THE THREE PILLARS OF CORPORATE SOCIAL REPORTING AS NEW GOVERNANCE REGULATION: DISCLOSURE, DIALOGUE, AND DEVELOPMENT

David Hess

Abstract: In this article I examine corporate social reporting as a form of New Governance regulation termed "democratic experimentalism." Due to the challenges of regulating the behavior of corporations on issues related to sustainable economic development, New Governance regulation—which has a focus on decentralized, participatory, problem-solving-based approaches to regulation—is presented as an option to traditional command-and-control regulation. By examining the role of social reporting under a New Governance approach, I set out three necessary requirements for social reporting to be effective: disclosure, dialogue with stakeholders, and the moral development of the corporation. I then assess current social reporting practices against these requirements and find significant problems. In response, I propose one option for solving those problems, and encourage future researchers to consider the demands of these three requirements and the possible trade-offs between them when attempting to find ways to improve social reporting practices.

I. Introduction

Over the past decade corporate social reporting has established itself as a key element in the movement for making corporations more socially responsible. Proponents of social reporting claim that its use will lead to increased corporate accountability, greater stakeholder democracy, and ultimately corporate practices that are more consistent with sustainable development. The leading guidelines for use by corporations in preparing their social reports—the Global Reporting Initiative (GRI)—recently released the third version of its standards with great fanfare and every year reports that more corporations are issuing social reports in accordance with its standards. By 2005, the majority of the 250 largest corporations in the world were publishing a stand-alone social report.[1] Also in that year, France passed legislation requiring its largest corporations to disclose certain information on their social and environmental performance.[2] Overall, social reporting is on the verge of becoming a mainstream phenomenon.[3] These developments make this an important

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time to assess the role social reporting is playing in encouraging corporations to work toward sustainable development and to determine if actions should be taken to place social reporting on a more constructive trajectory.

This assessment is especially important at this time because although the current system of voluntary social reporting in the United States and other nations may be improving the social performance of a few corporations, it is reasonable to have strong doubts that this system is having a significant impact overall. In fact, there is the real danger that social reporting can work against the attainment of sustainable development by hampering the implementation of other mechanisms that would be more effective in pushing us toward these goals, such as stricter regulation.[4] That is, if not implemented appropriately, self-regulation through social reporting can allow corporations to effectively escape stricter regulation; and the problems of unsustainable development that regulation should seek to address continue unabated.[5] Based on the available evidence, there is little reason to believe that social reporting meets its ideal purpose beyond perhaps a handful of industry leaders. Some may claim that these criticisms are too early, since social reporting is still low on its developmental trajectory and that over time it will improve and become more effective in improving social performance. For example, Conley and Williams summarize the general view that social reporting must necessarily improve social performance over the long term because "a corporate poseur would not escape detection for long."[6] However, they also point out the problematic view held by critics that "the substance of CSR seems to be process."[7] That is one of the central questions addressed in this paper: Is the substance of corporate social responsibility through voluntary social reporting under such standards as the GRI simply an empty process that does not lead to any substantive changes in corporate behavior? And if so, what should be done about it?

To answer these questions, I take the perspective of looking at social reporting as a form of regulation through networked governance. Because firms face unique situations, there are significant challenges in regulating a corporation's social performance in an effective and efficient manner through traditional command-and-control regulatory approaches. In short, the concern is that traditional regulatory approaches simply seek to achieve corporate compliance with minimal standards that apply to all corporations regardless of their capabilities. Such an approach, some argue, has a tendency to push corporations to "leav[e] rationality, innovativeness, and societal interests behind."[8] Governance-based regulation seeks to overcome these problems through flexible regulation that involves the participation of civil society actors in the process of encouraging corporate experimentation on sustainability strategies and holding corporations accountable for their performance against jointly determined goals. If implemented appropriately, social reporting plays a key role in this form of governance regulation.

In this paper, I establish what is necessary for corporate social reporting to achieve its goal of improving the social performance of corporations and encouraging corporations to work toward sustainable economic development. The necessary

requirements that I identify are based on so-called "New Governance" regulatory approaches. These interrelated requirements—*disclosure* of material information, *dialogue* with stakeholders, and the moral *development* of the corporation—form the three pillars supporting effective use of social reporting as a New Governance regulatory mechanism. Each pillar alone can serve as a justification for social reporting as a mechanism to improve the social performance of corporations, but effective implementation requires the establishment of all three pillars. Identifying these pillars enables us to better evaluate current practices—including drawing on existing empirical literature not directly related to social and environmental disclosures by corporations—and provides more focus to our exploration of the ways to improve social reporting. In addition, this approach allows us to see the relationships between these three aspects of social reporting and understand how attempts to improve performance on one pillar through external interventions may affect (negatively or positively) the other pillars. This understanding is necessary because although a corporation acting in good faith may be able to voluntarily meet the requirements of all three pillars simultaneously, there is an issue of whether we can "force"—through institutional pressures or government mandates—all corporations to do so in an attempt to broaden the impact of social reporting as a form of regulation. For example, would external interventions require that trade-offs between the three pillars be made, and, if so, would the trade-offs allow social reporting to achieve its full potential? These are all questions that need to be addressed as we consider the future of the social reporting under guidelines such as the GRI and whether or not nations should make social disclosure mandatory. Overall, the approach developed here allows us to conduct a more comprehensive and systematic analysis of social reporting and its potential for having a significant impact on the private sector's progress toward sustainable development. After identifying the pillars, I review the evidence suggesting that these pillars are not being met by current practices and then discuss how mandatory reporting may solve many of these problems.

II. Regulating Sustainable Economic Development: A New Governance Approach

The goal of corporate social reporting under such guidelines as the GRI[9] is to ensure that corporations are working toward becoming "sustainable enterprises," which can be defined as corporations that "contribute to sustainable development by delivering simultaneously economic, social, and environmental benefits."[10] The World Council for Economic Development developed the most well-known definition of sustainable development, which is "development that meets the needs of the present without compromising the ability of future generations to meet their own needs."[11] This definition does not place economic development in conflict with sustainability, but recognizes that economic growth is necessary to meet both the "needs of the present" and the needs of "future generations." To be sustainable,

however, economic growth must be guided by principles of environmental integrity and social equity.[12]

Using regulation to achieve sustainable economic development faces significant challenges. The failings of traditional, command-and-control regulation have been covered extensively in the legal literature and include arguments of inefficiency, over-deterrence, normative legitimacy, significant time delays in responding to new harms or changing societal expectations, limitations of enforcement (e.g., discovery of compliance failures), and focusing only on minimal, technical compliance with regulatory standards rather than encouraging corporations to work toward higher goals that their capabilities make attainable.[13] At the other extreme, markets have well-known failings of their own. Simply stated, the general concern is that "private markets cannot be relied on to give appropriate weight to public interests over private ones without active public involvement."[14] In response to the shortcomings of both markets and traditional regulation, a new approach is needed to complement, and in some cases replace, traditional regulation. That general category of approaches may be termed "New Governance" regulation,[15] and is touted as a "third way" between command-and-control regulation and markets.[16]

New Governance is a broad term that covers various regulatory innovations focused on decentralized, participatory, problem-solving approaches to regulation, as opposed to traditional regulation's focus on centralized dictation of rules developed by experts with state-imposed penalties for noncompliance.[17] This alternative approach to regulation is receiving support and consideration from across the political spectrum and in a variety of fields of law.[18] In general, the increasing popularity of this approach results from beliefs that society is too complex, dynamic, and unpredictable for traditional regulatory approaches.[19] In response to some of the problems identified above, its proponents believe that it has significant advantages over traditional regulation in simultaneously promoting both economic efficiency and democratic legitimacy.[20] Because New Governance is an emerging regulatory approach that is appearing in a variety of policy domains, there are differences (as well as basic confusion) about the theoretical underpinnings, which in some cases can lead to significant differences in implementation.[21] Here, I focus primarily, though not exclusively, on an approach referred to as "democratic experimentalism."[22]

In general, this experimentalist governance approach seeks to take advantage of local knowledge and encourage experimentation to find tailored solutions to complex problems.[23] The role of the government is to "orchestrate" this process, rather than dictate top-down rules. As part of this orchestration, the government must encourage broad participation at the local level that involves input from a variety of actors that are affected by the actions and that have differing perspectives on the problem as well as different areas of expertise.[24] Through experimentation, these actors can attempt to find the best solution to a problem that takes into account the relevant aspects of that unique situation (e.g., the situation of a specific corporation, an industry, an issue, or geographic area). Any solutions developed from experimentation are understood to be provisional and will be updated based

on new knowledge and changing circumstances or societal expectations.[25] In the administrative law context, Dorf and Sabel refer to this as "rolling best-practice rules."[26] That is, as some threshold level of regulated entities demonstrate that certain performance goals are attainable, those goals become the minimum acceptable standard for others.[27]

The Environmental Protection Agency's (EPA) Project XL provides one example of this type of regulation.[28] Under this project, corporations can receive waivers on a range of regulatory requirements related to emissions of pollutions in exchange for developing organizational practices that will produce "superior environmental performance" overall.[29] The regulatory body provides participating corporations with an amount of flexibility that they would not have had under existing command-and-control legislation in the hope that those corporations will develop and utilize new management techniques or technological innovations to provide superior results. To gain approval for their proposals and obtain the waivers, corporations must negotiate the terms of their project with federal and state agencies, as well as with interested stakeholder groups. A typical negotiated term required that the goals of the project be responsive to any significant changes in circumstances or new information impacting the project.[30]

Project XL was a progressive attempt at encouraging experimentation, but ultimately it failed to produce a significant number of projects and was halted by the EPA in 2003. There are many potential explanations for the failure of Project XL. Professor Freeman identifies poorly structured stakeholder participation mechanisms and the significant authority granted to corporations to determine the extent of stakeholder participation.[31] Professors Dorf and Sabel point to the inability of participants in one project to learn from the outcomes and experience of another project, which also prevented stakeholders from being able to benchmark successes.[32] Overall, Project XL's design failures prevented it from achieving the hoped for collaborative commitment to experimentalism.[33]

Among the lessons of Project XL's failures is the recognition of the importance of transparency. Transparency accomplishes two things. First, it ensures accountability. Accountability is the "expectation that one may be called on to justify one's beliefs, feelings, and actions to others," and those "that do not provide a satisfactory justification for their actions will suffer negative consequences."[34] In the context of this paper, the "others" are those parties participating in the governance exercise. Second, transparency furthers experimentation by allowing local actors to identify evolving best practices from other similar situations and then adapting those practices to meet their needs.[35] Thus, a key orchestration role for the government is directing the collection and dissemination of information to allow corporations and stakeholders in different locales to learn from each other and engage in benchmarking.[36]

One example of the use of transparency in this area is the Toxic Release Inventory (TRI), which requires companies to report their plants' emissions of certain toxic chemicals to the Environmental Protection Agency, which makes the information public.[37] Through these disclosures, governments and interested stakeholders can

both hold companies accountable for their actual performance and use the comparative data to establish appropriate benchmarks for performance goals. Some states passed laws to expand the TRI and require corporations to file annual reports that show how their performance has changed from past years, explain the cause of any change, and discuss organizational plans to reduce the use of toxic chemicals.[38] This is an attempt to more directly involve corporations in finding potential solutions and providing additional information to stakeholders. It is important to note that the TRI does not establish performance goals (e.g., emissions levels), but only provides information to any potentially interested stakeholders. Thus, an important regulatory goal of the TRI is "to induce firms and citizens to acquire information that reveals problems and possibilities for their solution."[39]

Corporations, of course, play a central role in this experimentation toward workable solutions for problems related to sustainable development. New Governance regulation recognizes not only that corporations have an information advantage over other participants with respect to their capacities and experiences with these issues, but also that any rule—whether it comes out of a stakeholder dialogue or a centralized government command—cannot be implemented effectively without the firm playing a central role.[40] As an example, consider the Organizational Sentencing Guidelines, which offer corporations reduced penalties for criminal violations if they had implemented an "effective" compliance and ethics program before the violation occurred. The Guidelines set out essential features of an effective program, but the corporation is free to implement those general features based on its own unique situation. In addition, this regulatory approach recognizes that corporations' strategies for compliance with the Organizational Sentencing Guidelines (or any rule or norm) "will be most effective if the firm or individual internalizes them, that is, absorbs them into its meaning structure so that they become part of its mode of operation or existence."[41] The 2004 amendments to the Guidelines recognized this when the requirements for a mitigated sentence were amended to state that in addition to an effective compliance program, corporations also must "promote an organizational culture that encourages 'ethical' conduct."[42]

New Governance legal scholars are exploring similar approaches to reduce employment discrimination.[43] These scholars recognize that the causes of discrimination are often unintentionally rooted in the corporation's culture and structural features, and that traditional regulatory approaches are limited in their ability to end such discrimination.[44] Thus, the challenge the law faces is to provide external legal incentives for compliance with discrimination laws, as well as to support internal change initiatives that may be unique to any particular corporation and are likely to be more effective in ending corporate-culture based discrimination.[45] Sturm frames the challenge as such: "How can there be external accountability without externally imposed rules? How can the law shape internal problem-solving processes without taking over the process of defining their features? How can standards of effectiveness be developed that are flexible enough to account for variability [among companies] and still comparable across different locations?"[46]

In her answer to these questions, Sturm argues that the law should orchestrate the meaningful participation of key stakeholders (e.g., non-governmental organizations and professional networks) to balance the need for unique local solutions while at the same time ensuring the company complies with external norms of appropriate behavior.[47] These stakeholders (which Sturm refers to as intermediary groups, since they intermediate between the law and the organizations) work directly with organizations to help incorporate external norms into the organization's internal norms, to develop compliance programs tailored to the organization's culture, and to develop knowledge that can be transferred between organizations.[48] Thus, this approach seeks to develop experimentation toward solutions to the problem of discrimination through the participation of interested stakeholders, the direct involvement of the corporation, and transparency (as conducted by the intermediaries through the support of government agencies[49]).

Overall, rather than command-and-control's reliance on one-size-fits-all regulation with centralized rule-making, appropriately structured New Governance regulation uses mechanisms to encourage experimentation at a more local level. This allows for solutions tailored to the specific needs and abilities of the regulated entity and its stakeholders, which are updated continuously as new information becomes available. This approach addresses many of the failings of command-and-control approaches listed earlier. As described above and based on my review of the scholarship in this area, I argue that any regulatory mechanism under the democratic experimentalist form of New Governance regulation must meet three basic requirements to succeed as a productive complement (or alternative) to traditional regulation: transparency, significant participation of interested stakeholders, and direct involvement of the regulated entity in determining strategies for compliance with the agreed-upon goals to ensure those strategies become part of the organization's "meaning structure."

As can be seen in some of the examples above, not all New Governance regulations successfully meet these requirements. However, these requirements can explain why those programs fail to reach their potential. Here, I use these three requirements to evaluate social reporting as a form of democratic experimentalist New Governance regulation designed to push corporations to work toward sustainable economic development. I refer to these requirements as the three pillars of corporate social reporting: disclosure, dialogue, and development. Before further discussing those requirements in connection with social reporting, the next section provides a brief background on social reporting and the current GRI guidelines.

III. Social Reporting: History and Current Status

Although there is wide familiarity with the GRI and currently issued social reports, many do not realize that current social reporting practices are the result of an evolution tracing back over sixty years. This section provides a brief history of that evolution and creates a background that I will touch upon throughout the paper

as I discuss the goals of social reporting. In this section and throughout the paper I use the term "social reporting" (and "sustainability reporting") to encompass the terminology of social accounting, auditing, and reporting, where social accounting refers to the measurement and collection of information, social auditing to the evaluation of a company's performance against selected standards, and social reporting to the disclosure of that information to the public.[50] Following the brief history, I provide a description of the GRI's latest guidelines for producing a social report. Although this paper is about social reporting in general, I look closely at the GRI standards, since they are arguably becoming the de facto standard for social reporting today.

A. A Brief History of Social Reporting

Professors Carroll and Beiler trace the development of the concept of corporate social auditing back to the 1940s and the work of Stanford professor Theodore J. Kreps.[51] Kreps was concerned with finding ways to measure the contribution of business to the overall goals of our economic system, since he viewed standard profit-and-loss accounting as inadequate.[52] The goals Kreps envisioned for the economic system included improved health and education, increased opportunities for individuals, innovations, international peace, and the democratization of businesses.[53] The second major work on social auditing appeared in the early 1950s when Howard R. Bowen developed a system for outside auditors to evaluate the performance of corporations on such matters as wages, human relations, community relations, and public relations.[54] Although the audit was to be conducted by independent auditors, it was not intended to be made public and was to be used solely by management.[55]

These first two approaches demonstrate two distinct potential purposes of social reports. Kreps's approach focused on the external evaluation of the performance of corporations and industries in achieving societal goals. This information was intended for use in public policy decisions.[56] Bowen, on the other hand, sought a system that would provide insight to management on how well they were running their corporations, and external evaluation was not a goal.

As social auditing developed in the 1970s,[57] this tension between auditing for public use and auditing only for internal decision making remained.[58] Although many companies in the United States experimented with social audits (76 percent of large corporations according to one survey in 1974), most did not make their reports public.[59] In response, some external stakeholder groups experimented with developing their own social audits of certain corporations for their use in identifying the socially irresponsible ones.[60] This pressure for external accountability continued to develop, and many executives believed that they would see government-mandated, publicly available social audits in the near future.[61] In the 1980s, however, this momentum dissipated.[62] In part, the blame can be placed on the recession and the elevation of business interests in the 1980s.[63] Another major contributing factor was the reluctance of corporations to provide fuel for their critics.[64] Thus, corpora-

tions did not produce social audits for internal management use since that might be viewed by shareholders as an unaffordable luxury, and they did not produce social audits for public use since they did not want to invite social criticism.[65] The result was the end of significant experimentation in social auditing by major corporations, accounting firms, and consulting groups.

The 1990s saw the resurgence of social reporting. Some of the drivers included the growing acceptance of environmental auditing and the increase in social investors and social consumers, which required information for the application of their various social screens.[66] Social reports issued by Ben & Jerry's Homemade, Inc., and the Body Shop in the mid-1990s raised the profile of these practices. This was followed by the nonprofit organization CERES starting the "Global Reporting Initiative" (GRI) in 1997.[67] In 1999, the United Nations Environment Program joined the GRI as a partner, the GRI released a draft of its reporting guidelines, and the first set of companies began reporting under those guidelines.[68] In 2002, the GRI established itself as a separate entity from CERES, released its second set of guidelines, and arguably become the unofficial accepted standard for social reporting. In 2000, only fifty organizations released reports under the guidelines,[69] but by spring 2007 that number was over one thousand.[70] Thus, corporate social auditing and reporting began as an idea in the 1940s and 1950s, drew growing interest in the 1970s, faded away in the 1980s, returned in the 1990s, and now is on the verge of becoming mainstream practice with the GRI leading the way.

B. The Global Reporting Initiative

In October 2006, the GRI issued the revised third edition of their reporting guidelines (G3).[71] In this section, I provide a brief overview of those guidelines and what they require for corporations producing a social report. According to the G3, "Sustainability reporting is the practice of measuring, disclosing, and being accountable for organizational performance toward the goal of sustainable development."[72] Likewise, the 2002 GRI guidelines state that: "The aim of the Guidelines is to assist reporting organizations and their stakeholders in articulating and understanding contributions of the reporting organizations to sustainable development."[73] Thus, the GRI sees its purpose as generally consistent with the sustainable development goals I set out above for New Governance regulation.

The starting point for organizations using the G3 is to determine the content of the report.[74] The guidelines provide certain core performance indicators that all organizations must report against, unless an organization determines that a specific indicator is not "material" for their situation.[75] In addition, the guidelines provide a list of non-core indicators that organizations should report on if they deem them material. The guidelines define "materiality" as information that "reflect[s] the organization's significant economic, environmental, and social impacts, or that would substantively influence the assessments and decisions of stakeholders."[76] In addition to materiality, the content of the report is determined by principles of stakeholder inclusiveness, sustainability context, and completeness.[77] Stakeholder

inclusiveness requires the corporation to identify its stakeholders (those "significantly affected" by the organization's activities) and report on how the organization "has responded to their reasonable expectations and interests."[78] The principle of completeness is designed to ensure the report presents a complete picture of the organization's actual performance for stakeholders (including both negative and positive trends over time) and the principle of sustainability context is to ensure that the organization reflects on and explains how the organization is (or is not) meeting the demands of achieving sustainability.[79] With respect to determining the quality of the information to be included in the report, the guidelines state principles of balance, comparability, clarity, accuracy, timeliness, and reliability.[80] It is important to note that the principle of clarity requires the report to "present information in a way that is understandable, accessible, and usable by the organization's range of stakeholders."[81] This means the report should "avoid technical terms, acronyms, jargon, or other content likely to be unfamiliar to stakeholders" and be "comprehensible to stakeholders who have a reasonable understanding of the organization and its activities."[82]

The actual disclosures the guidelines require organizations to include in their reports fall into three categories. First, the organization should describe basic features of the organization (e.g., size, industry, governance), discuss how sustainability issues affect corporate strategy, and describe how the organization conducted the reporting process (e.g., the stakeholders engaged).[83] Second, the organization should disclose the organization's management approach and policies related to issues in the report.[84] Finally, the organization must report on various performance indicators, which are organized into the categories of economic, environmental, labor practices, human rights, society, and product responsibility.[85]

Organizations are encouraged, but not required, to comply with all parts of the guidelines. Once the report is completed, however, the organization should indicate the degree to which they did comply by selecting an application level of A, B, or C.[86] A lower application level is meant for organizations that are relatively new to the social reporting process. In addition, an organization should include a "+" on their application level if they have used external assurance.[87]

IV. The Three Pillars of Social Reporting: Disclosure, Dialogue, and Development

The ultimate goal of corporate social reporting is to improve the social performance of the corporations doing the reporting and ensure they are working toward becoming sustainable enterprises. For social reporting to achieve this goal, the process must rely on three important pillars: disclosure, development, and dialogue. My use of these three pillars comes from the democratic experimentalist form of New Governance regulation. These three pillars are, however, generally consistent with others' descriptions of the use and goals of social reports. For example, in 1991 the SBN Bank in Denmark described their social report[88] as follows:

> [A social report] provides measures of how well an organization lives up to the shared values to which it has committed itself. It contributes to a dialogue process where values become integrated into the organization. It provides an extensive picture of the organization's relationships with its stakeholders, and thus of its chances for long-term development and survival. But it encompasses more than just a snapshot at a particular time; its design, development and interpretation contribute to an ongoing dialogue culture where values become vital for the organization's self-reference.[89]

This description reflects the Bank's belief that the organization must engage with their stakeholders to determine the shared values they will commit to live up to (dialogue), that those values must be "integrated into the organization" (development), and that the report provide a "picture" of the organization that allows them to be held publicly accountable for how well they have lived up to those shared values (disclosure).[90] In this section, I further describe the three pillars in the context of social reporting. Following that discussion, Part V of this article assesses current practices under each pillar.

A. Disclosure

The disclosure pillar requires that corporations provide their stakeholders with all relevant and material information related to the corporation's social and environmental policies and actual performance. Although the early discussions of social auditing debated whether social audits should be for internal use only or public use, those arguing for its public use have won. Businesses are now operating in an "age of transparency."[91] Demands for greater information on corporations' activities come from all sectors of society, including shareholders, consumers, communities, special interest groups, and governments.

Under a New Governance perspective, disclosure of corporations' performance information is necessary to ensure accountability and to provide information that allows stakeholder participants to identify best practices and learn from the experiences of various corporations. To work toward these ends, the information should be of use to not just market actors, but also stakeholders in the political arena. For example, non-market actors need information to determine if self-regulation on a particular issue is working or if some other approach is required.

The policy justification for any government intervention in this area is the problem of information asymmetry.[92] Corporations have information that outside stakeholders could use to hold corporations accountable or further their learning, but those stakeholders either cannot gain access to the information without incurring significant costs or simply do not have access to the information at all. Through intervention and perhaps mandated disclosure, the government cures the asymmetry problem and allows the interested stakeholders to act upon the information as they see fit.

Disclosure policies will not be effective in reaching their goal if they are not planned appropriately. To determine the effectiveness of a transparency policy,

including corporate social reporting, we must consider the process of how a corporation's disclosure of social information results in changed behavior in the corporation. To understand this process, Weil and colleagues refer to an "action cycle."[93] In this cycle, the corporation discloses new information, stakeholders take in and process the information, the stakeholders then decide to alter their behavior based on the new information, and then corporations identify those changes and respond appropriately. A new set of disclosures reflecting the changed corporate behavior starts the process over again.

The action cycle forces us to consider the behaviors of the users and disclosers of information, rather than focus simply on the information disclosed.[94] To improve the functioning of the action cycle, we need a clear understanding of who is using the disclosed information and how. Thus, rather than attempting to identify indicators that create a general picture of a firm's social performance and are directed at any potentially interested stakeholder (such as under the GRI's principle of clarity described earlier), there is a strong argument to be made for focusing on the information needs of those stakeholders that are the actual users of the reports, such as the financial community (e.g., social investors) or activist special interest groups. As discussed further below, meeting the needs of these users likely requires standardized and comparable data related to performance, such as found in financial reports or the environmental performance information contained in the Toxic Release Inventory (TRI) described earlier.[95] This information allows stakeholders to hold corporations accountable and to determine the success or failure of various local "experiments" (e.g., an industry code of conduct with self-regulation).

B. Dialogue

A key aspect of democratic experimentalist New Governance regulation is its focus on problem-solving (and continual improvement) based on dialogue with a variety of stakeholders. Under traditional regulation, a centralized body of experts sets the rules, corporations decide whether or not to comply, and then the experts develop new rules based on the information that works its way up to them.[96] Under New Governance regulation, however, corporations play an active role in setting the rules (or, more appropriately, the "norms"), but interested stakeholders besides just the government play an active role in that process as well. As stated by Lobel, under New Governance regulation, "The role of government changes from regulator and controller to facilitator, and law becomes a shared problem-solving process rather than an ordering activity."[97] The goal is not simply to have different stakeholders represent their interests in an adversarial forum where each seeks to "win," but rather to have stakeholders engaging in problem-solving and consensus building.[98] This collaboration applies not only to establishing norms and expectations, but also to ongoing monitoring of performance and updating of the norms and goals.[99] Similar to the moral development pillar discussed below, corporations are more likely to comply with the norms of behavior if they have played a role in developing

the consensus behind the norm.[100] In addition, this pillar contributes an additional democratic value by giving a voice to those affected by an action.[101]

This collaborative governance model applies not only to domestic issues—where this model has its roots from deliberative democracy ideas in political science[102]—but also to international issues related to sustainable development.[103] Currently, social movement pressures for more responsible conduct by corporations typically do not lead to the type of dialogue necessary for New Governance regulation. As Fung states with respect to international labor standards, "Rather than civil negotiating and rights-based reasoning, these movements exploit scandals, utilize accusation, and exercise protest, while firm responses are often designed to improve press relations rather than to establish earnest dialogue."[104] The role of government is to ensure the existence of forums for open deliberations that attempt to take into account power imbalances and limit adversarial posturing.

Overall, this form of stakeholder collaboration forms the second pillar of corporate social reporting, which requires that corporations develop meaningful dialogues with their stakeholders. As part of the social reporting process, corporations should consult with interested stakeholders to determine their expectations and their views on the corporation's performance in meeting those expectations. As discussed above, engagement is a key aspect of social reporting under the GRI and is fully developed under the principle of inclusivity. Corporations then should meaningfully reflect on those dialogues, determine to what extent any suggested changes should be implemented into corporate strategies, and then continue the dialogue through the articulation of their goals and the justification of their choices and performance. Not only should this process help companies decide what information is material (and thus should be included in their report under the GRI), but it also should influence the values and priorities of the firm. As discussed above, the SBN Bank views the dialogues conducted in constructing their social report as a necessary part of developing the "shared values" of the company.[105]

The Shell Group views engagement with stakeholders as "the cornerstone of social performance,"[106] and engagement has played an important role in internal audits of their social performance,[107] as well as determining the content of their social report.[108] A sustainable development officer at Shell states that "stakeholder engagement is about two-way dialogue and agreed actions. It includes involving stakeholders in the identification of potential impacts and issues, and collaborative development of possible solutions to these and their subsequent implementation and monitoring."[109] Shell even states that if certain stakeholder groups do not have the capability of interacting meaningfully with Shell, that Shell should support the building of that capacity.[110] Regardless of one's opinion on Shell's progress toward adopting practices consistent with sustainable development, their pioneering social reporting and engagement practices have clearly played a key role in saving Shell's reputation after its environmental and human rights crises in the mid-1990s and significantly improving its performance from that baseline.

C. Development

The ultimate goal of social reporting is, of course, to actually change corporate behavior in furtherance of the goal of sustainable economic development. This can occur through external pressures forcing the corporation to change, but it can also occur through a corporation's own self-critical reflection on its behavior.[111] I refer to this as the moral *development* of the corporation that occurs as the corporation goes through the social reporting process. This term is meant to focus on the processes and organizational norms that influence decision-making throughout the organization. Moral development refers to the incorporation of sustainability issues into the operating ethos of the corporation. Through self-reflection and self-criticism corporations become cognizant of where the corporation's social performance falls short of its previously held beliefs and societal expectations and then seek out new ways to improve their performance. In other words, the corporation should actually incorporate information from the social accounting process into operational and strategic decision making. Or, as Power states with respect to environmental accounting, "the re-internalization of external effects."[112] This process should force managers to challenge their assumptions based on this new information.

This notion of moral development of the corporation is consistent with the requirements of New Governance regulatory approaches. The New Governance approach understands that effective implementation of any law requires allowing the regulated entity to have an active role in determining its strategies for compliance with the goals of regulation.[113] As stated earlier, the effectiveness of compliance with any rule or norm of appropriate behavior is significantly enhanced if the corporation "absorbs them . . . into its meaning structure."[114] This is different from a corporation simply being "responsive" to societal pressures, and instead involves the actual incorporation of ethical issues into strategic and operational decision making.[115]

Moral development of the corporation through government intervention into corporate decision-making processes has a long history in the scholarship of corporate law reformists. Over thirty years ago, Christopher Stone, in his classic work, *Where the Law Ends*, argued that the law should stop treating corporations as a "black box" and intrude into "the corporation's decision structures and processes."[116] Stone went on to state that "the importance of a company's information processes cannot be overstated; they are as vital to the corporation as the nervous system of a human being to the body."[117] If certain "softer" types of information related to a corporation's social and environmental performance are not being collected, then the corporation will simply not be able to act effectively with respect to those issues.[118] Thus, through intervention, the law could require the corporation to collect certain types of information, which makes it easily available for incorporation into decision making. More important, it forces managers to confront social performance issues that they otherwise would have avoided. For example, the Environmental Protection Agency reports that after collecting the information required to complete a Toxic Release Inventory report, "some companies expressed surprise at their

own toxic chemical release amounts and set goals to improve their environmental performance."[119]

Suncor Energy is one company that views its social reporting practices as vital to putting the company on the path to sustainability.[120] Suncor claims that the act of publishing a report containing their social and environmental targets forces the company to find ways to live up to those self-imposed goals.[121] In other words, the report serves as a motivating mechanism to put in place the changes necessary for the company to meet its sustainability goals. To assist in attaining those goals, the company ensures that the reports are included within the responsibilities of the Chief Financial Officer and that certain indicators are included in the company's monthly financial reports.[122] These acts force sustainability issues into all business decisions and place those issues consistently in front of the senior managers and the board of directors.[123] Overall, Suncor views the reporting process as vital for both motivating and focusing the attention of managers, as well as providing the internal information necessary to determine if the company is making progress toward its goals.[124]

Ideally, development requires that the social auditing information have an impact not just on the decisions of the corporate officers and directors, but all employees of the corporation. To impact decision making throughout the firm, corporations should have systems in place that ensure that feedback from the data collection process—that is, information on stakeholders' concerns and appraisals of the firm's performance, as well as the firm's own appraisal of its performance—is incorporated into the firm's policies and practices.[125] In other words, the sustainability reporting process must actually have an impact on employees at all levels of the firm and allow those employees to see the connection between their job performance and sustainability.[126] One approach to doing this is working backwards from a GRI performance indicator to determine which specific company initiatives are necessary to attain the desired performance level that is to be reported.[127] In many cases, performance on these initiatives then should be recognized and rewarded along with other financial and operational goals.[128]

Ultimately, it is hoped the information collection process and the subsequent dissemination of information throughout the firm will lead to a positive change in the corporation's culture. Underlying much of the work on social reporting related to the pillar of disclosure is that firms will face pressure from external stakeholders (who, with more information on corporate performance, are better able to apply pressure) and will then respond appropriately. Although there is truth to that model, it fails to recognize the range of firms' responses to similar pressures, which can range from resistance to going beyond compliance with existing norms.[129] One strong explanatory factor is culture of the organization.[130] Thus, the development pillar should be factored into our analysis of social reporting. It is also important to note that the information needed to satisfy the demands of the development pillar may be different from that needed to satisfy the disclosure pillar. Reflecting the early debates on whether social auditing should be for internal or external

audiences, moral development is primarily focused on internal change. As such, the quality and character of information collected may be less precise and more qualitative than would be necessary to satisfy the demands of external stakeholders for purposes of accountability.[131]

V. Crumbling Pillars

In this part, I analyze current practices to determine if corporations are meeting the demands of each pillar. My analysis reviews existing empirical studies on social and environmental disclosure, but it also includes studies not directly related to social disclosure. These studies provide significant insight into determining if the current voluntary approach to social reporting will satisfy the requirements of the three pillars.

A. Dissembling: Failed Disclosure

Firms evade their disclosure responsibilities when they engage in strategic disclosures that provide little insight into the complete social performance of the corporation. Corporations *dissemble* when they disclose favorable information but hide unfavorable information, fail to put their disclosures into the appropriate context, or simply provide false disclosures. In addition, dissembling can occur when corporations provide disclosures on policies, but fail to provide information on the actual implementation or effectiveness of those policies. The evidence in support of dissembling is significant and growing.[132] The basic finding is that firms respond to their poor social performance or a crisis in their industry by disclosing relevant nonfinancial information, but that information is overwhelmingly positive.[133] Not surprisingly, one recent study of social disclosures by US corporations in all communications with stakeholders—including financial filings, analysts conference calls, Web sites, press releases, product information sheets, and others—found that social reports and similar stand-alone reports (e.g., Health, Environment and Safety reports) were second only to press releases in having the highest ratio of favorable to unfavorable social disclosures.[134]

Contrary to the quote above from Conley and Williams[135] that a corporate poseur would not escape detection for long, apparently corporations are successful with these dissembling practices. Although there are several empirical studies showing that firms increase social disclosures (but only favorable disclosures) in the face of legitimacy-threatening events,[136] there are few studies that have empirically tested the effectiveness of dissembling strategies. One exception, a study by Bansal and Clelland,[137] provides some support that dissembling can be an effective way to create the appearance of being a socially responsible corporation. Bansal and Clelland find that firms with low environmental legitimacy (as measured by negative coverage in the business press) are able to reduce their unsystematic stock market risk simply through communications that express environmental commitment. Thus, to the extent that corporations are engaging in social reporting to mitigate the risk of

lost shareholder value, meaningless but positive disclosures seem to be a successful strategy. Evidence from studies on impression management[138] and symbolic management[139] also provide general support for the effectiveness of strategies involving form over substance.

An additional form over substance problem with the current state of reporting under the GRI is that corporations are receiving positive recognition from organizations that rank the quality of social reports (often based simply on the amount of disclosure) without regard to the firm's actual social performance. To the extent that a firm's reputation is improved simply by increasing the number of GRI performance indicators it reports on—regardless of the quality or accuracy of those disclosures—firms are being rewarded for their dissembling. It is also important to note that one study of social reports conducted under the 2002 GRI Guidelines and the new G3 Guidelines found that companies claimed to be reporting on significantly more of the performance indicators than they actually were.[140] In a closer look at the auto industry, the study focused on a set of indicators that the researchers objectively viewed as the most important for that industry, and found that none of the companies' reports included information on even one-half of those indicators and most reported on only one-quarter.[141] They obtained this result even though several of the reports were issued by companies that belong to the GRI's working group for that industry.[142]

In certain circumstances, the greater the pressure on firms to disclose, the less disclosure there is. Hess and Dunfee state: "The greater the public intolerance for corporate irresponsibility, the greater the costs to the firm if it discloses negative information. This leads to the ironic result that the more stakeholders want information and tend to act upon it, the less willing firms are to disclose such information."[143] Using an economic analysis, Lyon and Maxwell find support for this claim.[144] Their analysis shows that "threat of public backlash for greenwash will cause firms to 'clam up' rather than become more open and transparent."[145] This holds especially for firms that have positive information to report but may not fully understand the social and environmental impact of their actions.[146] The exceptions, as stated earlier, are those poorly performing firms that seek to provide positive information to cover up their negative image. It also should be noted that empirical studies have shown that voluntary disclosures on environmental performance have no relationship to the firm's actual environmental performance.[147] Thus, there are additional reasons that we should not assume that those firms with high social performance will be the ones most willing to disclose.

B. Directing: Failed Dialogue

There is evidence that there is a rise in the use of stakeholder dialogues by corporations, as one survey found that approximately 40 percent of large corporations utilize a structured stakeholder dialogue process.[148] Critics, however, are quick to point out that "stakeholder engagement" often ends up being little more than "stakeholder management."[149] Returning to data from the KPMG survey of large

corporations, they found that in 2005 only 32 percent of companies sought feedback from stakeholders on their social report, and only 8 percent publicly responded to any feedback they received.[150] This provides additional evidence that meaningful discussions on a corporation's performance as reflected in its social report are very rare. Overall, it seems that rather than bringing together all relevant stakeholders for an open-ended discussion on the corporation's progress toward sustainable development and seeking consensus on goals and compliance actions, corporations are *directing* the process to limit stakeholder participation and power. Instead of bringing in stakeholders to deliberate over the legitimacy of corporate actions, corporations are directing the process in such a way that they gain the knowledge they need to assess and then manage those legitimacy risks that stakeholders pose the firm.[151] With this information from stakeholder dialogues, corporations can attempt to re-frame the debate,[152] or simply choose to ignore the comments of less-powerful stakeholders.[153]

Thus, a core criticism is that stakeholders have no real power to effect change from the dialogues.[154] Because corporations direct the engagement, the dialogue process is stacked in their favor. For example, Conley and Williams argue that ExxonMobil manages the process by defining corporate social responsibility in economic terms, which makes irrelevant any issues that cannot be directly related to that definition.[155] In other words, ExxonMobil captures the process and "further legitim[izes] the shareholder-focused status quo."[156] British American Tobacco (BAT), on the other hand, defines CSR as simply open communication with stakeholders. Although BAT opens up the process so that their actions may be challenged from any and all stakeholders, its response is simply the need for more communication and it commits itself to "nothing more than listening."[157] In this case, rather than addressing the conflict, the dialogue process smoothes over it. Likewise, Owen et al.[158] refer to these actions as "managerial capture," which involves "over-inflated promises of accountability to an all-encompassing and essentially meaningless set of stakeholders." Other academics who have actually participated as stakeholders in the engagement process rely on their first-hand experience to argue that the process does not achieve the democratic experimentalist goals of stakeholder engagement, which involves the corporation and stakeholders collectively coming to a conclusion on certain actions or goals and having the corporation commit to a strategy to achieve those ends.[159]

Ideally, the disclosure and dialogue pillars should work together, with disclosure providing stakeholders with the necessary information to establish a meaningful dialogue with corporations and to make demands for improvement that the corporation must acknowledge. If stakeholders do not have any power in the process, however, corporations may simply do "nothing more than listen."

C. Decoupling: Failed Development

The moral development pillar requires that corporations meaningfully incorporate the social reporting information into their policies and practices. Similar to concerns

with firms' implementation of compliance programs to reduce corporate crime or sexual harassment, however, there is the concern that the social reporting process is *decoupled* from actual operations (and information flows within the organization) and therefore serves only a "symbolic" or "cosmetic" role. In other words, social reporting can serve as little more than a superficial public relations strategy. It is important to note that such decoupling has the effect of not only creating false appearances to an external audience, but also internally.[160]

Empirical evidence is starting to emerge that provides evidence of decoupling among even those corporations identified as leaders in social reporting. For example, Norris and Innes[161] studied four large firms that experts considered social reporting leaders and found that the reporting process was conducted in a manner that had no real connection to the actual operations of the firm. For all four firms, the researchers found that the content of the social report and the performance indicators included within it were developed not through the internal management system, but by a self-contained unit separated from the organization's accountants and operational managers. Accordingly, they found that managers did not view the social report as in any way affecting their decision making. Commentators working in the area of social reporting seem to agree with these conclusions based on their experience. One consultant notes how social reports rarely discuss how sustainability issues are incorporated into long-term strategy, and states that from reading the reports it seems that corporate governance and sustainability are two worlds that "never touch one another."[162]

Empirical evidence from other policy domains also shows that decoupling rather than moral development is expected. For example, Hironaka and Schofer[163] show that Environmental Impact Statements—which require government agencies in the United States to draft a report on the environmental impact of a proposed action and seek feedback from interested parties as a way to encourage improved decision making on environmental matters—have largely failed due to decoupling based on the bureaucratic focus over the substantive issues. Likewise, Karkkainen summarizes his review of the evidence on environmental impact statements by stating that "Agencies have come to terms with the formal demands of the . . . Environmental Impact Statement requirement by routinizing and compartmentalizing their response, effectively marginalizing its operative effect and thereby circumventing NEPA's core purpose."[164] Robert Hahn and colleagues report a similar conclusion from their empirical analysis of regulatory impact analysis reports that government agencies responsible for various environmental, health and safety regulations are required to complete.[165] Although further research along these lines is clearly needed, the United States' experience with these regulatory initiatives does not give one much hope for optimism for the ability of social reports to improve a corporation's moral development.

VI. Establishing the Pillars

Ideally, the three pillars should work together to form a highly effective form of New Governance regulation. Corporations engaging in dialogues with their stakeholders should lead to some form of agreement on certain goals that the corporation should work toward. Development ensures that the corporation meaningfully attempts to meet those goals by adapting its strategies, operations, and corporate culture. Disclosure allows stakeholders to monitor the corporation's progress toward those agreed-upon goals and supports the next round of dialogue that revisits those goals in light of new information and experience. Directing, dissembling, and decoupling, however, prevent the social reporting process from creating any meaningful improvement in a corporation's contribution to sustainable economic development. In fact, collectively, these failures have the potential to create barriers to the achievement of sustainable enterprises.

Through the practice of social reporting, corporations signal to their stakeholders and society at large that they are meeting societal expectations of sustainable development and that further regulation is unnecessary. The signal and reality, however, are likely significantly different.[166] Thus, rather than using the social reporting process to identify stakeholder concerns, correct wrongs, and implement policies and practices consistent with the public's emerging views on sustainability, most firms are using the process to identify risks that need to be managed to protect the reputation of the firm.[167] Through social reporting, firms are purchasing the commodity of corporate social responsibility, which protects their reputation. With this protection, there is the real potential that firms can then continue business as usual or worse.[168]

As mentioned earlier, many may argue that non-market and market actors will learn to recognize poorly implemented social reports, and eventually be able to force corporations to change their ways. Evidence from organization theory, however, is not promising. For example, Zajac and Westphal[169] studied the curious phenomenon of corporations receiving market benefits from announced stock repurchase plans that were never implemented. Even with ample evidence of these practices, the markets did not "learn" and instead followed prevailing institutional logic. Likewise, some commentators have argued that we should stop giving awards for "best practices" in social reporting, and only give awards for actual performance. The concern is that an institutional logic is developing that a corporation having a high-quality social report is the equivalent of that corporation being socially responsible.

As an illustration, consider again British American Tobacco and their apparent policy of stakeholder disagreement with their practices simply requiring the need for more communication. Conley and Williams report that British American Tobacco representatives were among the "stars" at the 2003 Business for Social Responsibility annual meeting. The authors—conducting an ethnographic study of the CSR field—observed that there was "universal praise for BAT's engagement of stakeholders."[170] Likewise, a review of social reports issued in 2004 ranked BAT as having the fourth-best social report behind such firms as BP and NovoNordisk.[171]

The accolades were bestowed upon BAT despite the concerns of many that their social reports did not adequately address their major impacts on society, such as the harmful health effects of their product and their highly criticized marketing practices.[172] Moerman and Van Der Lan claim that BAT's social reporting is simply a "smoke and mirrors" attempt to gain legitimacy, and the entire project (including the external auditing) is focused solely on the process without any impact on the substance of what the corporation does.[173]

There are potential solutions for the problems of each individual pillar. Disclosure can be improved through standardization of performance indicators and mandatory reporting requirements. Dialogue can be improved by looking to political science research on deliberative democracy and perhaps implementing an industry-by-industry, or issue-by-issue forum that allows stakeholders to have a meaningful say in the performance standards corporations are expected to report on. These dialogues are occurring in such areas as international labor, but they go beyond extant social reporting practices. Development could be improved by requiring certain information dissemination practices and dialogues within the corporation. As we work through any of the proposed solutions, however, we must realize that a solution for any one pillar could have unintended negative consequences for another pillar. For example, standardization of disclosure requirements could result in the belief of disclosure as the end goal and work against the creation of processes within the corporation that will improve moral development. Thus, one goal of this paper is to set out the three requirements for social reporting under a New Governance perspective so that future researchers, policymakers, and others can begin to better understand the relationships between the pillars and the trade-offs that may have to be made to improve any individual pillar. In the next section, though, I provide a brief description of one possible solution to improve the effectiveness of social reporting overall by focusing primarily on making improvements in just one pillar but recognizing how it will impact the other pillars.

A. Finding a Solution: Is Mandatory Reporting the Answer?

To move from an aspirational goal of the ideal social report based on these three pillars to a realistic goal of improving the social performance of some meaningful number of corporations, I propose that we need an approach that relies upon disclosure as the foundation of both dialogue and development. That approach is mandatory social reporting with standardized indicators and third-party assurance. This improves the disclosure pillar most immediately by increasing the number of social reporters and ensuring that all reporters report on all performance indicators. Currently, high-profile firms that depend on their brand name and firms that belong to controversial industries are the most common issuers of social reports. This limits the potential of social reporting. Making disclosure mandatory can lead to more firms—including those virtually unknown to the general public—to change their behavior, such as has happened with the TRI.[174]

To overcome the problem of firms' issuing social reports that simply provide

positive information, standardized reporting guidelines should reduce this strategic behavior by providing a list of required indicators, such as a selection of the GRI's performance indicators. By requiring corporations to disclose on all indicators, firms cannot selectively choose their indicators. In addition, users of the reports can put the numbers in context by being able to more easily compare corporations. Currently, reporting on all the GRI indicators is voluntary, even for corporations choosing to report under those guidelines. Corporations using the GRI guidelines but not reporting on all indicators are required to indicate that is the case by self-declaring an application level of A, B, or C. The categories of compliance with the GRI's indicators should make it more apparent to stakeholders when firms are only selectively disclosing. If stakeholders then assume that non-disclosing firms are hiding poor performance and those firms are somehow punished for that poor performance, then an unraveling process should occur where top performers disclose to avoid being perceived in a negative light, which is then followed by a round of disclosures by the next best performers and so on. As shown by Hess and Dunfee,[175] however, under the current voluntary reporting regime, this unraveling process is unlikely to occur, or if it begins, it is unlikely to unravel past just the handful of top performers. In addition, recent research on social reports conducted under the GRI found that the application level has simply caused companies to claim they reported on more indicators than they actually did.[176]

As these last comments show, there is always the foundational problem of simply getting some critical mass of corporations to issue social reports in compliance with established guidelines, such as the GRI. There is natural resistance that is difficult to overcome. Managers may resist commitment to guidelines because they will lose control of the social reporting process as the GRI guidelines evolve over time. For example, with respect to social responsibility standards in general, one senior executive told the Conference Board, "We don't want to get sucked into a morass. We don't want to find that after we have been challenged for an endorsement that the standards have changed and they get defined as something other than our original commitment."[177] Suggestive of the failure of a voluntary reporting system to produce a significant number of reporters—let alone reporters that disclose on all indicators in the GRI—is the recent study commissioned by the United Nations which predicts that by 2020 fewer than 6 percent of multinational corporations will issue a social report.[178] That number of course counts all multinationals, and not just large ones, but consider also the case of the United States. Of the 100 largest corporations in the US, 32 percent issued a stand-alone social report in 2005.[179] This is a significant decrease from 1996 (44 percent) but not significantly different from levels in 1999 (30 percent) and 2002 (36 percent).[180] Likewise, a more recent study found that from April 2005 to March 2007, only 29 percent of the 545 largest corporations in the United States disclosed nonfinancial information in some format (that is, this number includes disclosures in the annual report).[181] Overall, the trends do not suggest that we will see a critical mass of social reporters any time soon.

One objection to making social reporting mandatory is that it is still too early

in our experience with social reporting to determine the content of those standardized indicators. A mandatory system does not need to be static, however, and the indicators do not need to be perfect at the initial stage. Most successful transparency-based regulatory programs in the United States (including financial reporting) started out far from perfect and instead were the result of political compromise.[182] Those programs improved over time, however, because they provided benefits to users (and some disclosers) who then pushed for improvements. Currently, due to the poor quality of social reports, pressure for improved reporting could easily start to decline, and perhaps already has. Some NGOs have stopped focusing efforts on pushing corporations to issue social reports because it diverts the NGO's resources and attention away from other ways where they can be more effective.[183] Other NGOs state they have stopped looking at social reports because they need to look at what companies are actually doing.[184] Investors resort to directly surveying corporations,[185] because they find social reports focus too much on attitudes and intentions and not enough on substantive information.[186]

To improve the benefits to current users and put us on the path to sustainable sustainability reports, the standardized indicators should be developed based on the needs of the actual expected users of the reports, such as investors or well-recognized NGOs, rather than indicators that may be more easily digested by non-specialist users. This user-focused approach is needed to create the potential for real benefits (and reduced costs) for those that will actually use the information. Even though these users may require more detailed and specific information than the GRI's "clarity" principle requires for other stakeholders, this approach is necessary to ensure that there is a driving force for social reports. To meet the needs of those stakeholders, other groups (which can be termed "infomediaries") will process the information and put it into a context and form that provides those stakeholders with more and better information in the end (as was the case with the TRI).[187] In addition, standardized indicators also will provide some benefits to those corporations that can distinguish themselves from their competitors—which are companies that are now forced to provide full disclosure on the standardized and comparable indicators—and they may also potentially press for improvements in the mandatory standards. Overall, mandatory reporting with indicators developed based on the needs of certain sophisticated users leads to more information on more corporations, and through the likely actions of infomediaries, more useful information for all stakeholders.

The improved disclosure pillar (in terms of the number of firms reporting and the usefulness of the information to users) should lead to improvements in the other two pillars. Dialogue will improve because stakeholders will now actually have access to information they can use. This reduces the power imbalances that allowed corporations to direct dialogues. In addition, it improves the quality of the dialogues. The corporation and its stakeholders can back up their claims of responsibility or irresponsibility with actual data rather than "anecdotal accounts or politically motivated claims and public relations counterclaims."[188] In addition, in an

environment where the claims of corporations and interested stakeholders must be backed up with credible evidence, then "the demands of activists and the responses of corporations become more reasonable . . . because that is what public credibility demands."[189] This data also allows stakeholders to more effectively develop solutions to problems that they can bring to corporations as part of the dialogue.

Improving the disclosure pillar also supports the development pillar. By being forced to produce certain information, top management, as well as all members of the organization, will be forced to confront the reality of their performance. Moreover, external stakeholders' claims of a corporation's irresponsibility compared to others will be credibly backed up with data. For companies that profess to be socially responsible to at least some degree, these external claims create a conflict between the company's image to outsiders and their identity as a responsible firm. As shown by organization theory scholars, this conflict can force the company to change to improve its image.[190] This internal pressure for change can be instigated by members at any level of the organization that feel a conflict with their identity.[191] Overall, this supports what Sonenshein refers to "internal social criticism," which is the moral development of the corporation from the inside and not just in response to external pressures.[192] It is also important to note that mandatory reporting does not prevent current social reporters from continuing to experiment and develop performance indicators that are more appropriate for internal use. In fact, mandatory reporting can support a bottom-up push for such activity by granting legitimacy to the ideas of social accounting, auditing, and reporting.

B. Objections and Reponses to Mandatory Reporting

As an initial matter, it is important to deal with one common response to proposals for mandatory reporting, which is that improved assurance of social reports will achieve the same (or better) results under a voluntary system. The idea is that although current reports may not be of great quality, the poor quality and lack of credibility will lead to pressures to audit social reports. Over time, improvements in the quality of assurance standards and service providers will improve social reports, since corporations will not be able to engage in dissembling or ignoring the legitimate concerns of stakeholders (directing).

There are strong reasons to be skeptical of these claims. First, there are issues with respect to the quality of assurance. In general, many argue that current practices focus simply on ensuring the accuracy of data rather than focusing on the quality of stakeholder engagement and the completeness of the report.[193] One study found that even among those social reports selected for awards in Europe for their quality, the external assurance that was conducted rarely involved interviewing stakeholders or providing an opinion on the extent to which the company attempts to respond to the concerns raised by stakeholders in strategy and operations decisions.[194] Second, even if the quality of assurance continues to improve under such standards as AA1000, few corporations are seeking external assurance of their reports. KPMG reports that only 30 percent of the Global 250 used external assurance in 2005, which is essentially

the same as in 2002 when 29 percent used such assurance.[195] In the United States, only 1 of 32 companies in the KPMG study reported use of external assurance.[196] Likewise, a 2006 study of sixty-four of the largest corporations in the world found that only 20 percent used at least a minimal level of external assurance.[197] One review of the various surveys on external assurance found that its use is actually slowing down and perhaps even declining.[198] Part of the reason may be the lack of trust that external stakeholders have in those conducting the assurance.[199] Thus, not only is there ample work to be done to increase the number of corporations issuing social reports under a voluntary system (which improved auditing will not affect, because, as discussed above, an unraveling effect is unlikely), we must also get existing reporters, as well as any new reporters, to begin assuring their reports. A mandatory approach immediately increases the number of reporters and the use of assurance. Such an approach, of course, comes at the cost of flexibility. I now turn to that criticism and others.

Critics have consistently pointed out the potential downsides of mandatory reporting with standardized indicators. The International Chamber of Commerce (ICC), for example, argues strongly against standardization and mandatory requirements by claiming that the current "voluntary and flexible" approach will "further innovation and experimentation."[200] The ICC also argues that

> [a] prescriptive approach may even discourage companies from pursuing a dialogue with stakeholders on corporate responsibility and from giving due consideration to what is important to the business and, instead, nudge them toward choosing a lowest common denominator or "tick-the-box" approach to complying with mandated reporting requirements. As a result, regulatory requirements on non-financial reporting will almost certainly lead to reports that will be of little or no value to the wide range of stakeholder audiences.

The ICC is arguing that a mandatory disclosure requirement will turn social reporting into a meaningless, *pro forma* exercise that has little relation to the needs of the company or its stakeholders in working toward sustainable development—much like the above critique of environmental impact statements. Thus, the ICC would argue, even though a mandatory requirement would immediately increase the number of reporters significantly,[201] those reports would be of such limited value to corporations and stakeholders that society would be better off (in the long run) allowing corporations to voluntarily choose whether and how to participate. Breaking down the analysis of social reporting into the three pillars identified here helps us understand how mandatory requirements should not lead to such a result if they are appropriately structured, and in the long run should do more for the goal of sustainable development than a voluntary approach.

First, as discussed above, based on the United States' experience with other mandatory transparency programs, there is reason to believe that a mandatory system focused on the information needs of actual users of the reports will result in a cycle that puts social reporting on a path of continuous improvement. Thus, a mandatory approach does not stop social reporting at a certain point in time, but puts

us on a path where stakeholders and certain corporations will demand more useful reports. Second, with actual information on a variety of corporations and an ability to benchmark the performance of any corporation against others, stakeholders will be empowered to open up dialogues with more corporations, rather than waiting for corporations to approach them. Third, requiring report indicators to be based on the needs of sophisticated users—rather than be accessible to any member of the general public—helps alleviate the concerns of over-simplification leading to reports that are not of use to anyone. Fourth, mandatory legislation legitimizes the public's right to this information and can provide stakeholders with better standing to demand additional information related to a specific concern that is not otherwise covered by a mandated indicator. This legitimacy granted to social reporting should not prevent, and would likely encourage, experimentation with better social reporting practices. A mandatory social reporting requirement should be drafted in such a manner that it is consistent with initiatives such as the GRI. The mandated indicators may go beyond the GRI requirements in some areas and in other areas not require disclosure, but overall they should be generally consistent. This would allow the handful of companies that are leaders today in social reporting to continue easily to go "beyond compliance" and produce more complete social reports than required by law. Overall, a properly structured mandatory requirement will likely cause stakeholders to demand information beyond the mandated indicators and may provide many corporations with incentives to voluntarily disclose more information as a way to provide a complete picture of their performance (if they believe that the mandated indicators create a skewed picture). This will encourage continued experimentation and provide a greater wealth of experience upon which to improve performance indicators and other report content over time.

The critics are right that there may still be situations where a corporation may focus on improving its performance on matters related to a mandated performance indicator when that company could have a greater impact on society by focusing its efforts on a matter that is not directly tied to a mandated performance indicator. However, based on the factors just listed, this seems to be a risk that can be mitigated significantly and is a risk that does not outweigh the benefits achieved by mandated disclosure, including getting more companies to focus seriously on at least some of these issues in the first place.

A final criticism against this proposal would come not from the business community, but from those seeking a more radical version of corporate social responsibility and true stakeholder democracy. Although my proposal would focus primarily on the needs of investment community members and large NGOs, the information produced is a public good that can be used in any market or political arena by anyone. Here, again, the role of infomediaries is important, and additional policy initiatives to improve the development and functioning of such groups could be useful.

As we consider the continued development of guidelines such as the Global Reporting Initiative, there needs to be a clear understanding of the trade-offs we

make when seeking to improve disclosure, dialogue, or development-based aspects of the social reporting process, as well as the potential pitfalls if we try to achieve all three simultaneously. Here, mandatory reporting with indicators based on the needs of sophisticated users does require some short-term trade-offs with the dialogue and development pillars. Ultimately, however, the benefits of more corporations providing more useful information to stakeholders, as well as the benefits of greater experience with social reporting should lead to greater progress toward the goal of sustainable development. Mandating the disclosure pillar does not hamper the voluntary development of the other two pillars and seems only to enhance it.

VII. Conclusion

Sustainable development requires corporations to make certain trade-offs between their social, environmental, and economic goals. That decision depends on the corporation's unique situation (e.g., market environment and organizational capabilities), but traditional regulation can only set minimal standards for all corporations regardless of those differences. Mandatory reporting as a form of New Governance regulation allows for variation in performance (e.g., those that can do more based on their capabilities and resource constraints should do more) but also seeks a continuous ratcheting-up of what acceptable performance should be for all corporations. If implemented appropriately, social reporting as a form of democratic experimentalist New Governance regulation can be more effective in placing all corporations on the road to sustainable development than a model focused exclusively on continually expanding the reach of traditional regulation or a model relying on voluntary initiatives by corporations. If not implemented appropriately, however, social reporting can distract attention from other forms of regulation that would be more effective, and society will actually be worse off. It is important to remember that proposal advocated here—mandating sustainability reports—is not a return to command-and-control regulation, since the only thing that is mandated is the disclosure of information and not performance outcomes.

Social reporting can be viewed as a cycle, where dialogue with stakeholders establishes expectations of legitimate corporate goals related to sustainable development, followed by the corporation working to meet those goals as well as internalizing those values through moral development, followed by disclosure of its performance, and then the dialogue begins again. The ideal social reporting process will successfully combine all three pillars, and perhaps some corporations will achieve, or have already achieved, that goal. However, it seems unlikely that many corporations will, or will even try, under our current voluntary system. Under the current system, the corporation decides what information and what quality of information to disclose (dissembling), who to talk to and what they will talk about (directing), and whether or not to actually implement practices and policies it has committed to (decoupling). To the extent that social reporting remains voluntary and a "business case" is necessary for firms to engage in the practice, then the po-

tential for managerial capture remains high.[202] As briefly outlined above, I propose a mandatory disclosure system as the best approach to meeting the demands of all three pillars in the long term.

We are clearly still in the early stages of social reporting. Although the concept has been around for decades, it is only within the past few years that these reports have become a more common—and potentially mainstream—practice. With the GRI Guidelines quickly becoming the de facto standard, there needs to be serious consideration of whether or not those standards under a voluntary approach are putting social reporting on the path to disclosure, dialogue, and development; or a path to dissembling, directing, and decoupling. As the shaping of social reporting practice continues to develop and we move toward either accountability or capture, there are many questions that must be addressed. Within the accounting literature there are numerous scholars conducting valuable empirical research on these issues. Hopefully, more scholars from other disciplines, such as the fields of management and law and society, will join these efforts and provide additional perspectives on some of the issues I have raised in this paper.

Notes

1. KPMG GLOBAL SUSTAINABILITY SERVICES, KPMG INTERNATIONAL SURVEY OF CORPORATE RESPONSIBILITY REPORTING 2005, at 4 & 11 (2005), available at http://www.kpmg.nl/Docs/Corporate_Site/Publicaties/International_Survey_Corporate_Responsibility_2005.pdf. The average was brought down by United States corporations. One hundred of the Global 250 corporations are based in the United States, but only 35 percent of those companies published a social report. Id. at 11.

2. See Lucien J. Dhooge, *Beyond Voluntarism: Social Disclosure and France's Nouvelle Regulations Economiques*, 21 ARIZONA J. OF INT'L & COMPARATIVE L. 441 (2004).

3. Hendrik Garz & Claudia Volk, *GRI Reporting: Aiming to Uncover the Truth*, at 7 (Sept. 2007), available at http://www.siran.org/pdfs/WestLB_GRI_reporting.pdf (stating that social reporting is "on the way to becoming the norm, rather than the exception" among large, public corporations").

4. For recent arguments that corporations' claims of social responsibility divert attention from potentially more effective means of attaining truly socially responsible behavior by corporations, see ROBERT B. REICH, SUPERCAPITALISM: THE TRANSFORMATION OF BUSINESS, DEMOCRACY, AND EVERYDAY LIFE (2007); Aaron Chatterji & Siona Listokin, *Corporate Social Irresponsibility*, DEMOCRACY, Winter 2007, at 52.

5. See William S. Laufer, *Social Accountability and Corporate Greenwashing*, 43 J. BUS. ETHICS 253 (2003).

6. John M. Conley & Cynthia A. Williams, *Engage, Embed, Embellish: Theory Versus Practice in the Corporate Social Responsibility Movement*, 31 J. CORP. L. 1, 5 (2005).

7. Id. at 5.

8. Wade-Benzoni et al., *Barriers to Resolution in Ideologically Based Negotiations: The Role of Values and Institutions*, 27 ACAD. MGMT REV. 41, 48 (2002).

9. The GRI refers to reports issued under their guidelines as "sustainability reports" and states the goal of these reports as furthering "sustainable development." Global Reporting

Initiative, *Sustainability Reporting Guidelines* 3 (2006), available at http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3_GuidelinesENU.pdf.

10. Stuart L. Hart and Mark B. Milstein, *Creating Sustainable Value*, 17 ACAD. MGMT. EXEC. 56, 56 (2003).

11. WORLD COUNCIL FOR ECONOMIC DEVELOPMENT, OUR COMMON FUTURE 43 (1987).

12. WORLD COUNCIL FOR ECONOMIC DEVELOPMENT, *supra* note 11, at 40; Robert W. Kates et al., *What is Sustainable Development?*, ENVIRONMENT, April 2005, at 8, 11.

13. For general reviews of these criticisms, see David Hess, *Corporate Social Responsibility and the Law*, in CORPORATE SOCIAL RESPONSIBILITY (JOSÉ ALLOUCHE, ED.) 154, 158–63 (2006); CHRISTINE PARKER, THE OPEN CORPORATION: EFFECTIVE SELF-REGULATION AND DEMOCRACY 8–12 (2002).

14. Lester M. Salamon, *The New Governance and the Tools of Public Action: An Introduction*, 28 FORDHAM URB. L. J. 1611, 1635 (2001).

15. Bradley C. Karkkainen, *"New Governance" in Legal Thought and in the World: Some Splitting as Antidote to Overzealous Lumping*, 89 MINN. L. REV. 471, 471 (2004–2005).

16. Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342, 442–43 (2004).

17. Karkkainen, *supra* note 15, at 472–74.

18. Lobel, *supra* note 16, at 343–45.

19. Id. at 357–58.

20. Id. at 443.

21. Karkkainen, *supra* note 15, at 478 (stating that "in its sheer novelty, the recent profusion of New Governance scholarship has not yet settled upon a common nomenclature, leaving even the most dedicated reader with the daunting task of sorting through and translating a bewildering babel of unfamiliar, competing, and possibly incompatible terminology, which may or may not describe similar phenomena in different terms, or different phenomena in similar terms.")

22. Michael C. Dorf & Charles F. Sabel, *A Constitution of Democratic Experimentalism*, 98 COLUM. L. REV. 267 (1998).

23. Lobel, *supra* note 16.

24. Katherine R. Kruse, *Instituting Innocence Reform: Wisconsin's New Governance Experiment*, 2006 WIS. L. REV. 645, 677–79 (2006).

25. Id. at 679–80.

26. Dorf and Sabel, *supra* note 22, at 350–51.

27. Id.

28. Id. at 382–85.

29. Freeman, *Collaborative Governance in the Administrative State*, 45 UCLA L. REV. 1, 55 (1997).

30. Id. at 55–56.

31. Id. at 77–81.

32. Dorf and Sabel, *supra* note 22, at 383–88.

33. Id.

34. Jennifer S. Lerner & Philip E. Tetlock, *Accounting for the Effects of Accountability*, 125 PSYCH. BULLETIN 255, 255 (1999). Those that provide "compelling justifications" may enjoy positive consequences. Id. See also Rubin, *supra* note 40, at 2119 ("As used in ordinary language, accountability refers to the ability of one actor to demand an explanation or justifica-

tion of another actor for its actions and to reward or punish that second actor on the basis of its performance or its explanation.").

35. Kruse, *supra* note 24, at 680.

36. Dorf and Sabel, *supra* note 22, at 383–84.

37. The TRI is part of the Emergency Planning and Community Right-to-Know Act in the United States. *Emergency Planning and Community Right-to-Know Act of* 1986, §§ 301–30, 42 U.S.C. §§ 11001–50 (1994).

38. See Dorf and Sabel, *supra* note 22, at 379–81 (discussing the Massachusetts Toxics Use Reduction Act (TURA)).

39. Id. at 380.

40. Edward Rubin, *The Myth of Accountability and the Anti-administrative Impulse*, 103 MICHIGAN L. REV., 2073, 2108–09 (2005).

41. Id. at 2109.

42. U.S. Sentencing Guidelines Manual §8B2.1(a)(2) (2006).

43. *See generally* Susan Sturm, *Second Generation Employment Discrimination: A Structural Approach*, 101 COLUM. L. REV. 458 (2001).

44. Id. at 465–69.

45. Id. at 522.

46. Id at 523.

47. Id. at 523–24.

48. Id. at 523–37; see also Lobel, *supra* note 16, at 422–23.

49. Sturm, *supra* note 43, at 548–53 (discussing current problems related to transparency and providing suggestions for solutions).

50. David Hess, *Regulating Corporate Social Performance: A New Look at Corporate Social Accounting, Auditing, and Reporting*, 11 BUS. ETHICS Q. 307, 308 (2001).

51. Archie B. Carroll and George W. Beiler, *Landmarks in the Evolution of the Social Audit*, 18 ACAD. MGMT. J. 589, 590 (1975). Although they recognize Kreps as originator of the term in this context, they acknowledge that the term may have a prior history. Id.

52. Id. at 591–93.

53. Id.

54. Id. at 593–94.

55. Id.

56. Id. at 596.

57. Some of the major works of the 1970s included CLARK C. ABT, THE SOCIAL AUDIT FOR MANAGEMENT (1977); RAYMOND BAUER & DAN H. FENN, THE CORPORATE SOCIAL AUDIT (1972); DAVID BLAKE, WILLIAM FREDERICK & MILDRED MYERS, SOCIAL AUDITING (1976); and RALPH ESTES, CORPORATE SOCIAL ACCOUNTING (1976).

58. See Raymond A. Bauer, *The Corporate Social Audit: Getting on the Learning Curve*, 16 CAL. MGMT. REV. 5, 7–8 (1973); see also SIMON ZADEK, PETER PRUZAN, & RICHARD EVANS, BUILDING CORPORATE ACCOUNTABILITY 17 (1997) (identifying the tensions between social auditing as a "management tool" or an "accountability mechanism").

59. Hess, *supra* note 50, at 311.

60. Bernard L. Butcher, *The Program Management Approach to the Corporate Social Audit*, 16 CAL. MGMT. REV. 11, 13 (1973).

61. Hess, *supra* note 50, at 311.

62. Meinolf Dierkes, *Whither Corporate Social Reporting: Is it Time to Legislate?*, 28 CAL. MGMT. REV. 106, 107 (1986).

63. Hess, *supra* note 50, at 311; Zadek et al., *supra* note 58, at 18.

64. Id. at 312.

65. Id. at 311–12.

66. Zadek et al., *supra* note 58, at 18.

67. Global Reporting Initiative, *Our History*, available at http://www.globalreporting.org/AboutGRI/WhatWeDo/OurHistory/.

68. Id.

69. Id.

70. Global Reporting Initiative, *Press Release, Heading into the 1000+ reporters*, April 26, 2007, available at http://www.globalreporting.org/NewsEventsPress/LatestNews/2007/NewsApril07NewReporters.htm.

71. Global Reporting Initiative, *Sustainability Reporting Guidelines* (2006), available at http://www.globalreporting.org/NR/rdonlyres/ED9E9B36-AB54-4DE1-BFF2-5F735235CA44/0/G3_GuidelinesENU.pdf

72. Id. at 3.

73. Global Reporting Initiative, *Sustainability Reporting Guidelines* 1 (2002).

74. Global Reporting Initiative, *supra* note 71, at 6–7.

75. Id. at 7. In addition, there are additional core indicators for members of certain sectors (e.g., apparel and footwear, electric utilities, financial services) that are published in separate supplements.

76. Id. at 8.

77. Id. at 7.

78. Id. at 10.

79. Id. at 11–13.

80. Id. at 13–17.

81. Id. at 16.

82. Id.

83. Id. at 17–24.

84. Id. at 24.

85. Id. at 25–36.

86. Id. at 5.

87. Id.

88. The SBN Bank used the term "Ethical Accounting Statement" rather than "social report." Peter Pruzan, *The Ethical Dimensions of Banking: Sbn Bank, Denmark*, in BUILDING CORPORATE ACCOUNTABILITY 63, 67 (Simon Zadek et al. eds., 1997).

89. Id. at 68.

90. See id. at 69 (describing the minimum requirements of an ethical accounting statement).

91. DON TAPSCOTT & DAVID TICOLL, THE NAKED CORPORATION: HOW THE AGE OF TRANSPARENCY WILL REVOLUTIONIZE BUSINESS (2003).

92. David Weil et al., *The Effectiveness of Regulatory Disclosure Policies*, 25 J. POLICY ANALYSIS & MGMT. 155, 156 (2006).

93. Id. at 157.

94. See Id. at 158.

95. The TRI is part of the Emergency Planning and Community Right-to-Know Act in the United States. *Emergency Planning and Community Right-to-Know Act of* 1986, §§ 301–30, 42 U.S.C. §§ 11001–50 (1994).

96. Lobel, *supra* note 16, at 376–77.

97. Id. at 377.

98. Freeman, *supra* note 29, at 18–22; Lobel, *supra* note 16, at 377.

99. Id. at 22.

100. Id. at 23.

101. Id. at 27.

102. Brendan O'Dwyer, *Stakeholder Democracy: Challenges and Contributions from Social Accounting*, 14 BUSINESS ETHICS: A EUROPEAN REVIEW 28, 29–30 (2005).

103. Archon Fung, *Deliberative Democracy and International Labor Standards*, 16 GOVERNANCE 51, 52 (2003).

104. Id. at 55.

105. Pruzan, *supra* note 88, at 69.

106. Titus Fossgard-Moser, *Social Performance: Key Lessons from Recent Experiences within Shell*, 5 CORP. GOV.: INT'L J. BUS. SOC. 105, 112 (2005).

107. Id.

108. See THE SHELL REPORT 2004 24 available at http://www.shell.com/static/envirosoc-en/downloads/sustainability_reports/shell_report_2004.pdf (indicating the importance of stakeholder engagement to determine the key performance indicators included in the report).

109. Fossgard-Moser, *supra* note 106, at 112.

110. Id. at 113.

111. Hess, *supra* note 50; Eric W. Orts, A *Reflexive Model of Environmental Regulation*, 5 BUS. ETHICS Q. 779 (1995).

112. Michael Power, *Constructing the Responsible Organization: Accounting and Environmental Representation*, in ENVIRONMENTAL LAW AND ECOLOGICAL RESPONSIBILITY: THE CONCEPT AND PRACTICE OF ECOLOGICAL SELF-ORGANIZATION 369. (G. Teubner et al., eds, 1994)

113. Rubin, *supra* note 40, at 2107–08.

114. Id. at 2108.

115. See R. EDWARD FREEMAN & DANIEL R. GILBERT, JR., CORPORATE STRATEGY AND THE SEARCH FOR ETHICS 104 (1988). The authors argue against the idea of corporate social responsibility simply meaning responsive to social pressures by stating that it "perverts the connection between ethics and strategy. In doing so, it represents a paradigm case of how not to do ethical reasoning. It is simple and easy, and wrongheaded." Id.

116. CHRISTOPHER D. STONE, WHERE THE LAW ENDS: THE SOCIAL CONTROL OF CORPORATE BEHAVIOR 121 (1976).

117. Id. at 201.

118. Id. at 202.

119. Environmental Protection Agency (Office of Environmental Information, Toxics Release Inventory Program Division), *How Are the Toxic Release Inventory Data Used?: Government, Business, Academic, and Citizen Uses*, EPA-260-R-002-004, May 2003, at 9, available at http://www.epa.gov/triinter/guide_docs/pdf/2003/2003_datausepaper.pdf.

120. Irene M. Herremans & Sandy Herschovis, *Sustainability Reporting: Creating and Internal Self-Driving Mechanism*, ENVTL. QUALITY MGMT., Spring 2006, at 19.

121. Id. at 23.

122. Id. at 23–24.

123. Id.

124. Id. at 28.

125. David Hess, *Social Reporting: A Reflexive Law Approach to Corporate Social Responsiveness*, 25 J. CORP. L. 41, 67–68 (1999).

126. *See* Josh Dowse, *Making CR Measurement Meaningful to the Rest of Business*, CORP. RESPONSIBILITY MGMT., June/July 2005, at 14.

127. Id. at 17.

128. Id. at 21.

129. *See generally*, Christine Oliver, *Strategic Responses to Institutional Processes*, 16 ACAD. MGMT. REV. 145 (1991).

130. *See* NEIL GUNNINGHAM ET AL., SHADES OF GREEN: BUSINESS, REGULATION AND ENVIRONMENT 95–134 (2003).

131. Bauer 1973, *supra* note 58, at 7.

132. For reviews of the empirical literature supporting these conclusions, see Sylvie Berthelot et al., *Environmental Disclosure Research: Review and Synthesis*, 22 J. Accounting Lit. 1 (2003); David Hess & Thomas W. Dunfee, *The Kasky-Nike Threat to Corporate Social Reporting: Implementing a Standard of Optimal Truthful Disclosure as a Solution*, 17 BUS. ETHICS Q. 5 (2007).

133. Hess and Dunfee, *supra* note 132, at 8–10.

134. Lori Holder-Webb et al., *The Supply of Corporate Social Responsibility Disclosures Among US Firms* 38 (November 30, 2007), available at SSRN: http://ssrn.com/abstract=970330.

135. See *supra* note 6 and accompanying text.

136. Hess and Dunfee, *supra* note 132, at 8–10.

137. P. Bansal & I. Clelland, *Talking Trash: Legitimacy, Impression Management, and Unsystematic Risk in the Context of the Natural Environment*, 47 ACAD. MGMT. J. 93 (2004)

138. Kimberly D. Elsbach, *Managing Organizational Legitimacy in the California Cattle Industry: The Construction and Effectiveness of Verbal Accounts*, 39 ADMIN. SCI. Q. 57 (1994).

139. James. D. Westphal & Edward J. Zajac, *Decoupling Policy from Practice: The Case of Stock Repurchase Programs*, 46 ADMIN. SCI. Q. 202 (2001); *The Symbolic Management of Stockholders: Corporate Governance Reforms and Shareholder Reactions*, 43 ADMIN. SCI. Q. 127 (1998); *Substance and Symbolism in CEOs' Long-term Incentive Plans*, 39 ADMIN. SCI. Q. 367 (1994); Edward J. Zajac & James D. Westphal, *Accounting for the Explanations of CEO Compensation: Substance and Symbolism*, 40 ADMIN. SCI. Q. 283 (1994); *The Social Construction of Market Value: Institutionalization and Learning Perspectives on Stock Market Reactions*, 69 AMER. SOCIOLOGICAL REV. 433 (2004).

140. Garz & Volk, *supra* note 3, at 61, 141 & 147.

141. Id. at 64.

142. Id. at 146.

143. Hess and Dunfee, *supra* note 132, at 23.

144. Thomas P. Lyon & John W. Maxwell, *Greenwash: Corporate Environmental Disclosure under Threat of Audit* (2005), available at http://ssrn.com/abstract=938988.

145. Id. at 32.

146. Id.

147. For a review of the empirical studies, see Berthelot et al., *supra* note 132.

148. KPMG, *supra* note 43, at 21.

149. David L. Owen et al., *The New Social Audits: Accountability, Managerial Capture or the Agenda of Social Champions?*, 9 EUROPEAN ACCOUNTING REV. 81, 87 (2000).

150. KPMG, *supra* note 43, at 21.

151. Parker, *supra* note 13, at 157.

152. *See* R. Shamir, *Minding the Gap: The Commodification of Corporate Social Responsibility*, 28 SYMBOLIC INTERACTION 229 (2005).

153. D. Neu et al., *Managing Public Impressions: Environmental Disclosures in Annual Reports*, 23 ACCOUNTING, ORGANIZATIONS AND SOCIETY 265 (1998).

154. *See* Owen et al., *supra* note 149.

155. Conley and Williams, *supra* note 6, at 6.

156. O'Dwyer, *supra* note 102, at 31.

157. Conley and Williams, *supra* note 6, at 6.

158. Owen et al, *supra* note 149, at 85.

159. For a review, see O'Dwyer, *supra* note 102.

160. Laufer, *supra* note 5; Power, *supra* note 112.

161. GWENETH NORRIS & JOHN INNES, CORPORATE SOCIAL RESPONSIBILITY: A CASE STUDY GUIDE FOR MANAGEMENT ACCOUNTANTS (2005.)

162. Markus Palenberg et al., *Trends in Non-Financial Reporting*, 15 (2006), available at www.gppi.net.

163. Ann Hironaka & Evan Schofer. 2002. *Decoupling in the Environmental Arena: The Case of Environmental Impact Assessments*, in ORGANIZATIONS, POLICY, AND THE NATURAL ENVIRONMENT: INSTITUTIONAL AND STRATEGIC PERSPECTIVES 214 (A. J. Hoffman & M. J. Ventresca, eds., 2002).

164. Bradley C. Karkkainen, *Toward a Smarter NEPA: Monitoring and Managing Government's Environmental Performance*, 102 COLUM. L. REV. 903, 906 (2002).

165. Robert W Hahn et al., *Assessing Regulatory Impact Analyses: The Failure of Agencies to Comply With Executive Order 12,866*, 23 HARVARD J. L. & PUBLIC POLICY 859 (2000).

166. *See* Linda C. Forbes & John M. Jermier, *The Institutionalization of Voluntary Organizational Greening and the Ideals of Environmentalism: Lessons About Official Culture from Symbolic Organization Theory*, in ORGANIZATIONS, POLICY, AND THE NATURAL ENVIRONMENT: INSTITUTIONAL AND STRATEGIC PERSPECTIVES 194 (A. J. Hoffman & M. J. Ventresca, eds., 2002).

167. See Laufer *supra* note 5.

168. See Laufer *supra* note 5; Shamir, *supra* note 152.

169. Zajac and Westphal (2004), *supra* note 139.

170. Conley and Williams, *supra* note 6, at 6.

171. SUSTAINABILITY, RISK & OPPORTUNITY: BEST PRACTICE IN NON-FINANCIAL REPORTING (2004), available online at http://www.sustainability.com/insight/research-article.asp?id=128.

172. Guido Palazzo & Ulf Richter, *CSR Business as Usual? The Case of the Tobacco Industry*, 61 J. BUS. ETHICS 361, 392 (2005).

173. L.C. Moerman & S.L. Van Der Lan, *Social Reporting in the Tobacco Industry: All Smoke and Mirrors?*, 18 ACCOUNTING, AUDITING & ACCOUNTABILITY J. 374 (2005).

174. Fung, *supra* note 103, at 66

175. Hess and Dunfee, *supra* note 132, at 21–23.

176. Garz & Volk, *supra* note 3, at 147.

177. Ronald E. Berenbeim and Sophia Muirhead, *Business Conduct Codes: Why Corporations Hesitate*, CONFERENCE BOARD, EXECUTIVE ACTION, January 2002, at 4.

178. Palenberg et al., *supra* note162, at 30.

179. KPMG, *supra* note 1, at 10.

180. KPMG, *International Survey of Sustainability Reporting 2002*, at 14 (June 24, 2002).

181. Garz & Volk, *supra* note 3, at 21.

182. David Hess, *Social Reporting and New Governance Regulation: The Prospects of Achieving Corporate Accountability through Transparency*, 17 BUS. ETHICS Q. 455, 461 (2007).

183. Palenberg et al., *supra* note 162, at 21.

184. Id. at 21–22.

185. Id. at 23–24.

186. Garz & Volk, *supra* note 3, at 8. This study goes on to state that they cannot reject the null hypothesis that "for the financial analyst CR/Sustainability reports are useless." Id. at 148. The authors reached this conclusion even though they had an admitted bias toward supporting the use of sustainability reports. See id. at 3 (stating "The hope of this report is to support and encourage the relatively nascent field of sustainability reporting.")

187. Hess, *supra* note 182, at 467–68.

188. Fung, *supra* note 103, at 62.

189. Id. at 56.

190. See Susan Fox-Wolfgramm et al., *Organizational Adaptation to Institutional Change: A Comparative Study of First-order Change in Prospector and Defender Banks*, 43 ADMIN. SCI. Q. 43, 87 (1998).

191. See Jane E. Dutton & Janet M. Dukerich, *Keeping an Eye on the Mirror: Image and Identity in Organizational Adaptation*, 34 ACAD. MGMT. J. 517 (1991).

192. Scott Sonenshein, *Business Ethics and Internal Social Criticism*, 15 BUS. ETHICS Q. 475 (2005)

193. For a review of the literature stating these concerns, see Brendan O'Dwyer & David Owen, *Seeking Stakeholder Centric Sustainability Assurance*, 25 J. CORP. CITIZENSHIP 77, 79 (2007). For a complete review of auditing concerns, including an analysis of the GRI's second guidelines, see Carol A. Adams & Richard Evans, *Accountability, Completeness, Credibility and the Audit Expectations Gap*, 14 J. CORP. CITIZENSHIP 97 (2004).

194. O'Dwyer and Owen, *supra* note 193, at 87–89.

195. KPMG, *supra* note 43, at 30.

196. Id. at 31. In the United Kingdom, by contrast, 38 out 71 companies reporting use of assurance. Id.

197. AccountAbility, *Accountability Rating 2006: Summary Report of Results* 2 (2006). This was a study of the 50 largest global corporations and 14 other large corporations that were used to ensure the researchers had at least ten companies in certain key industries. Id. at 3.

198. Palenberg et al., *supra* note 162, at 15.

199. Id. at 15.

200. International Chamber of Commerce, Commission on Business and Society, *ICC views on economic, environmental and social reporting* (March 4, 2005), available at: http://www.iccwbo.org/policy/society/id599/index.html.

201. The exact number would depend on the criteria selected for the mandatory requirement, such as mandating disclosure only for corporations of a certain size.

202. *See* Owen et al, *supra* note 149.