides something for second-year law students to chew on for a few minutes in one class, but that is about all.

The central issue in the "social responsibility" debate arises from the fact that we live in a complex industrial society in which most of the means of production are controlled by a relatively few persons. The issues are what goals, values, sources of information, and rules those persons are to go by, and how they are to be selected. It really makes no difference at all whether a corporation, partnership, limited partnership, trust, collective, or any other form of business enterprise is involved. It also does not make any difference whether the entities involved are rationalized on a "contract" or "property" theory, or on the more traditional "concession" theory, as Dr. Hessen says they are.

Maybe a few people seriously believe that the modern large corporation is "illegitimate" because control is centralized and the shareholders, in fact, have no real voice in business or other decisions. I suspect, however, that those people ultimately would favor a much more radical redistribution of economic power, with the government operating the means of production, than the kinds of solutions suggested in the current debate. Most people urging greater "social responsibility" are not taking that extreme position. The present system is pluralistic and complex, and many changes can be proposed within the present framework. For example, the Securities and Exchange Commission recently proposed regulations that might cause public corporations to increase the number of outside directors and to have such

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directors form the cores of certain committees. Maybe these changes are sensible, maybe they are not. That is the kind of issue we should be considering, not irrelevant differences between corporations and partnerships.

In several places, Dr. Hessen refers to "private property" as though putting that appellation on something immunizes it in some mystical way from social or government control. The concept of property itself, however, is a societal concept. Government and society have always regulated the use of property to some extent and always will; the issue is how much or how little. Dr. Hessen tends to use the word "contract" in the same way. Anyone who teaches contracts in law school, however, is aware of how intimately the government is involved in that societal concept. At another point Dr. Hessen comments, "The essence of capitalism is the inviolability of individual rights, including the right to use or invest wealth as one chooses and the right to associate with others for any purpose and under any mutually acceptable terms of association." That, too, is simplistic. I am not free to associate with my competitor to agree on the price at which we will sell our products. I am not free to drop my garbage into the local river. I may not even be free to borrow money from my broker to buy shares of stock, even though he is willing to lend it to me, because a multitude of such transactions has been felt to have adverse effects on the economy. Under Dr. Hessen's definition, we do not have a capitalistic system today and probably never have had.

I gather from several comments in Dr. Hessen's essay that he favors a system of maximum freedom of business and the complete nonregulation of the modern corporation. That is certainly one possible position to take in the "social responsibility" debate; it is probably only a little to the right of Professor Milton Friedman and the Chicago School. Now if Dr. Hessen would tell us why he believes that is the optimal solution in the light of some manifest abuses in the past, he will address the principal issue in the debate.