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Russell B. Stevenson Jr.

THE CORPORATION AS A POLITICAL INSTITUTION

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For most of this century the large business corporation has occupied a position in the front ranks of those institutions whose size and power—immanent or transitive—inevitably generate a need for their legitimation.[1] It is a paradox perhaps, but a commonplace one, that the freedom of a powerful organization to function within a democratic society ultimately depends upon the existence of real or imagined constraints on that freedom. For a democracy will not long tolerate in its midst centers of power that are not perceived as responsive to the needs of the people and at least in some measure accountable to the popular will.

Because of the source of corporate power and the role corporations play in society, it is natural that those who first sought to explain how society controls the corporation, or more accurately, corporate *management*, did so in predominantly economic terms.[2] Classical economic theory assumed that corporations would be subject to control by the invisible hand of the marketplace. Shareholders, exercising their will through the mechanism of "shareholder democracy," would require management to work for the maximization of profits.[3]

Berle and Means dealt a near fatal blow to that theory with their finding of a "separation of ownership from control" in the large publicly held firm.[4] To accord with this finding, the original theory was eventually amended to downplay the role of sharehold-

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1. For a brilliant exposition of the history of this phenomenon and its results, see J. HURST, THE LEGITIMACY OF THE BUSINESS CORPORATION IN THE LAW OF THE UNITED STATES, 1780-1970 (1970).

2. Adam Smith's theory of economic control provided the starting point for the early theorists of corporate control. A. SMITH, THE WEALTH OF NATIONS (1776). *See generally* A. BERLE & G. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY (1932).

3. For a discussion of the earliest theories of corporate legitimacy, see J. HURST, *supra* note 1, at 13-57.

4. A. BERLE & G. MEANS, *supra* note 2, at 70; *see id.* at 47-125.

ers as electors and to emphasize instead their role as purchasers and sellers of stock. According to this revised theory, managerial discretion is limited by the free market, where shareholders make their views felt by selling their shares when they become discontented with the performance of incumbent management.[5]

No amount of theoretical rationalization, however, has been able to conceal from the public the fact that corporations are occasionally guilty of abuses of their power.[6] In the world of today, corporations and those who manage them are no longer able to bathe comfortably in the warm delusion that their actions are irresistibly dictated—and their power thus legitimated—by the invisible hand of the marketplace. In the last decade or so the lamp of reason has finally awakened the business community and its observers to the reality that the corporation, that preeminently *economic* institution, has become—nay, has always been—a *political* institution as well. It has become inescapably clear that while the forces of economics do indeed play a crucial role in shaping corporate behavior, large corporations respond—sometimes with an alacrity that is startling in such bureaucratic behemoths—to the vagarious currents of political forces as well.

The "political" forces of which I speak are perhaps best defined in the negative: Those extrinsic influences on corporate behavior, arising out of popular feelings, that are not expressed *directly* through the market mechanism. These forces often have economic aspects. A corporation may, for example, seek to build a favorable public image, or to avoid an unfavorable one, because of that image's potential impact on the corporation's sales, its ability to recruit executive talent, or the morale of its employees. A corporation may choose or refrain from a particular course of action out of fear of inviting governmental regulation. But the calculus that leads a company to improve its pollution control program,[7] to stop manufacturing napalm,[8] or to withdraw from South Africa[9] is

5. *See* Manne, *Some Theoretical Aspects of Share Voting*, 64 COLUM. L. REV. 1427, 1430-34 (1964). *See also* H. MANNE & H. WALLICH, THE MODERN CORPORATION AND SOCIAL RESPONSIBILITY 14-16 (1972).

6. *See, e.g.*, R. NADER, M. GREEN & J. SELIGMAN, TAMING THE GIANT CORPORATION 17-32 (1976); C. STONE, WHERE THE LAW ENDS 35-69 (1975); Heilbroner, *Controlling the Corporation*, in IN THE NAME OF PROFIT 223, 223-24 (1972).

7. *See* D. VOGEL, LOBBYING THE CORPORATION 99-100 (1978).

8. *See* Friedman, *This Napalm Business*, in IN THE NAME OF PROFIT 128 (1972).

9. *See* D. VOGEL, *supra* note 7, at 168-89.

not related to the laws of supply and demand in the conventional manner in which most corporate economic decisions are made.

Perhaps because Plato and Aristotle, not to mention Locke and Rousseau, were not called upon to address the issue, and perhaps because our recognition that an issue exists dates from relatively recent times, we seem a long way from an acceptable general theory of the influence of political forces on corporate behavior. To attempt the development of such a theory today would be ambitious, if not rash. Simple prudence suggests that that effort await an empirical foundation constructed by observers sensitized to look at the corporation in a new way.[10]

At any rate, this Article makes no pretensions to any such undertaking. It has four far more modest goals: First, to review some of the more important currents of contemporary theorizing about the sources of legitimacy of corporate power; second, to sketch several of the principal mechanisms through which external political forces are translated into changes in corporate behavior; third, to examine some results of the increasingly common demand that corporations disclose more information about their activities to facilitate the workings of political forces; and fourth, to furnish a very tentative response to the question whether all of this is a good idea in the first place.

THEORIES OF CORPORATE LEGITIMACY

The theme that corporations are—and should be—influenced by political forces is a relatively new one. Originally played by a lonely scholar or two somewhere in the woodwind section, it has gradually been picked up by more and more members of the orchestra, until it now approaches a crescendo. Neil Jacoby, a professor of economics, has created a Social Environmental Model of the business corporation whose most important characteristic is "the explicit recognition that corporate behavior responds to political as well as to market forces."[11] David Vogel, a political scientist,

10. Such a literature seems to be emerging. *See generally id.*; Blumberg, *The Politicalization of the Corporation*, 26 BUS. LAW. 1551 (1971). Vogel writes that with one exception, "there has been no comprehensive scholarly treatment of direct political challenges to the corporation. Political scientists continue to reify the term 'political,' equating it with activity having to do with governments and thus, with relatively few exceptions, overlooking political pressures on other institutions." D. VOGEL, *supra* note 7, at 229.

11. N. JACOBY, CORPORATE POWER AND SOCIAL RESPONSIBILITY 195 (1973) (emphasis deleted).

finds in his recent study, *Lobbying the Corporation*,[12] that in most instances, "corporations take citizen demands . . . with increasing seriousness. The demands are regarded as a permanent, though not necessarily legitimate, part of the political and social environment of the modern firm."[13] Vogel concludes that "[b]y any objective criteria . . . the acceptance of citizen pressures by business has increased considerably."[14] The American Institute of Certified Public Accountants (AICPA) suggests that among the constraints on the corporate clients of their members are "the pressures of the general public or general and self-interest groups."[15] The Committee for Economic Development, one of the more important organs of the liberal business establishment, recognizes that "[b]usiness functions by public consent."[16] This, in turn, implies a degree of accountability: "The great growth of corporations in size, market power, and impact on society has naturally brought with it a commensurate growth in responsibilities; in a democratic society, power sooner or later begets equivalent accountability."[17]

This new willingness to acknowledge that corporations do, in fact, respond to forces of a frankly political nature does not represent a discontinuity in thinking about the social control of the corporation but is firmly rooted in a number of more recent theoretical antecedents. The most conventional of these is a direct descendant of the standard legal model of corporate governance by shareholder democracy. According to this model, the power wielded by management is legitimated by the control exercised by shareholders through the medium of the corporate electoral system—or at least that power could be so legitimated if only the

12. D. VOGEL, *supra* note 7.

13. *Id.* at 203.

14. *Id.* at 203-04. Vogel goes on to say, somewhat paradoxically: "Clearly what is least important about citizen pressures has been their direct, substantive effect on corporate decisions. These have been, and are likely to remain, marginal." He suggests that a more significant impact of the process he describes is to be found in the "dynamics of government regulation of business." *Id.* at 226. Thus, "[t]he most fundamental contribution of citizen pressures has been to link the corporation more closely with the vitality and turbulence of the democratic process." *Id.* at 227.

15. COMM. ON SOCIAL MEASUREMENT, AM. INST. OF CERTIFIED PUB. ACCOUNTANTS, THE MEASUREMENT OF CORPORATE SOCIAL PERFORMANCE 5 (1977).

16. COMM. FOR ECONOMIC DEVELOPMENT, SOCIAL RESPONSIBILITIES OF BUSINESS CORPORATIONS 11 (1971).

17. *Id.* at 21 (emphasis deleted).

electoral system were perfected.[18] Although the exponents of this view seldom said so explicitly, they seemed to rely heavily on the steadying influence of shareholder suffrage to reduce the incidence of corporate invasions of the public interest—after all, shareholders are members of the public, too. It is ironic that just when the notion of shareholder control seemed finally to have expired from the near-fatal blow administered by Berle and Means[19] and their intellectual successors,[20] it was shareholder activists, who had apparently read the old wisdom but not the new, who proved that the corporate electoral machinery could, after all, be fashioned into an effective tool for increased accountability.[21]

Other theorists have conceived of large corporations as private governments. Emphasizing the statelike nature of their power over a body of constitutents far broader than shareholders, they urge recognition that members of this broader group are entitled to a voice in corporate decisionmaking.[22]

A related body of literature finds the governmental character of the large corporation in its close relationships with the state.[23] Proponents of this view point to public utilities that perform functions of a governmental or quasi-governmental nature;[24] to con-

18. *See, e.g.*, F. EMERSON & F. LATCHAM, SHAREHOLDER DEMOCRACY (1954); Bernstein & Fischer, *The Regulation of the Solicitation of Proxies: Some Reflections on Corporate Democracy*, 7 U. CHI. L. REV. 226 (1940); Katz, *The Philosophy of Midcentury Corporation Statutes*, 23 LAW & CONTEMP. PROB. 177, 188-92 (1958).

19. A. BERLE & G. MEANS, *supra* note 2, at 69-125.

20. *E.g.*, Chayes, *The Modern Corporation and the Rule of Law*, in THE CORPORATION IN MODERN SOCIETY 25, 40 (E. Mason ed. 1959); Rostow, *To Whom and for What Ends Is Corporate Management Responsible?*, in THE CORPORATION IN MODERN SOCIETY 46, 53-56 (E. Mason ed. 1959).

21. *See* notes 35-49 *infra* and accompanying text.

22. *See, e.g.*, R. DAHL, AFTER THE REVOLUTION? 115-40 (1970); R. EELLS, *Preface* to THE GOVERNMENT OF CORPORATIONS at v (1962); Brewster, *The Corpoation and Economic Federalism*, in THE CORPORATION IN MODERN SOCIETY 72 (E. Mason ed. 1959); Latham, *The Body Politic of the Corporation*, in THE CORPORATION IN MODERN SOCIETY 218 (E. Mason ed. 1959); Miller, *Private Governments and the Constitution*, in THE CORPORATION TAKE-OVER 122, 142-49 (A. Hacker ed. 1964).

23. *E.g.*, J. GALBRAITH, THE NEW INDUSTRIAL STATE 308-28, 406-08 (3d ed. 1978); A. MILLER, THE MODERN CORPORATE STATE 113-42 (1976); Miller, *A Modest Proposal for Helping to Tame the Corporate Beast*, 8 HOFSTRA L. REV. 79, 86-89 (1979).

24. There is substantial overlap between the types of functions performed by "private" corporations, such as utility companies, and "public" corporations or governmental agencies, such as the Tennessee Valley Authority, Comsat, and Amtrak.

tractors producing military equipment under governmental contracts or in governmental laboratories; and to consumer product firms that are subject to governmental licensing, regulations, and reporting requirements.[25] They argue that the obvious entanglement of private business with the state is bound to increase, notwithstanding efforts at deregulation. Those who are of this persuasion tend to find the source of legitimation of corporate power in a growing assimilation of the corporation into the state.[26]

Managerialism is another body of thought in which can be found an implicit recognition of the political character of the modern corporation.[27] The managerialists tend to focus on the part played by the corporate executive, whom they cast as a sort of philosopher king. This new executive's appropriate mode of behavior is to engage in "leadership" and "interest balancing,"[28] apparently guided largely by his or her own conscience, perhaps as it reflects the mores of society at large. Recently, possibly because they find that role a bit uncomfortable, some management representatives have begun to find limits on their behavior growing out of the "onerous compulsion and harassment" to which the corporation will be subjected "if it does not do its part in helping create" a "healthy, prosperous, and well-functioning society."[29]

Finally, organizational behaviorists have been suggesting for some time that the goal of managers of large corporations has never been to maximize profits. Instead they "satisfice," juggling a complex mix of competing demands, many of them only remotely connected, if at all, with conventional economic considerations.[30]

Whatever its analytical structure, the question addressed by each of these schools of thought is no less than the central problem

25. *See, e.g.*, Consumer Product Safety Act §§ 1-34, 15 U.S.C. §§ 2051-2081 (1976) (protecting public against unreasonable risks of injury from consumer products); Magnuson-Moss Warranty—Federal Trade Commission Improvements Act §§ 110-112, 15 U.S.C. §§ 2301-2312 (1976) (improving adequacy of information available to consumers).

26. *E.g.*, J. GALBRAITH, *supra* note 23, at 413-14.

27. *See, e.g.*, H. BOWEN, SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN 85 (1953); P. DRUCKER, CONCEPT OF THE CORPORATION 115-17 (1946); D. LILIENTHAL, BIG BUSINESS: A NEW ERA *passim* (1953); Mason, *The Apologetics of "Managerialism,"* 31 J. BUS. 1, 1 (1958).

28. COMM. FOR ECONOMIC DEVELOPMENT, *supra* note 16, at 22.

29. *Id.* at 29.

30. *See* McKie, *Changing Views*, in SOCIAL RESPONSIBILITY AND THE BUSINESS PREDICAMENT 17, 31-32 (J. McKie ed. 1974). *See generally* R. CYERT & J. MARCH, A BEHAVIORAL THEORY OF THE FIRM (1963); Cohen & Cyert, *Strategy: Formulation, Implementation, and Monitoring*, 46 J. BUS. 349, 352 (1973).

of all political theory: How can society assure that those who occupy positions of power will exercise it responsibly and efficiently (which, in a democratic society, implies accountably)? In the case of corporate power, the answer remains far from clear.

THE MECHANISMS OF POLITICIZATION

Traditional modes of political analysis do not translate well into a corporate context for the self-evident reason that the electoral mechanism, to which all democratic political analysis must ultimately refer, occupies a place in corporate politics that is, if not negligible, very nearly so.

Although the shareholders do elect, at least nominally, the board of directors, and although one still hears references to corporate democracy, it is unrealistic "to rely on the shareholder constituency to keep corporate power responsible by the exercise of the franchise . . . . Shareholder democracy, so-called, is misconceived because the shareholders are not the governed of the corporation whose consent must be sought."[31] We must, therefore, look elsewhere for the mechanisms by which political forces operate on the corporation. I would suggest three such mechanisms as among the most important: The impact of public opinion on the managerial psyche; the effects, real or imagined, actual or potential, of public opinion on the economic welfare of the corporation; and the fear of regulation.

Public Opinion and the Managerial Psyche

The corporation, that "mere legal entity,"[32] has, as Blackstone put it, no soul.[33] It is not subject to social pressures, cannot be shamed or embarrassed, and cannot be conditioned to behave in a given way. That is not, however, true of its managers. Corporate executives live in the communities in which their firms operate. They enjoy whatever measure of prestige—or obloquy—comes from their corporate affiliation. And of course they must, in the end, live with their own consciences.

As Francis Rourke has pointed out, primitive societies rely heavily on publicity as a means of informal punishment for violations of social, or even legal, norms.[34] We are not far from the day

31. Chayes, *supra* note 20, at 40.
32. Bank of United States v. Deveaux, 9 U.S. (5 Cranch) 61, 86 (1809).
33. 1 W. BLACKSTONE, COMMENTARIES* 465.
34. F. ROURKE, SECRECY AND PUBLICITY 113-17 (1961). *See generally* D. RIESMAN, THE LONELY CROWD (1950).

when miscreants were locked in the stocks or the pillory in the town square to receive the scorn of their neighbors. As society grew larger and more complex, we moved away from the use of public disgrace as a punitive measure. But with the advent of modern mass communication we seem to be moving back in that direction.

Surely the new generation of shareholder activists must realize this, at least implicitly. One need not be a director of a large public corporation to understand the discomfort with which those benighted individuals face the annual ordeal of the shareholders meeting. The shareholder responsibility movement has become an enormously effective tool for bringing the pressure of public opinion to bear on corporate managements. Since the launching in 1970 of Campaign GM, the first chapter in what has proved to be a remarkably successful and durable saga,[35] hundreds of corporate responsibility resolutions have been put before the shareholders of scores of corporations in what has become for many an annual ritual.

When they have been opposed by management, as has typically been the case, only a small proportion of these resolutions has won the three percent of the shareholder vote necessary to qualify for subsequent resubmission.[36] But that apparently dismal showing is by no means a measure of the movement's success. The 1970 General Motors resolutions, for example, asked for the addition of three new board members: A black community leader, a female consumer affairs expert, and an environmental scientist.[37] The shareholder activists also sought the creation of a Shareholders Committee for Corporate Responsibility to conduct and submit to the shareholders a study of GM's performance with respect to a number of major social issues.[38] Neither resolution received three percent of the vote. Yet, within three years, General Motors had

35. Campaign GM was launched in 1970 by the Project on Corporate Responsibility, a "public interest group" organized for the principal purpose of forcing social considerations into corporate decisionmaking. The Project was the first such organization to make conscious and sustained use of the SEC's shareholder proposal mechanism, 17 C.F.R. § 240.14a-8 (1979), as an effective tool for this purpose. Its example has since been followed by numerous other organizations. General Motors was selected to be the first target of the Project's efforts largely because of its symbolic status as representative of large American corporations. *See* D. VOGEL, *supra* note 7, at 71-89; Schwartz, *The Public-Interest Proxy Contest: Reflections on Campaign GM*, 69 MICH. L. REV. 419, 423-25 (1971).

36. *See* 17 C.F.R. § 240.14a-8(c)(12) (1979).

37. *See* D. VOGEL, *supra* note 7, at 78; Schwartz, *supra* note 35, at 426.

38. *See* D. VOGEL, *supra* note 7, at 78; Schwartz, *supra* note 35, at 424-25.

elected to its board a black community leader, a woman, and an eminent scientist; it had established a Public Policy Committee composed of outside directors; and it had commenced a series of conferences on Progress in Areas of Public Concern, extensive reports of which were sent to the shareholders.[39]

"Unsuccessful" shareholder proposals on a variety of issues have achieved similar responses from numerous other large corporations.[40] The pressure of church groups on corporations with investments in South Africa, for example, has caused managements not only to focus their attention on local conditions there but in many cases to change their employment practices.[41] Until recently, few, if any, major corporations published statistical data relevant to their employment of women and minorities. Since 1974, however, partly in response to shareholder resolutions, large numbers of firms have included this information in their annual reports.[42] A similar campaign has resulted in the publication of facts concerning many major firms' policies and practices with respect to the Arab boycott of Israel.[43] And, at least in part because of shareholder pressures, corporate boardrooms are no longer exclusively populated by white males.[44]

The submission of shareholder resolutions and the nature of corporate responses to them has gradually become more sophisticated. In the early years of the shareholder responsibility movement most corporations stubbornly opposed shareholder resolutions. Firms would initially resist including shareholder proposals in their proxy materials. If forced by the SEC to do so, management would almost invariably recommend a "no" vote and cast all available proxies against the resolutions.[45] Lately, however, there

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39. *See* Blumberg, *supra* note 10, at 1561-63; Schwartz & Weiss, *An Assessment of the SEC Shareholder Proposal Rule*, 65 GEO. L.J. 635, 643-47 (1977).

40. *See generally* D. VOGEL, *supra* note 7, at 203-06; Schwartz & Weiss, *supra* note 39, at 642-48; *see also* Purcell, *Management and the "Ethical" Investors*, HARV. BUS. REV., Sept.-Oct. 1979, at 24. According to Purcell: "A look at the past five years leaves little doubt that the public interest shareholder proposal movement has affected corporate management, raised its consciousness about a number of ethical issues, and caused it to do some things it would not otherwise have done." *Id.* at 30.

41. Schwartz & Weiss, *supra* note 39, at 643-44. Obviously management's conscience is not the only reason for changes in corporate practices of this sort; direct and indirect economic effects on the corporation play a role as well. *See* text accompanying note 56 *infra*.

42. Schwartz & Weiss, *supra* note 39, at 644-45. *See generally* Stevenson, *The SEC and the New Disclosure*, 62 CORNELL L. REV. 50, 53-57 (1976).

43. Schwartz & Weiss, *supra* note 39, at 645-46.

44. *See* D. VOGEL, *supra* note 7, at 206.

45. *See* Schwartz, *supra* note 35, at 426-30, 483-85, 523-24.

has been a marked trend toward negotiating with activist groups before the annual meeting, with the result that corporate policies are often either changed or explained to the satisfaction of the shareholder proponents and the resolutions withdrawn.[46]

The impact of this new movement has not been exclusively dependent on the efforts of a few small public interest organizations and church groups. While they have furnished both the infantry and the generalship of the movement, they often have lacked firepower. Increasingly, however, they have made up for that deficiency by impressing into the service of their cause large numbers of institutional investors, including charitable foundations, college and university endowment funds, mutual funds, banks, pension funds, and insurance companies.[47] These are the voices of the establishment. Corporate executives might be able to shrug off pressure from the Project on Corporate Responsibility, the National Organization for Women, or even the Church Project on U.S. Investments in Southern Africa. But when their policies are met with expressions of concern—or even hostile votes—by the Harvard Corporation, the Ford Foundation, and a variety of banks, insurance companies, and mutual funds, management cannot but begin to take notice. In the process, institutional investors have become so concerned about their own responsibilities in this area that a group of them organized the Investor Responsibility Research Center (IRRC),[48] whose function is to prepare background papers for the use of IRRC's members voting on shareholder resolutions.[49] The idea that large corporations should be concerned about the social consequences of their behavior is thus coming fully into the mainstream of contemporary mores, a fact that not even the most reactionary corporate executive can ignore completely.

Although the shareholder responsibility movement has certainly been the most dramatic mechanism for directing the currents of public opinion against the broad surfaces of the management psyche, it is far from the only one. The campaign of the late 1960's

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46. *See* Hartley, *More Concerns Willing to Enter Negotiations on Holder Resolutions*, Wall St. J., Mar. 23, 1977, at 1, col. 6.

47. *See* D. VOGEL, *supra* note 7, at 94-107.

48. *Id.* at 100-02.

49. There has also been an enormous quantity of writing on the subject of the responsibility of the institutional investor prompted by the shareholder movement. *See, e.g.*, B. LONGSTRETH & D. ROSENBLOOM, CORPORATE SOCIAL RESPONSIBILITY AND THE INSTITUTIONAL INVESTOR (1973); J. SIMON, C. POWERS & J. GUNNEMANN, THE ETHICAL INVESTOR (1972). *See also* D. VOGEL, *supra* note 7, at 94-107.

to induce Dow Chemical Company to cease manufacturing napalm, then being used in the war in Vietnam, is a prime example of some of the other public relations techniques used to convince corporate management to change its policies.[50] The participants in that effort picketed, demonstrated, and sat-in[51] to bring Dow's involvement in napalm production to the attention of the public and, surprisingly enough, to the awareness of Dow's own top management.[52] In the course of the campaign, Dow's top executives came under pressure from friends, employees, and even their own children. Ultimately the company extricated itself by entering what it must have known would be a losing bid for the renewal of the napalm contract.[53]

As the Dow case exemplifies, the very fact that management's attention is drawn to a particular aspect of the corporation's activities may be a significant element in bringing about change. A famous cartoon in the *New Yorker* shows a well-tailored executive standing at the end of a large pipe from which an unpleasant looking liquid is pouring into a waterway. Speaking to the bureaucrats behind him, he is remarking, "So *that's* where it goes! I'd like to thank you fellows for bringing this to my attention."[54] A lengthy study of corporate reporting requirements prepared by a group of British accountants makes the same point somewhat less graphically:

> It is important to keep in mind the pervasive influence of reporting practices on management attitudes. Managements naturally respond to those indicators by which they consider their performance is judged, and strive to achieve and present results accordingly. Special attention is bound to be given to those areas where the spotlight falls.[55]

The message is clear. Anything that broadens the view of managers beyond the traditional measure of success provided by the profit-

50. The campaign is described in Friedman, *supra* note 8, at 128-53.

51. They also were among the first to try the shareholder resolution tactic, but were prevented from getting their proposal in the management proxy materials before Dow finally capitulated. *See* Medical Comm. for Human Rights v. SEC, 432 F.2d 659 (D.C. Cir. 1970), *dismissed as moot*, 404 U.S. 403 (1972).

52. Dow's president stated that he was unaware of the contracts to supply napalm to the Defense Department until the demonstrations began. Friedman, *supra* note 8, at 136.

53. *Id.* at 151-53.

54. Stevenson, NEW YORKER, Nov. 7, 1970, at 47 (cartoon).

55. ACCOUNTING STANDARDS STEERING COMM., THE CORPORATE REPORT 38 (1975).

and-loss statement is bound to influence the way management approaches corporate decisionmaking.

The Economic Effects of Public Opinion

It is not just management psyches that suffer from a negative corporate image. Corporations are also affected in more conventional ways by hostile public opinion generated by adverse publicity. Corporate managers justify the large sums they spend on public relations with the rationale that a favorable public image promotes sales.[56] Particularly in oligopolistic markets where competing goods are very similar in quality, a firm's share of the market depends in large part on its brand image. This image in turn depends on a complex blend of factors, only one of which is the overall standing of the corporation in the public favor; but a manager who ignores public opinion does so at his or her peril.

Even firms that do not sell directly to the public are usually concerned about their images. United States Steel, for example, is anxious to let us know "We're involved." Dupont tells us about "Better things for better living through chemistry," and Union Carbide claims "Something we make will touch your life." Some of this concern can be traced to management's desire for association with a prestigious company; however, there can be no doubt that a prime motivation for improving the corporate image is the belief in its relation to profitability.

The notion that corporate image is linked to corporate profits is almost certainly valid for firms that sell directly to the public. It may even have some validity for those that do not. In the end, however, it matters little whether the notion is in fact correct. What matters is that the executives of so many large corporations *believe* it is. As long as corporate management perceives public opinion as a factor affecting profitability, corporate decisionmaking will be responsive to political considerations.

Fear of Regulation

Corporate executives have learned that if their manner of conducting business creates problems of sufficient concern to a sufficient number of people, the government will eventually react by changing the rules. Gone are the days of "the public be damned." As Adolf Berle wrote,

> [A] modern American corporation understands well enough that

56. D. VOGEL, *supra* note 7, at 43-54.

> it has a "constituency" to deal with. If its constituents—notably its buyers—are unsatisfied, they will go to the political state for solution. Hardly any present-day board of directors or corporation management would take the position that it could afford to disregard public opinion—or would last very long if it did.[57]

Berle was writing in 1954, before the civil rights movement, the women's movement, the environmental movement, and a variety of other causes had begun to wield the influence to which we have become accustomed. Were he to consider the same problem today, he would hardly be able to limit a corporation's constituency to its buyers.

Business executives do not like regulation except when it serves to reduce the pressures of competition. Their reasons are complex. In part they object to the economic costs imposed by regulation.[58] But the negative reaction of corporate executives is, perhaps, more often a product of the limitations on their flexibility, the challenge to their self-image as lords of their own dominion, the insult to their ideological view of the world, and other "psychic" costs of regulation.[59] Whatever the reasons, and however valid, it is clear that executives are averse to regulation. Their aversion is an important factor in determining the corporate response to those political forces that carry a credible threat of regulation.[60]

POLITICS AND INFORMATION

In the corporate political system, as in all political arrangements, information plays a critical role. It is the mortar without which the most elaborate political edifice would soon be a heap of rubble. Seventy-five years ago, Theodore Roosevelt recognized the importance of information in society's control of corporate behav-

57. A. BERLE, THE 20TH CENTURY CAPITALIST REVOLUTION 56 (1954).

58. *See* R. LANE, THE REGULATION OF BUSINESSMEN 16-18 (1966).

59. *Id.* at 19-35.

60. Ironically, it is the rare corporate manager, occupied as he or she is with the normal affairs of management, who is able even occasionally to anticipate an adverse public reaction sufficiently in advance to correct a problem before it becomes a matter of public concern. Although corporate efforts at self-improvement may be sincere, they are almost always inadequate to satisfy the popular will. Thus, the fear of regulation is more likely to affect corporate *style* than the substance of corporate behavior. The result is that corporations, at least at first, apparently respond to political pressures more by word than by deed. Even so, the fear of regulation remains a significant component of the political forces impinging on corporations, for institutions, even more than individuals, often come in the end to be influenced by their own rhetoric.

ior. To ensure that large corporations function harmoniously with our social institutions, he emphasized the crucial importance of "knowledge, full and complete—knowledge which may be made public to the world."[61]

There already exists a variety of legal rules that require corporations to divulge information about themselves. Most of these rules, however, are founded on economic justifications: Shareholders are entitled to access to corporate books and records to protect their interests as shareholders;[62] the securities laws require the reporting of information for the protection of investors;[63] various regulations mandate disclosure to facilitate consumers' buying decisions;[64] and line-of-business data are sought to further antitrust goals.[65] While some of the information reaching the public by means of these disclosure devices is undoubtedly relevant to the functioning of political restraints on corporate conduct,[66] no statute has been explicitly designed for that purpose. From a political point of view, the resulting patchwork of availability and nonavailability of information relevant to an assessment of corporate behavior is less than wholly satisfactory.

Given the central role of information in the functioning of any political process, it is inevitable that public demands for more information about corporations would increase in tandem with mounting political pressures for substantive responses. Indeed, the extent of corporate disclosure for "noneconomic" purposes could well be taken as a measure of the extent to which the corporation has become politicized.

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61. T. ROOSEVELT, *Message of the President of the United States, Communicated to the Two Houses of Congress, at the Beginning of the First Session of the Fifty-Seventh Congress*, in PRESIDENTIAL ADDRESSES AND STATE PAPERS OF THEODORE ROOSEVELT 529, 543 (rev. ed. 1970). For a discussion of the historical development of this and other corporate governance issues, see Loomis & Rubman, *Corporate Governance in Historical Perspective*, 8 HOFSTRA L. REV. 141 (1979).

62. *E.g.*, DEL. CODE ANN. tit. 8, § 220 (1974); N.Y. BUS. CORP. LAW § 624 (McKinney & Supp. 1979-1980); ABA-ALI MODEL BUS. CORP. ACT § 52 (rev. ed. 1974). *See* H. HENN, HANDBOOK OF THE LAW OF CORPORATIONS 395-402 (1970).

63. *E.g.*, Securities Exchange Act of 1934, §§ 13-14, 15 U.S.C. §§ 78m-78n (1976).

64. *See, e.g.*, 21 C.F.R. §§ 101.22-.35 (1979) (food labeling requirements); *id.* §§ 201.300-.317 (labeling requirements for specific drug products); *id.* § 501 (labeling for contraceptive products). *See also* Gardner, *Increasing Patient Awareness in Drug Therapy: Ramifications of a Patient Package Insert*, 66 GEO. L.J. 837 (1978).

65. *See* BUREAU OF ECONOMICS, FEDERAL TRADE COMMISSION LINE OF BUSINESS REPORTING PROGRAM (1974).

66. *See, e.g.*, Stevenson, *supra* note 42, at 51.

The Demand for Disclosure

In the last several years the reluctance of corporations to disclose information necessary to an evaluation of the social consequences of their conduct has often been more severely criticized than have deficiencies in the conduct itself.[67] Many shareholder resolutions take the form of requests for information. Responsible critics of the corporation recognize that reducing pollution, producing safer products, providing better working conditions for employees—in fact complying with nearly all of the substantive demands being made on business in the name of corporate responsibility—can be accomplished only at a price that will ultimately be passed on to consumers. There is, therefore, an increased willingness on the part of those who challenge corporate policy to listen to, if not always to accept, reasons given by corporations for failing to act, or for failing to act more quickly, to meet these demands. Disclosure, on the other hand, involves only minimal direct costs to corporations.[68] The public has become far less patient, therefore, with the failure of corporations to comply gracefully with reasonable requests for information about their activities. Demands for increased disclosure have become "central to both the ideology and the practice of the politics of corporate accountability."[69]

The Council on Economic Priorities (CEP), one of the most effective of the public interest groups focusing on corporate issues, has devoted much of its effort to detailed studies of the performance of various industries in areas of particular social concern.[70] CEP's executive director, Alice Tepper Marlin, remarked of one of its first efforts:

> Interestingly, when the press reported on our findings, its heaviest criticism was not of the companies with the worst records, though these were certainly heavily criticized. The most adverse commentary was reserved for the companies that refused to discuss their efforts with us honestly . . . . [T]he public cannot sympathize with a refusal to disclose information, to dis-

67. *See, e.g.*, Blumberg, *The Public's "Right to Know": Disclosure in the Major American Corporation*, 28 BUS. LAW. 1025, 1037 n.38 (1973).

68. For a discussion of the direct and indirect costs of disclosure, see Williamson, *On the Governance of the Modern Corporation*, 8 HOFSTRA L. REV. 63, 75-77 (1979).

69. D. VOGEL, *supra* note 7, at 129.

70. THE COUNCIL ON ECONOMIC PRIORITIES, PAPER PROFITS (1972).

cuss problems fully and openly. The public objects to corporate secrecy on social issues.[71]

Disclosure in Practice

Demands for public disclosure of corporate affairs have hardly gone unnoticed by the managers of large corporations. Many have begun to realize that information that previously would have been kept secret can sometimes be disclosed to the corporation's benefit. An example is recounted in a recent article by an executive of the J.C. Penney Company.[72] In reaction to the general public impression that large retailers reap huge profits from their credit operations, a number of states enacted legislation reducing the allowable interest rates on charge account balances. This threatened to be disastrous for Penney, a company already *losing* money on its credit operation. The company reacted by publishing full details of the financial status of its credit department, information that had previously been treated as highly confidential. Many of Penney's competitors followed suit, and these disclosures led to the prompt relaxation of the new interest limits.[73]

Whatever the motivation, corporations seem to be moving toward a policy of increased social disclosure. Probably the most notable step has been taken by the BankAmerica Corporation. Under the leadership of chairman A.W. Clausen, long an advocate of greater corporate disclosure, the corporation recently published a

71. AM. INST. OF CERTIFIED PUB. ACCOUNTANTS, SOCIAL MEASUREMENTS 74 (1972) (quoting Alice Tepper Marlin, executive director of CEP), *quoted* in Blumberg, *supra* note 67, at 1037. Vogel describes the increasing demand for corporate disclosure:

> Most public interest proxy resolutions challenge management's control of information; their immediate objective is to increase the public's awareness of the nonfinancial dimensions of the performance of business. Virtually every citizen's group has put a significant portion of its energies into researching and publicizing various aspects of corporate behavior. In addition a number of citizen organizations have formed whose primary purpose is to uncover and publicize as much information as possible about the social impact of corporate policies.

D. VOGEL, *supra* note 7, at 129. The AICPA concurs: "The day is long since past when corporations can come before you and simply recount their successes and setbacks in strictly profit-and-loss categories. Now, they must also account for their activities in the social area—in matters of the environment, human resources, consumerism, and product accountability." COMM. ON SOCIAL MEASUREMENT, *supra* note 15, at 241.

72. Axelson, *A Businessman's Views on Disclosure*, J. ACCOUNTANCY, July 1975, at 42, 44.

73. *Id.*

Voluntary Disclosure Code[74] that begins with the proposition that "[t]he public is *entitled* to the information necessary to judge the value of BankAmerica's contributions to economic and social well-being and its adherence to legal and ethical standards."[75]

The significance of the shift in attitude toward disclosure signalled by the BankAmerica code cannot be overstated. The typical posture of corporations approaching a disclosure issue is one of extreme reticence. Corporate executives, like the members of any bureaucracy, generally take the view "what they don't know can't hurt me."[76] As a consequence, executives tend to resist the disclosure of any information unless it is required by law, or disclosure promises some perceptible benefit to the corporation. The law, treating the public corporation as a private institution, is supportive of that attitude.[77] The underlying, unwritten premise, to which disclosure requirements are exceptions, is that corporations, like individuals and other private entities, are *entitled* to keep secret that which they have the capacity to keep secret. The BankAmerica code virtually stands this premise on its head. It announces that its purpose is to "reverse this priority, making the 'right to know' paramount and imposing limits only where it is clearly appropriate."[78]

While the reaction of BankAmerica's sister corporations suggests that the BankAmerica code has not quite launched the ship of voluntary disclosure, it seems at least to have laid the keel. It may

74. BANKAMERICA CORP., VOLUNTARY DISCLOSURE CODE (1976).

75. *Id.* at 8 (emphasis added). The code lists five objectives:

> 1. To provide the men and women who manage BankAmerica with a continuing guide that keeps effective disclosure a principal objective of corporate policy.
>
> 2. To facilitate disclosure of information that has been determined—not by the corporation but by its constituencies—to be useful and relevant in understanding and evaluating BankAmerica's activities.
>
> 3. To encourage disclosure of information in ways which can be easily understood by all concerned.
>
> 4. To give the public ready access, to the extent permitted by law, to information the corporation currently provides in its routine reporting to regulatory agencies.
>
> 5. To define the limits of voluntary disclosure—that is, to respond to the public's question, "Why not?"

Id. at 4-5.

76. For the classic, and considerably more elegant, statement of this characteristic of bureaucracy, see 2 M. WEBER, ECONOMY AND SOCIETY 991 (G. Roth & C. Wittich eds. 1978).

77. *See* Miller, *supra* note 23.

78. BANKAMERICA CORP., *supra* note 74, at 7 (1976).

prove one day to have been the first major step toward what Professor Blumberg foresees as "the day where full disclosure of the social and environmental, as well as financial, policies of major business will be an accepted practice in keeping with the 'public' character of the major American enterprise."[79]

Another bit of evidence that corporations are moving in the direction of systematic evaluations of the noneconomic consequences of their activities is the increasing number of corporations engaging in some form of "social audit."[80] The increasing use of social audit techniques indicates that a great deal of information necessary to evaluate a corporation's social performance is already being generated, at least for internal corporate purposes.[81] However, the

79. Blumberg, *supra* note 67, at 1037.

80. The literature of the social audit is growing apace. Among the more important books are R. BAUER & D. FENN, THE CORPORATE SOCIAL AUDIT (1972); COMM. ON SOCIAL MEASUREMENT, *supra* note 15; CORPORATE SOCIAL ACCOUNTING (M. Dierkes & R. Bauer eds. 1973); J. CORSON & G. STEINER, MEASURING BUSINESS'S SOCIAL PERFORMANCE (1974); E. GOLDSTON, THE QUANTIFICATION OF CONCERN (1971); SOCIAL AUDIT SEMINAR, PUBLIC AFFAIRS COUNCIL, SELECTED PROCEEDINGS (1972); TASK FORCE ON CORPORATE SOCIAL PERFORMANCE, DEP'T OF COMMERCE, CORPORATE SOCIAL REPORTING IN THE UNITED STATES AND WESTERN EUROPE (1979). *See also* Abt, *Managing to Save Money While Doing Good*, INNOVATION, Jan. 1972, at 38.

81. There is little agreement on the function of social audits. Bauer and Fenn suggest that their function is only partially to satisfy external demands for information. R. BAUER & D. FENN, *supra* note 80, at 47-76. They discuss internal uses of social audits as well, including salving executive consciences, anticipating and avoiding community pressures, solving social problems, and increasing long-range profits. *Id.*

A number of approaches have been used for "social measurement." One study identifies five: (1) The "cost or outlay approach" concentrates on inputs, attempting to identify and report total expenditures for social activities. (2) The "human asset valuation approach" attempts to measure the effect of the corporation's social behavior on such intangible assets as the "value of shareholder loyalty, banker and finance community goodwill, customer loyalty, supplier loyalty, and loyalty in the communities where plants or offices are located." (3) The "program management approach" focuses on quantifying the costs and the benefits of those activities in which the corporation is involved "largely for social reasons." (4) The "inventory approach" is a nonquantitative effort to list and describe the areas in which society expects a corporation to undertake certain behavior and what the corporation is actually doing in those areas. (5) The "cost/benefit approach" encompasses a variety of means of measuring and displaying the costs and benefits of actions taken or not taken by the corporation for social ends. J. CORSON & G. STEINER, *supra* note 80, at 18-20. The United States Task Force on Corporate Social Performance identifies two further approaches to social measurement: (1) In the "social-indicator approach," the corporation develops (or adopts) various measures of community well-being and then evaluates the effect of its activities on those indicators. (2) The "process audit" requires the corporation, with respect to particular social problems on which the activities of the firm may have an impact, to examine "the reasons for undertaking a particular acsystematic evaluation of social performance by all large companies for the purpose of regular reporting to the public remains a long way off. According to a study done for the Committee for Economic Development, social audits have usually been undertaken for corporation-centered reasons rather than out of a sense of obligation to render an account to the public,[82] and less than half of the firms completing social audits made the results of their assessments available to their stockholders or to the general public.[83] Corporate managers may find it helpful to develop, *for their own use*, as accurate a picture as possible of the social impact of their firms' activities, but the level of altruism required for the voluntary, routine publication of the unedited versions of such comprehensive social audits is to be encountered more often in the cloisters of religious institutions than in the executive offices of major corporations.

In truth it is hardly surprising that disclosures relating to social performance are used more for public relations than for the edification of the constituencies that might have an interest in the unvarnished truth. The corporate response to compulsory disclosure requirements provides a dramatic contrast to the sort of voluntary social reporting that is becoming increasingly prevalent. Evaluating the disclosures of environmentally related expenditures *required* by the Securities and Exchange Commission,[84] the AICPA study remarks with some understatement,

> [They] tend to portray the company's position in an objective or even unfavorable fashion and frequently to present evidence of considerable differences of opinion between the company and the courts, regulators, and public interest groups. . . . If disclosures in SEC reports are taken as models of what would be disclosed under pressure, one would be forced to conclude that voluntary disclosures of unfavorable matters in non-SEC reports might leave much to be desired. One also would conclude that a good deal of balance is lost in the process.[85]

To an observer more cynical than the authors of the AICPA study,

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tivity, the goals of the activity and the rationale for the action" and then to describe what the firm is doing and attempt to measure its impact. TASK FORCE ON CORPORATE SOCIAL PERFORMANCE, *supra* note 80, at 5-9.

82. J. CORSON & G. STEINER, *supra* note 80, at 34.

83. *Id.* at 40-41.

84. Securities Act Release No. 33-5386, 38 Fed. Reg. 12,100 (1973). *See generally* 17 C.F.R. §§ 239, 249 (1979).

85. COMM. ON SOCIAL MEASUREMENT, *supra* note 15, at 232.

this observation is hardly astonishing. The corporate manager who *voluntarily* and routinely releases thorough, candid appraisals of the firm's social performance, simply because he or she believes it is right to do so, is still a very rare creature (a phenomenon for which Darwin had an excellent explanation). Although there is an increasing demand for firms to release more information about the nonfinancial aspects of their activities, it is extremely doubtful that the benefits to corporations of publishing regular, candid evaluations of company social performance will ever outweigh the obvious economic and psychic costs. If the disclosure of social information is ever to be an effective mechanism for improving the accountability of large corporations, society will have to undertake the difficult, perhaps impossible, task of designing and imposing reporting standards.

POLITICS, ECONOMICS, AND ACCOUNTABILITY

In the final analysis a demonstration that corporations *are* political institutions is much less interesting than the more difficult question of whether, and to what extent, corporations *should be* influenced by political forces. Would it be wise, as Professor Jacoby[86] and others[87] urge, to discard once and for all the fiction that corporate enterprise is governed exclusively by the invisible hand of the marketplace, and to recognize explicitly that corporate behavior is also subject to political forces? The incorporation of such a recognition among the tenets of accepted doctrine would slowly, but inevitably, lead to a major alteration in the way in which corporate managers, the public, and scholars approach questions about the role of large corporations in society. One principal result would be an increase in the extent to which corporations do respond to political forces, and, probably, an accompanying decline in the efficacy of economic forces in shaping corporate behavior.

The potential for mischief in such a trend is obvious. The advantage of harnessing corporate enterprise firmly to the profit motive is that we know more or less where that will take us, and we know more or less that the result will approximate something we call economic efficiency. Should we partially unhitch the corporation from economic forces and direct it to respond to political forces as well, we should be relying for the attainment of our social

86. N. JACOBY, *supra* note 11, at 194-95.

87. *See* S. BUCHANAN, THE CORPORATION AND THE REPUBLIC (1958); Kaysen, *The Social Significance of the Modern Corporation*, 47 AM. ECON. REV. 311, 313 (1957); Note, *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145 (1932).

goals on political mechanisms that are at best dimly understood; and we should do so at the risk of jeopardizing whatever degree of economic efficiency is attained by the functioning of the free market as we presently know it.[88]

The response of conservative economists to pleas for greater corporate social responsibility is summed up by Milton Friedman's now-famous dictum that "the social responsibility of business is to increase its profits."[89] He, and others of his persuasion, are fully confident that the result of free and vigorous competition will be the maximization of overall social welfare.[90] But as Christopher Stone has pointed out, Friedman qualifies his injunction with an innocuous little phrase that conceals far more than is at first apparent.[91] This increase in profits, he says, is to be accomplished "while conforming to the basic rules of the society."[92] Friedman subsequently suggests these rules include "both those embodied in law and those embodied in ethical custom."[93] And there's the rub. For the crux of the objections of the more thoughtful critics is that corporations are far too often guilty of breaches of precisely those legal and ethical norms by which Freidman suggests they should be guided.[94]

Perhaps it is enough to rely on the normal processes of law enforcement to keep corporate conduct within those "basic rules of society" that are embodied in the law.[95] But how, if not by political means, is society to force corporations to adhere to ethical rules? One response is that there is no problem; the existing level of corporate compliance with ethical norms, while far from perfect, is at least adequate.[96] This must be taken as the response implicit in the positions of Friedman and others who deny that there is any

88. *See* Williamson, *supra* note 68.

89. Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. Times, Sept. 13, 1970, § 6 (Magazine), at 32. *See also* M. FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962). For another articulate presentation of this point of view and a rebuttal, see H. MANNE & H. WALLICH, *supra* note 5.

90. M. FRIEDMAN, *supra* note 89, at 133.

91. C. STONE, *supra* note 6, at 75-77.

92. Friedman, *supra* note 89, at 33.

93. *Id.*

94. *See generally* R. NADER, M. GREEN & J. SELIGMAN, *supra* note 6, at 33-131; C. STONE, *supra* note 6, at 35-69; Heilbroner, *supra* note 6, at 225.

95. There may be room for "political activity" here, too. The Antitrust Division of the Justice Department has made a point of seeking jail terms for corporate executives convicted of price fixing. Orland, *Jail for Corporate Price Fixers?*, N.Y. Times, Dec. 12, 1976, § 3, at 16, col. 3.

96. *See, e.g.*, Arsht, *The Business Judgment Rule Revisited*, 8 HOFSTRA L. REV. 93 (1979).

need for more corporate responsibility. For others, however, that response is inadequate. While we may be content with socialization, augmented by the constraints and sanctions of the law, to maintain *individual* conduct above a minimally acceptable level, the structural characteristics of *corporations* lead too often to behavior that would clearly be considered antisocial were it carried on by individuals. As Christopher Stone says in his thoughtful book, *Where the Law Ends*,[97] "When individuals are placed in an organizational structure, some of the ordinary internalized restraints seem to lose their hold."[98] Thomas Schelling asks

> whether the modern business corporation has to be thought of as a solvent within which personal morality becomes unstuck. Should human decency be considered incapable of surviving the sterile atmosphere of the business firm? Can we not demand of a large corporation—or, if not demand, wish for—the same decency that we think we have a right to expect from our paper boy?
>
> . . . May [corporate managers] not be encouraged, at least, to forgo profits, consciously and openly, in the interest of behaving, as a firm, the way they would all wish to behave as individuals?[99]

This is not to ask that firms spend the shareholders' money on an elaborate program of good works. There is a distinction to be drawn between corporate voluntarism and corporate responsibility.[100] Corporate responsibility—perhaps corporate accountability is a better term—does not ask that tobacco companies stop making cigarettes because smoking causes cancer. It does not suggest that a corporation install expensive equipment to reduce its pollution levels below those required by law. It does not require that corporations give money to charity. What corporate accountability *does* demand is that corporations carry on their affairs with no less regard for the social and environmental consequences of their actions than we would expect from an individual possessed of an ordinary conscience. This means not engaging in ethically dubious conduct. It means "willing compliance" with established public policy at

97. C. STONE, *supra* note 6.

98. *Id.* at 35.

99. Schelling, *Command and Control*, in SOCIAL RESPONSIBILITY AND THE BUSINESS PREDICAMENT 79, 107 (J. McKie ed. 1974).

100. Schelling speaks of the "false dichotomy of voluntarism and coercion." *Id.* at 103-05.

"generous levels."[101] It means conforming to those demands that society has found it desirable to embody in formal rules without the obdurate resistance and niggardly interpretation that so often characterize corporate responses to regulation.[102] It also means participation in policymaking and implementation as concerned members of the community, rather than as adversaries. There is no reason why corporations should not participate constructively in the political process by seeking "mutual coercion mutually agreed upon"[103] where it is necessary to resolve a social problem to which the unregulated activities of separate corporations are contributing. The point is that corporate responsibility is not the either/or proposition that Professor Friedman would have us believe. There is a large gray area short of voluntarism in which corporations have a great deal of latitude in determining *how* they go about increasing their profits.

CONCLUSION

We can no longer afford to deal with the problems of the social performance of large corporations by continuing to proliferate the bureaucratic regulation that is already imposing unacceptable burdens on our economic machinery. The most promising alternative is to modify the institutional framework within which corporations operate. One interesting move in that direction would be to increase the extent to which political forces influence corporate behavior.

The politicization of the corporation is not, to be sure, without drawbacks. If carried too far, it could weaken unacceptably the grip of the "invisible hand of the marketplace" leading to a decline in economic efficiency. There is also some risk that the infant political control mechanism that we have been discussing will not, even in its maturity, provide an adequate replacement for that degree of economic control of corporate behavior likely to be lost through an explicit rejection of the notion that economic forces do provide a satisfactory means of limiting managerial discretion. This would leave corporate power subject to even less social control than it is today.

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101. Chirelstein, *Corporate Law Reform*, in SOCIAL RESPONSIBILITY AND THE BUSINESS PREDICAMENT 41, 53 (J. McKie ed. 1974).

102. *See generally* C. STONE, *supra* note 6, at 109; Chirelstein, *supra* note 101, at 53; Heilbroner, *supra* note 6, at 239.

103. Schelling, *supra* note 99, at 103.

A consideration of these aspects of the problem cannot, however, be abstracted from practical contemporary reality. Corporate power is *not* generally perceived as fully legitimate.[104] It is inevitable, therefore, that there will be changes in the model that shape our thinking about the mechanisms by which it is controlled and thus legitimated. A move in the direction of changing that model to recognize political forces as a legitimate and desirable means of affecting corporate behavior must be considered in light of the alternatives.

In the present state of affairs, the most likely alternative seems to be offered by the managerialists, who would turn the corporate manager into a twentieth-century philosopher king. A great many of those corporate managers most sensitive to the problem of the legitimacy of their own power are adherents of this school of thought, which furnishes a comfortable, nondisruptive—indeed status-enhancing—justification for their social role. Since they are and will remain in control of the large corporation, it is their view that seems likely to dominate should the rest of society continue to drift along without offering a more persuasive model.

Under these conditions the conclusion becomes almost inescapable that we have little choice but to undertake the development of an explicit *political* theory of corporate behavior that can be set alongside the far more developed economic theory that no longer provides an adequate basis for controlling the phenomenon of the large business corporation. The articulation of a reasoned theory of corporate accountability will enormously strengthen the forces within the society that are already beginning to exercise some influence over the social aspects of corporate behavior and will no doubt bring others into existence. Until a theory far more elaborate and better reasoned than any we now have is developed and accepted, corporations will continue to treat political demands that they act more "responsibly" as the illegitimate product of fringe groups that simply do not understand or appreciate the "American way."

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104. For evidence of this proposition, one need only review the steadily increasing volume of literature critical of the role of the corporation in society. *See generally* P. BLUMBERG, THE MEGACORPORATION IN AMERICAN SOCIETY (1975); N. JACOBY, *supra* note 11; M. MINTZ & J. COHEN, AMERICA, INC. (1971); R. NADER, M. GREEN & J. SELIGMAN, *supra* note 6; C. STONE, *supra* note 6.