



24 February 2006

Mr John Kluver  
Executive Director  
Corporations and Markets Advisory Committee  
Parliament House  
Canberra ACT 2600

Dear Mr Kluver,

Thank you for the opportunity to make a submission to the Corporations and Markets Advisory Commission inquiry into corporate social responsibility. Given the similarity in the CAMAC terms of reference to the Parliamentary Joint Committee on Corporations and Financial Services, I have attached my submission to the PJCCFS inquiry for your consideration. I have also included a relevant paper (co-authored with Dr. Ken Cussen) which was published in the journal *Essays in Philosophy* as part of a special edition on corporate social responsibility in June 2005.

I would also like to take this opportunity to emphasise a point which often seems to be overlooked. It is obvious that corporations operating to generate financial returns may create significant social and environmental disutilities. But it is this very pursuit of profit within legal constraints which distinguishes a corporation from a government entity or NGO. This raises two key questions. First, how can corporate profitability be aligned with wider social and environmental objectives? The typical answer is to utilise taxes and subsidies together with prescribing minimum standards of stakeholder obligations. Such mechanisms are not always successful, however, particularly with respect to operations in the developing world. This leads to a second question: when profit maximising behaviour would result in adverse societal outcomes how can corporations be encouraged to sacrifice such profits?

The proposed changes to broaden the fiduciary responsibilities of directors are an attempt to address this second question. Such an attempt rests on an implicit assumption that these fiduciary responsibilities drive corporate profit maximising behaviour. But as Milton Friedman observed over thirty years ago, it is competitive markets (for capital, labour, customers and so on) that are a much more powerful force. Friedman argued that even if managers wanted to act in a socially responsible way (which he opposed on moral grounds), their companies would become less profitable and ultimately vulnerable to hostile takeover. If Friedman is right, and I think his thesis is largely persuasive, this severely limits the possible impact on corporate behaviour from legislative change to directors duties (or from corporate reporting). It may be, therefore, that we need to look at non-corporate organisational structures to deliver goods and services where there is a significant potential for adverse social and environmental consequences. In short, we must acknowledge that the square peg of the corporate form will never easily fit into the round hole of social and environmental responsibility.

Yours sincerely

A handwritten signature in black ink, consisting of a vertical line on the left, a horizontal line crossing it, and a loop on the right.

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# **Submission to Senate Inquiry into Corporate Responsibility**

James Hazelton

September 2005

## **Corporate Social Responsibility**

The starting point for most discussions of Corporate Social Responsibility (CSR) is the work of Milton Friedman (Friedman 1982, Friedman 1970/1993) who believed businesses should maximise profits within the existing legislative framework. Friedman presented both ethical (normative) and commercial (positive) reasons to support his position. He believed it was unethical for managers to deviate from profit maximisation because they:

- Are agents of shareholders and the objective of shareholders is to maximise their financial returns;
- Lack the ability to make social decisions; and
- Are not democratically elected.

Friedman's ethical arguments have been challenged by numerous authors on both Kantian and utilitarian grounds. Very briefly, Kantian ethics suggests people have inalienable rights and should never be treated solely as a means to an end, but always as an end in themselves. Kantian ethicists therefore reject Friedman's approach, as they believe it violates the rights of the other stakeholders of the firm (Freeman 1994, Freeman and Reed 1983). By contrast utilitarian ethics seeks to maximise the utility (or happiness) for the greatest number of people. Using this approach, Boatright (1994) challenges Friedman's claims on the basis that maximising returns for shareholders may not with maximise utility for society at large. Using these arguments (and others discussed in Hazelton and Cussen (2005)), Friedman's normative position is generally rejected.

A more simplistic version of Friedman's normative account is the common modern claim that 'good ethics is good business'. According to this view, the interests of corporations and the interests of the community as a whole are closely aligned, which neatly solves any ethical questions and makes significant regulatory intervention redundant. While strong ethics may translate into profits in some cases, the existence of obvious counter-examples (tobacco companies, highly polluting factories and mines, companies utilising sweatshop labour and so on) make the principle highly suspect. A common response to these counter-examples is that this alignment takes place over the 'long run.' However, as Keynes famously observed, in the long run we are all dead! More seriously, while it might be true that society eventually acts to price externalities and therefore align profitability with societal benefits, it is also clear that significant social and/or environmental harm can result in the interim.

Therefore in respect of part (b) of the Terms of Reference I suggest there is a very strong case for believing that corporations should have regard for stakeholders other than shareholders above and beyond the minimum legal requirements.

The key question is therefore whether corporations *will* have regard for such other stakeholders. Friedman claimed that they will not. He argued that even if managers wanted to they could not deviate from a profit maximising position because of competitive markets:

And, whether he wants to or not, can he [the manager] get away with spending his stockholders', customers' or employees' money? Will not

the stockholders fire him? (Either the present ones or those who take over when his actions in the name of social responsibility have reduced the corporation's profits and the price of its stock.) His customers and his employees can desert him for other producers and employers less scrupulous in exercising their social responsibility (1970/1993 p. 251-252).

This competitive markets argument (particularly when combined with the existing imperatives of the Corporations Law for directors to act in the interests of shareholders) suggests that it is unlikely that corporations will deviate from profit maximisation in any significant way.

Therefore in response to part (a) of the Terms of Reference, I suggest that corporate decision-makers do not have regard for stakeholders other than shareholders where this conflicts with profit maximisation.

In conclusion, from an ethical perspective citizens would like to see corporations having regard to stakeholders other than shareholders. However due to commercial pressures and legal requirements this is will not occur when such regard would result in lower profits for the corporation.

What can be done? While it may be desirable to impose a blanket principle requiring directors to balance the interests of shareholders with other stakeholders, it is difficult to see how this could be achieved in practice, particularly given the commercial pressures noted above. However, the Committee could consider adopting the United Nations Norms on the Responsibilities of Transnational Corporations in order to prescribe minimum standards on Australian companies operating abroad.<sup>1</sup> A possible objection is that this may harm the competitiveness of Australian companies. However, if we are to believe the rhetoric, most companies already seek to maintain ethical standards to preserve their reputation and therefore compliance costs will be minimal. Even where these costs are material, surely the benefits of protecting basic environmental and human rights comprehensively outweigh them.

While general principles are important, the main mechanism for the protection of stakeholders has been and will continue to be specific provisions enacted by the various levels of government. The community relies on the democratic process to ensure their views on acceptable corporate behaviour are translated into law. Naturally, the corporate sector is entitled to participate in the dialogue, however given their substantial access to resources it is vital to ensure their influence does not overwhelm that of private citizens. An area of particular concern is the ability of either corporations or corporate leaders in their capacity as individuals to make political donations. Such donations invite the perception of corporations being able to 'buy' favours, whether or not this is the case. As Leigh (2004) explains:

Politicians routinely deny that money influences the way they vote; money buys access, not outcomes. Yet as Kim Beazley admitted: "It is

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<sup>1</sup> A similar approach was adopted in the US through the creation of the Foreign Corrupt Practices Act 1974 which holds US firms to certain standards of ethical conduct regardless of where they operate.

simply naïve to believe that no big donor is ever likely to want his cut some time”.

Donations by highly regulated industries such as information technology have risen substantially (Crowe 2005). Critics such as Tham (2004) point to increased corporate funding predominantly drawn from large corporations. Tham suggests such funding undermines the Australian democratic system in two important ways. First it contributes to financial inequalities between parties – for example, the National Party received more than nine times more funding per vote than the Democrats or the Greens. Second it may result in the policies of the major parties being skewed towards the interests of the large corporate donors.<sup>2</sup>

Given these issues, organisations such as the Australian Shareholders Association have called for a ban on corporate political donations (Percy 2004). I endorse this position and encourage an outright prohibition on political donations including corporate donations. Not only would this improve both the practice and perception of the legislative process it would also free politicians from the necessity of spruiking for campaign contributions and enable them to focus on more important work.

Governments also play a key role in aligning the interests of the community with that of the corporate sector through intervening in the market by imposing taxes and granting subsidies. The renewable energy sector is a good example in which there are mandatory renewable energy purchases for power companies and subsidies for private solar power installation. However there are also numerous instances where taxes and subsidies are inconsistent with broader social and/or environmental objectives such as the fringe benefits tax regime encouraging higher levels of car usage and the purchase of newer cars (for a comprehensive study see Van Dyke (1999)). I suggest a bipartisan review of the current incentive structures to identify and address those that are ‘perverse’.

Finally, while I acknowledge this is outside the scope of the present inquiry, I also encourage the Committee to reflect on the question of whether the corporation is always the ideal organisational form to provide goods and services to the community. While there is a strong trend towards privatisation of government organisations, when externalities are significant and outcomes difficult to specify the corporate form may well deliver sub-optimal outcomes. Activities such as management of detention centres and essential utilities may result in negative social and/or environmental outcomes when left to profit maximising operators.

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<sup>2</sup> This problem is not confined to Australia - in a survey of 104 countries, Pinto-Duschinsky (2002) found only 16% had either partial or complete bans on political donations. In the UK, the Blair government campaigned on the issue of reforming the political donation process in 1997, but subsequently faced a number of allegations of favouring large donors such as Bernie Ecclestone and Enron. They are currently under attack over the proposal to allow companies to donate to Trade Unions without obtaining the usual shareholder approvals required for any political donations. It is alleged that the unions will simply pass the funds on to Labour, who received 66 million pounds of donations in the last governmental period (Kite 2005). In the US, concerns about the role of political donations led to the creation in 1997 of Democracy 21, a non-profit organisation which focuses specifically on this issue. Donations for the 2004 US elections totalled well over \$US750 million (Justice 2004).

## **Reporting**

In respect of part (f) of the Terms of Reference, the question of the most appropriate reporting for corporations regarding CSR issues has been debated for many years. Authors such as Hines (1988) suggest that what gets reported is critical for our perceptions of whether an organisation is 'successful' and therefore whether or not its licence to operate is revoked (though Gibson (1996) provides an alternate view). As social and environmental reporting is almost completely unregulated, it currently provides an opportunity for companies to manage reputational risk rather than meet the information needs of users. Academic research has found a *negative* correlation between reporting and performance (Deegan and Rankin 1997)<sup>3</sup>. This finding has been explained using 'legitimacy theory' which essentially suggests that corporations undertake more extensive reporting when they believe that their legitimacy is threatened (Deegan 2002). The lack of regulation can also result in misleading reporting. During the recent NSW Parliamentary Inquiry into sustainability reporting by NSW government agencies, the CEO of Integral Energy admitted under examination that the organisation had reported their positive environmental initiatives (such as using recycled paper) in the annual report but had not mentioned the negative environmental impacts from sourcing the overwhelming majority of power from coal-fired generators (NSW Public Accounts Committee 2005 p28-29).

However, there are at least three categories of the community which would find regulated, standardised corporate reporting useful. First, such information may be material to profit maximising investors. As social and environmental externalities are identified, they are eventually placed onto the firm (the tobacco industry being a good example). Therefore, an investor who better understands the environmental and social impact of a corporation has an understanding of the extent to which the future operations of the company may be affected by more stringent regulation and is able to better price the security. Second, some investors consider themselves citizens as well as economic agents and therefore wish to evaluate an organisation's social and environmental performance quite apart from any economic effects. Finally, citizens who are not direct investors may also be impacted by the firm through their position as an employee, customer, supplier etc. and/or be concerned about a particular social or environmental issue. Given the increasing influence of corporations, a strong argument can be made to require corporations to report on the impact of their activities.

Even if it is agreed that corporations should report on their activities, a key question is what they should report. There are numerous examples of sustainability reporting and suggested standards. However, as the Committee is no doubt aware, the Global Reporting Initiative (GRI) is the leading standard setting body and I see no reason why the reporting in accordance with GRI standards (or even a sub-set of the standards) could not be made mandatory. Corporations could, of course, continue to report additional

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<sup>3</sup> A prime example is British American Tobacco which won a UK Sustainability reporting award in 2002.

information as desired. The GRI has been recommended as the starting point for sustainability reporting by the Group of 100 (2003), though it has been disappointing to note their continual resistance to any form of mandatory social and environmental reporting.

Again a likely objection is that this will place an additional cost on corporations. While this may be the case I would argue that this cost will be outweighed by the benefits to investors and the community at large. Indeed, the prevalence of reporting in the absence of regulation demonstrates that corporations themselves believe that such reporting is important, albeit largely as a marketing tool.

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# The Amoralty of Public Corporations

*James Hazelton and Ken Cussen*

## Abstract

We consider whether public corporations can be ethical, using the notion of corporate social responsibility (CSR). We distinguish between ‘weak’ CSR (where corporate profitability is enhanced by pursuing social and environmental objectives) and ‘strong’ CSR (where it is not) and consider four possible positions in relation to strong CSR. First, CSR is unnecessary – good ethics is synonymous with good business. Second, CSR is unethical as the government is responsible for intervention in markets. Third, CSR is ethical and is being implemented by corporations. We find none of these positions convincing and argue a fourth position – CSR is ethical but impossible for corporations to implement due to competitive markets and the legal requirements of the corporate form. We conclude that public corporations are best considered amoral entities. In order to alleviate the inevitable negative social and environmental outcomes arising from corporate activities we suggest strengthening the regulatory environment and using alternate organizational forms to conduct economic activities.

## Introduction

The creation of the corporate form is unquestionably one of the most important inventions of humanity. Almost everything we wear is produced by a corporation (often thousands of miles away) and if we look around our home, almost every item, from the television to the lounge to the cutlery on the table has been created by the corporate system. Since the industrial revolution, the corporation has transformed the material standard of living for millions, if not billions. On this point, even Adam Smith and Karl Marx agreed. Given this success, it is not surprising that the modern corporation has unprecedented wealth and power. A recent study comparing the market value of companies to countries (measured by stock market capitalisation) found that 24 out of the largest 50 economic entities in the world are corporations (Sheehan 2005).

Corporations are not a completely benign force, however. Again both Smith and Marx were in agreement that there were negative side effects to the capitalist economy, and they particularly focused on its impact on the worker. As Smith believed education occurred primarily in the workplace, he understood increasing specialization would breed ignorance:

In the progress of the division of labour, the employment of the far greater part of those who live by labour, that is, of the great body of the people, comes to be confined to a few very simple operations; frequently to one or two. But the understandings of the greater part of men are necessarily formed by their ordinary employments. The man whose whole life is spent in performing a few simple operations, of which the effects too are, perhaps, always the same, or very nearly the same, has no occasion to exert his understanding, or to exercise his invention in finding out expedients for removing difficulties which never occur. He naturally loses, therefore, the habit of such exertion,

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and generally becomes as stupid and ignorant as it is possible for a human creature to become (1776/1998 p429).

Marx was even more scathing in his critique. Believing meaningful work is fundamental to full realization of humanity, he contended that such specialization, combined with the division of labor between the worker and the capitalist, alienated the worker from their work and ultimately from themselves. Marx states that:

The more wealth the worker produces, the more his production increases in power and scope, the poorer he becomes. The more commodities the worker produces, the cheaper a commodity he becomes. The extinction of value from the world of things is directly proportional to the devaluation of the world of men. Labour does not only produce commodities; it produces itself and the worker as a commodity (1844/1983 p133)

The ultimate result is profound alienation - as the highest function of humanity (i.e. work) is stripped of meaning, the worker is no longer fully human (1844/1983 p137).

While the debate around employee rights continues (especially in the developing world), more recently the critique of corporatism has widened to consider other stakeholders such as customers, the wider community and the environment. In respect of customers issues range from product safety and truth in advertising to allegations of bias in media companies such as Fox. Corporations have been accused of ignoring the impact they have on communities when they close factories or mine on indigenous land. The environmental performance of corporations has also come under fire, particularly in respect of pollution and resource consumption.

In the field of business ethics, such issues are typically dealt with in isolation. The pros and cons of a particular course of action can be debated and analysed. A particular corporation can be praised or condemned for their actions. However, the deeper structural issues within the world of business, particularly in respect of large public corporations, are rarely considered in depth. This is the focus of our paper.

One way of considering such structural issues is by using the notion of corporate social responsibility (CSR). Corporate social responsibility has been defined as an corporation's perceived societal obligations, the response to which generates corporate activities, reporting and status (Gray, Kouhy, and Lavers 1995; Hooghiemstra 2000). It is helpful to further refine this definition and distinguish between 'strong' and 'weak' CSR (this distinction is sometimes referred to as 'broad' versus 'narrow' conceptions of business ethics – see for example Shaw and Barry (2004 p212-214)).

'Weak' CSR is where businesses engage in socially or environmentally positive behavior but where the motivation is profit maximization. This type of CSR is typically a response to attacks on the legitimacy of corporations. As Friedman (1970/1993 p253) puts it:

In practice the doctrine of social responsibility is frequently a cloak for actions that are justified on other grounds rather than a reason for such actions . . . in the present climate of opinion, with its widespread aversion to 'capitalism', 'profits', the 'soulless corporation' and so on, it [social responsibility] is one way for a corporation to generate goodwill as a by-product of expenditures that are entirely justified in its own self-interest.

Strong CSR, on the other hand, entails a corporation acting contrary to its economic interests to pursue some other social and/or environmental objective. It means pursuing some environmental or social objective which involves a cost which will *not* be recovered either directly or indirectly through enhancement to reputation, increased customer loyalty and so on.

Since corporations seek to maximize profits, we can safely assume that they will (eventually) adopt all opportunities for weak CSR. There are widespread examples of weak CSR in action, from charitable donations to companies increasing social disclosures in their annual reports in order to legitimize their activities (Hooghiemstra 2000). Therefore, this form of CSR need not concern us, and all further CSR references are to strong CSR.

We consider a number of possible positions in relation to CSR. The first view is CSR is unnecessary – good ethics is synonymous with good business. Smith’s ‘invisible hand’ means self-interested acts result in the collective good. The second view is that while collective good does not necessarily result from free markets, any correction should be provided by government, not business. Indeed CSR is immoral – any monies managers spend on non-profit maximizing activities are stolen from shareholders. The third view is CSR is moral – corporations do have a responsibility to go beyond financial self-interest - and is actually happening. We find none of these positions convincing and argue for a fourth view – though CSR may be desirable, it is impossible for public corporations to implement due to competitive markets and the legal requirements of the corporate form.

## **CSR is unnecessary**

For some commentators the entire CSR debate is redundant as ‘good ethics is good business’. For example, the following quote is from a typical finance text: ‘In most instances there is little conflict between doing well (maximizing value) and doing good. Profitable firms are those with satisfied customers and loyal employees; firms with dissatisfied customers and a disgruntled workforce are more likely to have declining profits and a lower share price’ (Brealey and Myers 2000 p. 27). Many companies (unsurprisingly) support this view, and Shell has made it central to their public relations campaign with the slogan ‘profits and principles – does there have to be a choice?’ Indeed, Shamir (2004 p676) argues the entire notion of CSR has been framed in this way.

Some commentators go as far as believing that being ‘good’ can become a competitive advantage. A typical example is Devero (2004) who in her piece *Corporate Values Aren’t Just Wall Posters – They’re Strategic Tools* discusses how corporations ‘can use value-based strategies as tools, not just to avoid scandals and litigation, but also to achieve competitive advantage and higher profits’ (p19). (Empirical evidence as to the success of this ‘strategy’ is mixed – see Hartman (2005 p270-272)).

The root of the argument can be traced to Smith’s famous ‘invisible hand’ theory, where individuals acting out of collective self-interest create the public good:

. . . every individual necessarily labours to render the annual revenue of the society as great as he can. He generally, indeed, neither intends to promote the public interest, nor

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knows how much he is promoting it . . . he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was in no part his intention' (Smith 1776/1998 p291-292).

When applied to corporations, this means that profit maximization creates the public good. As a recent edition of *The Economist* focusing on CSR explains:

Smith was a genius because this harmony of private interest and public interest is not at all obvious – and yet, at the same time, once it is pointed out, the idea is instantly simple and plausible. This is especially so if you think not about self-interested individuals but about profit seeking companies. The value that people attach to the goods and services they buy from companies is shown by what they are willing to pay for them. The costs of producing those goods and services are a measure of what society has to surrender to consume those things. If what people pay exceeds the cost, society has gained – and the company has turned a profit. The bigger the gain for society, the bigger the profit. So profits are a guide (by no means a perfect one, but a guide nonetheless) to the value that companies create for society (*The Economist* 2005b p15).

Historically, perhaps the most important response to the 'invisible hand' was Garrett Hardin's famous *The Tragedy of the Commons* (1968). Hardin takes Whitehead's definition of tragedy being the 'remorseless working of things' and using the example of sheep herders shows how self-interested actions eventually result in the destruction of commons. If the carrying capacity of a common is say, five sheep, it is still in the interests of each herder to graze additional sheep as the incremental benefit of the herder's extra sheep is realized by the particular herder alone while the incremental cost is shared by all the herders. The commons are inevitably over-grazed and eventually destroyed. Therefore, individuals acting solely from self-interest reduce, rather than promote, the well-being of society.

The more modern conceptualization of this phenomenon is under the banner of 'externalities'. The problem is that profit does not capture the 'true' costs and benefits of transactions, only the price which is paid for them in the marketplace. (For an interesting discussion of the subjective nature of accounting profits see Hines (1988)). A factory polluting the atmosphere is using a public common but not bearing the eventual costs of acid rain or global warming. The profits of such a firm are therefore overstated. Likewise, a tobacco company may not pay the full costs of the harm that its products cause. Externalities can also be positive, such as where education results in not just a higher income for an individual but also for the country through the individual paying greater taxes. The result of mispricing such externalities is that more under-priced (and less over-priced) resources are used than would be optimal for society.

Moving beyond individual businesses, although there are some industries with little conflict between 'profits and principles' (such as waste management, alternative energy or education), in others the distinction is problematic (such as armaments, pornography, logging, gambling, alcohol, tobacco and mining). Clearly, then, wholly free markets do not produce optimal outcomes for society.

There are two possible responses to this conclusion. One is that businesses must take responsibility for addressing this problem. The other (and much more usual) response is that

market intervention is the responsibility of governments – and this neatly solves any qualms a corporation may have pursuing profit maximization. This position is considered below.

## **CSR is immoral**

The idea that business has no moral obligations beyond profit maximization can be traced back at least as far as Levitt (1958) and Carr (1968). Levitt considered that placing responsibility for social welfare on corporations was dangerous because it allowed the influence of corporate operations to extend into all spheres of society. Carr believed corporations have no social responsibility because business is a ‘game’ and so any action is moral as long as it is lawful.

Friedman (1970/1993; 1982) extended these arguments with additional sophistication. He presents three main arguments to support his position:

- Managers are agents of shareholders – as managers are not owners, they do not have the right to impose their beliefs on the owners of the firm. If owners want to support a particular cause then that is their right. However, for a large company with many shareholders there is unlikely to be consensus. Therefore, managers should distribute as much money as possible to shareholders and the shareholders can then individually support their chosen cause. A manager using company funds for a non-profitable cause is thieving from owners.
- Corporations do not have the skills to make ethical evaluations. Corporations are designed for profit and their employees are trained to create wealth. They are not equipped to deal with public policy decisions which would include social and environmental considerations.
- Corporations are not democratically elected. Therefore, they do not necessarily represent the ‘will of the people’. Thus even if a corporation had the skills to make public policy decisions it would be inappropriate for them to do so.

Central to Friedman’s position is the role of the state as the conduit for society’s wishes. The state sets the rules of the game in which business operates. Therefore if utilitarians or Rawlsians (or even libertarians) believe the outcome or conduct of the ‘game’ is unjust, they can intervene by changing the rules through the democratic process.

This is a very common view in today’s corporate landscape. For example, the Australian Shareholder’s Association advocated exactly this position in relation to corporate donations in respect of the 2004 Tsunami disaster, suggesting corporations should not make a donation unless there was a clear business case for doing so (Australian Broadcasting Corporation 2005). The Economist piece cited earlier concludes:

As a general rule, however, correcting market failures is best left to government. Businesses cannot be trusted to get it right, partly because they lack the wherewithal to frame intelligent policy in these areas. Aside from the implausibility of expecting the uncoordinated actions of private firms to yield a coherent optimising policy on global warming, say, [note the rejection of the invisible hand argument here] there is also what you might call the constitutional issue. The right policy on global warming is not clear-cut even at the global level, to say nothing of the national level or the level of the

individual firm or consumer. Devising such a policy, and sharing the costs equitably, is a political challenge of the first order. Settling such questions exceeds both the competence and the proper remit of private enterprise (The Economist 2005b a p18).

However there is a serious problem with the argument that ethical business consists of profit maximization subject to legal compliance. The argument rests on the assumption that the legislative environment directs business activity toward ethical outcomes, or at least represents the 'will of the people'. There are, however, a number of circumstances where this is not so. First, there will always be a time lag in drafting and passing new legislation. Second, it is almost impossible to draft foolproof legislation. Inevitably there will be some loophole that can be exploited which complies with the 'letter' of the law but not its 'spirit'. Third, the Friedman world ignores the influence that corporations have on regulation.

The Ford Pinto case illustrates these problems were significant even in Friedman's day. Dowie (2004) explains that the then Ford CEO, Lee Iacocca, believed 'safety doesn't sell' and had set strict limits on the cost, weight and development time of the Pinto. Due to the design and placement of the gas tank, rear-impact collisions were likely to rupture the fuel tank and explode. Ford knew this – Ford had crash tested the Pinto at a top-secret site more than 40 times and every test made at over 25mph without special structural alteration of the car resulted in a ruptured fuel tank. In 1968 the federal regulator (the National Highway Traffic Safety Administration (NHTSA)) proposed Standard 301. This Standard required cars to withstand an impact of 20mph without losing fuel. Ford used a variety of tactics to delay its introduction. Ford first claimed fire was not a significant issue for automobile safety. In response the NHTSA conducted a number of studies which conclusively refuted this claim. Next, Ford conceded that while fire may be a problem, rear-end collisions were relatively rare and therefore should be excluded from the standard. The NHTSA again conducted research which found that rear-end collisions were seven and a half times more likely to result in fuel spills than front-end collisions. Ford then argued that while fire might be present in accidents, it was not the fire but rather the impact that killed car occupants. When this argument was also rejected, Ford claimed that implementing the changes required under the Standard would take 43 months (which was somewhat surprising given the 24 month development period for the entire car). Finally, in 1977, almost ten years after the legislation was first proposed, Standard 301 was enacted. The new Ford Pinto complied with the Standard with the addition of a one-dollar part.

This case shows the difficulties facing a government, even in the developed world, to implementing legislation that curtails corporations. Ford successfully delayed Standard 301 but in so doing caused unnecessary serious injuries and deaths. The Friedman view ignores the huge influence that corporations have on regulation. Corporations have well organised lobby groups, and the resources to donate directly to political parties and attend political fundraisers. Business therefore has a better opportunity to argue its case to politicians than other community sectors.

Even Smith believed businessmen were not only likely to influence regulation, but also unlikely to promote the public interest. He stated that merchants and manufacturers have frequently claimed that what is good for them is good for the public, though the opposite is often the case:

This interest of the dealers, however, in any particular branch of trade of manufactures, is always in some respects different from, and even opposite to, that of the public . . . The

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proposal of any new law or regulation of commerce which comes from this order, ought always to be listened to with great precaution, and ought never to be adopted till after having been long and carefully examined, not only with the most scrupulous, but with the most suspicious attention. It comes from an order of men, whose interest is never exactly the same with that of the public, who have generally an interest to deceive and even to oppress the public, and who accordingly have, upon many occasions, both deceived and oppressed it . . . (1776/1998 p157)

In the modern era, this influence is demonstrated by the creation of taxes and subsidies that serve corporations at the expense of the public. In an extensive review of such government policy in Australia, Van Dyke (1999 pi) found over \$14 billion in industry ‘assistance’ was paid by the three tiers of government in the year 1998-99 and:

whilst this expenditure is an obvious boon for recipient companies, negative effects stem from such transactions and are felt both at societal and even more intensely at environmental levels . . . the practice of offering sectors such as primary production and mining continual assistance is particularly ironic considering the taxpayer pays twice; once by way of a subsidy to encourage an activity eg cropping, extensive cattle grazing and ore extraction and then again in environmental expenditure to clean up the degradation caused by that activity eg salinity, soil erosion and loss of biodiversity. Thus the Commonwealth government (not including extensive state support) on one hand extended \$1,058 million to primary production and mining in 1998-99 and at the same time spent \$5,200 million (estimated from 1996-97 figures) cleaning up the mess.

The situation is similar in the US. Shaw and Barry (2004 p161-162) point out that ‘Every year the federal government doles out an estimated \$85 billion to private business in direct subsidy programs . . . Some put total federal spending for corporate welfare at over \$167 billion a year, which is far more than combined state and federal spending on social welfare programs for the poor.’

Further, some activities do not easily lend themselves to the free-market system. An example is the case of Australian Correctional Management (ACM), a for-profit company responsible for the management and operation of the Woomera refugee detention center. It was in ACM’s financial interest to have disturbances (such as riots) at the detention center, as long as there were no deaths. This was because there were financial penalties for deaths, but the company was authorized to send additional staff in the case of disturbances for which they received above-award rates substantially in excess of what they had to pay the staff (Whitmont 2003).

Such problems are exacerbated in developing countries, which do not have the resources to create the voluminous legislation in western countries. In particular, labor laws in terms of pay, conditions and safety are often weak. Apart from the drafting, in order to be effective legislation must be enforced. This is difficult enough in a developed country, but in developing countries the situation is much worse. What laws exist are unlikely to be fully enforced due to resource constraints, difficulties in accessing geographically isolated areas and corruption. A well-known example is Nike. It has been alleged that workers in Nike factories in Vietnam receive only one toilet break, two glasses of water and \$US1.60 for an eight-hour shift. The benefits to Nike are clear - all-up labor costs of less than \$2 for items that retail for \$149 (Grace and Cohen 2001

p191). Similar claims have been made against many other public corporations such as Wal-Mart, Gap, Mattel and Disney.

Governments in developing countries may be even more prone to corporate influence. A classic example concerns Resistol, a glue H B Fuller sells in South America where it is primarily used for making shoes. However the glue has also been widely used as a hallucinogenic by street children, causing significant and irreversible brain damage. In Honduras, legislation was proposed to require the company to add mustard to the glue and make sniffing impossible. However as Hayskar (1994) reported 'When the Honduran Congress debated the oil of mustard bill in 1988, H. B. Fuller weighed in with abundant corporate charm and a plethora of seemingly well-documented studies. Overwhelmed by H. B. Fuller's lobbying, in 1989 the Congress passed a watered-down law creating a commission that would set the amount of oil of mustard necessary. After more pressure and "scientific studies" from H. B. Fuller, the commission recommended zero percent.'

Finally, an obvious problem arises in countries when there is no democratic process in place, as laws in such countries can hardly be considered to represent the will of the people. The case of Shell in Nigeria, discussed by Grace and Cohen (2001 p194-195), provides an poignant example. Shell acted in accordance with the laws of the Nigerian military dictatorship in extracting oil and building a pipeline through the land of the indigenous Ogoni people. Not only did the Ogonis receive none of the wealth the oil provided, it polluted their land and created dangerous conditions for habitation. Far from being able to influence the political process, the leader of the Ogoni protests (Ken Sari Wewa) was executed by the dictatorship. Brooks (1995) gives a graphic account of the plight of the Ogoni people:

Since Shell struck oil there in 1958 an estimated \$US30 billion . . . has been extracted and sold. Yet the poverty of the 50,000 Ogoni remained desperate, even by the harsh yardstick of the poor world. As subsistence farmers dug for yams with sticks, their naked children drank from streams polluted by the toxic chemicals of neglected oil spills. Oil pipelines snaked hard up against the farmers' mud brick huts, even though current industry practice is to site them far from human habitation. I spoke to a woman burned in one of the inevitable oil fires that had resulted from this perilous practice. Still in pain almost three months later, she lay on the earthen floor of a traditional healer's hut, her burns wrapped in poultices of leaves. When I asked a Shell spokesman about her, he said the company was 'hazy' on the details of the accident, and couldn't investigate because of tensions in the area.

The position that corporations are ethical if they merely act within the established legal framework is therefore flawed. Sorrell and Hendry (1994) provide an explicitly philosophical consideration of this position using the standard ethical frameworks of Kantian, utilitarian, Aristotelian and Hobbesian morality. They have difficulties in finding self-interested business practice moral. The problem with Kantian morality is that it demands acts are done out of duty, rather than self-interest, which is hardly endemic in the business world. As Sorrell and Hendry put it:

Are there any measures that a firm could implement in relation to society or the environment that are genuinely in keeping with Kantian morality? And could these activities be undertaken not only in theory but in practice, by a firm with real scale and

profitability? Although the question needs more space than can be devoted to it here, it seems that the areas in which broad business ethics could prove their Kantianism would be those in which a society was seen as valuable not just because it was the source of consumption and labour but because it had a value in itself. To bring this down to earth, one could imagine a society being valued because of a particular way of life or valuable institutions or customs. Examples of this sort of society do not seem to be very numerous in business . . . (p39).

Likewise, using a utilitarian framework, business fails to act ethically on the grounds that it ranks outcomes in relation to the few (in particular shareholders, but also customers, employees and managers) over the many (such as society as a whole). For example, no business would voluntarily pay more tax than required even though the additional taxation monies might substantially benefit the wider community. Applying Aristotelian or 'virtue' theory meets with similar problems. For an act to be virtuous it has to be of good character, such as courage, temperance, justice and so on. For business, however, actions out of self interest would fail the virtue test, leading Sorrell and Hendry to conclude ' . . we have not found in virtue theory a way of representing those actions as moral and self-interested at the same time' (p46-47).

It is the Hobbesian framework of ethical egoism that seems to fit business best – the problem is this demands little, if anything, that might be considered 'moral'. As Sorrell and Hendry point out:

Ethical egoism has a certain naturalness as a framework for justifying corporate social responsibility and is the framework that seems to be implicit in the thinking of real firms engaged in real ventures in social responsibility. It is also perhaps the natural moral counterpart to the prevailing political philosophy of free-market capitalism, in which the economic pursuit of self-interest by competing businesses is supposed to be for the benefit of all. But even with the addition of the social contract, ethical egoism as generally interpreted is not very convincing as a general moral framework . . . certain acts that call for a great deal of self-sacrifice, and that might therefore ordinarily be regarded as close to ideal morally, should not be done at all. It is even possible to interpret ethical egoism to be saying that it is morally wrong to perform acts that are heroic or saintly (p48-49).

After considering these options, Sorrell and Hendry conclude 'it is hard to find a convincing moral theory that both allows self-interested acts to have moral value and does not demand acts that go beyond self-interest' (p49). A critical question therefore is whether corporations actually act in this way. Do corporations sacrifice self-interest in order to serve society as a whole? The following section considers the position of those that believe they do.

## **CSR exists**

The overwhelming conclusion from the above analyses is that legal compliance is not enough *from society's perspective*. If we set profit maximization as the sole criteria for corporate performance, a number of unsatisfactory social and environmental outcomes will inevitably

result. This position is relatively uncontroversial, and Friedman's normative claim is widely rejected. It is therefore concluded that corporations should 'do more' to address such issues.

Some writers believe the role of business has indeed changed. For example, Solomon (1991) believes 'profits are no longer condemned along with "avarice" in moralising sermons, and corporations are no longer envisioned as faceless, soulless, amoral monoliths' (p356). Solomon contends business is not just about making profits:

'Profits are a means to building the business and rewarding employees, executives and investors. For some people, profits may be a means of 'keeping score', but even in those cases, it is the status and satisfaction of 'winning' that is the goal, not profits as such . . . pursuit of profits is not the ultimate, much less the only goal of business. It is rather one of many goals and then by way of a means and not an end-in-itself' (p357).

Solomon concludes that the idea of corporate social responsibility is that the corporation should serve all stakeholders, not just stockholders: 'social responsibility, so considered, is not an additional burden on the corporation but part and parcel of its essential concerns, to serve the needs and be fair to not only its investors/owners but those who work for, buy from, sell to, live near or are otherwise affected by the activities that are demanded and rewarded by the free market system . . . the purpose of the corporation, after all, is to serve the public' (p. 361).

This 'public' might be further refined as comprising the stakeholders of the corporation. Among the most influential writers promoting the stakeholder view are Evan and Freeman (1988/1993). They propose a 'stakeholder theory of the firm' which asserts (adopting a Kantian approach) that all stakeholders have rights. 'Stakeholders' can be interpreted from both a narrow and wide stakeholder view – narrow stakeholders are groups vital to the survival and success of the corporation while wide stakeholders are any group or individual who can affect or is affected by the corporation (Freeman and Reed 1983). Stakeholder theory provides a radically different perspective of the purpose of a corporation:

[it is] to serve as a vehicle for coordinating stakeholder interests. It is through the firm that each stakeholder group makes itself better off through voluntary exchanges. The corporation serves at the pleasure of its stakeholders, and none may be used as a means to the ends of another without full rights of participation in that decision (Evan and Freeman 1988/1993 p262).

Under the stakeholder model, the CEO becomes the facilitator of the interests of the various stakeholder groups rather than simply aiming to increase returns for shareholders. Evan and Freeman propose two principles for the management of such a firm. First, the firm should be managed for the benefit of its stakeholders, to protect their rights and ensure that they participate in decision-making. Second, management bears a fiduciary duty to these stakeholders as well as to the corporation as an abstract entity (1988/1993 p262).

But is it possible to implement this idea in practice? Can a corporation actually 'serve the public' given what is 'rewarded and demanded by the free market system' as Solomon believes? Can a CEO really facilitate the interests of all stakeholders as Evan and Freeman suggest?

## **CSR is impossible**

We have now reached the central issue. It is clear corporations acting solely in their self-interest cannot be considered 'ethical'. In response, some commentators contend that corporations can go beyond self-interest. However, in respect of public corporations this view is problematic for two reasons. First, corporations are constrained by competitive markets. Second, they are constrained by their legal construction.

When most business ethicists cite Friedman, they consider only his normative position (discussed above). However Friedman also made a positive claim regarding the limitations on corporate non-profit maximizing behavior:

And, whether he wants to or not, can he [the manager] get away with spending his stockholders', customers' or employees' money? Will not the stockholders fire him? (Either the present ones or those who take over when his actions in the name of social responsibility have reduced the corporation's profits and the price of its stock.) His customers and his employees can desert him for other producers and employers less scrupulous in exercising their social responsibility (1970/1993 p. 251-252).

Friedman suggests a business significantly deviating from profitable activities will not survive for long. A business might be able to 'get away' with a one-off gesture, such as when Merck developed and distributed Mectizan (a cure for river blindness) or when Levis exited China due to concern for human rights. However, the capitalist system enables those who believe they can better manage the assets of a corporation to make a takeover bid for the company. A company engaging in significant non-profit maximizing activities will have lower profits and a lower stock price. A profit-driven investor can simply purchase this stock, eliminate the non-profit maximizing activities and reap the benefits of a substantially improved stock price. As capital markets are efficient (Ross, Westerfield, and Jaffe 2002 p. 349), non-profit maximizing firm will eventually be driven to a profit maximizing position.

The problem is illustrated by the example of the Body Shop. Founded in 1976 by Anita Roddick, the Body Shop was intended to both contribute to various social and environmental causes as well as provide an example of how 'progressive' businesses could be run. In her book *Business as Unusual* she claims 'corporations operating globally can change the system to encourage trade that is fair, sustainable and devoted to good husbandry of the Earth's resources' (Roddick 2000 p28). However, after the Body Shop was listed on the London Stock Exchange in 1982, debate over the priority of financial versus non-financial objectives grew. A 'professional' CEO was brought in to manage the business in the mid-1990s, though at the time Roddick contended that the company's social and environmental agenda would continue unhindered. However, when Roddick believed the company should oppose the World Trade Organization following the Seattle protests she was unable to implement this policy. Roddick now believes her agenda cannot be achieved through a public company – she describes the stock market floatation as a 'pact with the Devil . . . you go into the stock market and the imperative is to grow – and by a small group of people's standards, financial investors who are gamblers . . . ' (Bakan 2004 p52).

Arguably even more powerful than competitive markets is the legal obligation of managers to put the interests of the stockholders first. Evan and Freeman (1988/1993) explain:

## *The Amoralty of Public Corporations*

The law of corporations gives a relatively clear-cut answer to the question: In whose interest and for whose benefit should the modern corporation be governed? It says that the corporation should be run in the interests of the stockholders in the firm. Directors and other officers of the firm have a fiduciary obligation to stockholders . . . since the corporation is a legal person, existing in contemplation of the law, managers of the corporation are constrained by law . . . [which has] guaranteed that the claims of customers, suppliers, local communities, and employees are in general subordinated to the claims of stockholders . . . (p255-256).

This principle has been enshrined by the courts in a number of decisions over the years. One of the earliest, ironically enough given the Pinto example mentioned above, involved Ford. In 1916 Henry Ford wished to use the profits of the company to lower prices to customers rather than pay dividends. The Dodge brothers were major shareholders of the company and were planning to use the dividend payments to start their own automotive firm. The judgement in *Dodge v. Ford* held that the company had to put the interests of shareholders first – what has become known as the ‘best interests of the corporation’ principle (Bakan 2004 p36). Though the judgement was in favour of Ford (as reinvesting rather than distributing dividends is not illegal), the judgement stated that ‘a business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among shareholders in order to devote them to other purposes’ (Dodge v. Ford Motor Co. 1919). Managers must put shareholders first.

This principle means a stakeholder-driven corporation is illegal. Evan and Freeman (1998/1993) argue that regulations increasingly protect the interests of stakeholders. This may be so, but the important principle is that the firm is being managed for the benefit of the stockholders subject to these regulations. As *The Economist* points out:

Of course it is always possible, as a matter of law, to create forms of managerial accountability to non-owners. Through the courts, you might say, managers are held accountable to society at large. Public policy can make managers accountable to regulators. Managerial accountability to workers can also be required by law: worker representation on company boards is mandated in Germany, for instance . . . but all such lines of accountability recognise owners as primary. You cannot deem stakeholders to be equal co-owners of a business without repudiating the very idea of ownership. And where the law does not create accountability to non-owners, there is none (*The Economist* 2005a b p21).

Even Evan and Freeman concede the present laws would have to significantly change in order to create a stakeholder-driven firm (1988/1993 p264-265).

One response to this position is to argue that even if the firm must be run on behalf of shareholders, it does not necessarily follow that all shareholders are profit-maximizing entities. This argument, however, is problematic. First, the majority of shares are held not by individuals but by other corporations (such as insurance companies) and fund managers. From the discussion above it is clear that corporate investors will seek profit maximization. Fund managers compete with each other on the basis of returns in order to attract investors and therefore also demand

maximum corporate profitability. So-called 'ethical' funds do not provide an exception to this rule. They claim investors do not have to sacrifice returns in order to invest ethically and hence must also demand corporate profitability. This fact combined with the very small size of the ethical investment sector suggests it is unlikely to significantly alter corporate behavior for the foreseeable future (Haigh and Hazelton 2004).

Finally, even with respect to individual investors, a public corporation faces a dilemma in deciding to take an ethical position. Given the voluminous literature on the subject it is clear there is no universal conception of ethics. How would a corporation know what its shareholders preferred when faced with a choice between increasing spending on recycling, improving opportunities for disabled employees or contributing to the local community sports club? Even if it conducted a survey of its shareholders there would be no guarantee that the same shareholders, and hence ethical preferences, would continue in future.

Thus when Kofi Annan stated at the 2002 World Summit for Sustainable Development 'we are not asking corporations to do something different from their normal business, we are asking them to do the normal business differently' (United Nations 2002), it was impossible for business to heed the call. In an analysis of business activities since the Summit, LeVeness and Primeaux (2004 p193) suggest there has been little attitudinal or behavioral transformation. They cite 'unyielding commitment to increasing shareholder value in the short term' as the key barrier to change. Given the commercial and legal constraints discussed above, this finding is hardly surprising.

## **Conclusions and implications**

The analysis above suggests public corporations will be profit-maximizing entities. Corporations therefore cannot act in a genuinely ethical way (and the only way they can be unethical is to deviate from this profit maximizing position). For all practical purposes, therefore, public companies are amoral. (The position with respect to private companies is similar but due to more concentrated ownership, non-profit maximizing preferences of their owners may be more readily translated into their activities. However such instances will be rare). We might not like this. We might feel that public companies have great ethical responsibility because of their power. We might even have many business ethicists on our side. But this is not going to change the fact that large companies are unlikely to substantially deviate from profit maximizing behavior, and that this will inevitably lead to adverse social and environmental outcomes.

There are two ways to alleviate these adverse outcomes. The first is to improve the regulatory process, particularly at the trans-national level. The second is to look beyond the corporate form as the main organizational structure for economic development.

If we accept corporations will profit-maximize within the legislative framework, the quality of this framework is obviously of paramount importance. From the discussion above the corporate 'capture' of the regulatory process was identified as particularly problematic. Given their resources, the corporate sector has a natural advantage in their ability to lobby politicians. In the US, Bakan (2004 p103) notes that 'in the mid-1970s the Supreme Court extended First

Amendment constitutional protection to corporate funding of elections, a decision that opened the door to corporations' near-complete takeover of the electoral process'. Even some shareholders find such donations unpalatable – in 2004 the Australian Shareholders' Association (unsuccessfully) called for a ban on political donations by listed companies, stating they effectively amount to a bribe and taint the democratic process (Percy 2004). Around the world, restrictions on corporate political donations are rare - in a survey of 104 countries Pinto-Duschinsky (2002) found only 16% had either partial or complete bans on this practice.

The other area of particular weakness is trans-national governance. This was recognized as far back as Kant. His *Idea for a Universal History with a Cosmopolitan Purpose* (1787/1991 pp. 41-53) conceptualizes humanity's past and future as a gradual progression towards the 'cosmopolitan purpose' of creating a civil society able to administer justice universally. Only such a society enables full realization of the capabilities of humanity – but it requires global rules. Other Kantian philosophers such as Rawls agree:

The idea of a reasonably just society of well-ordered peoples will not have an important place in a theory of international politics until such peoples exist and have learned to coordinate the actions of their governments in wider forms of political, economic and social cooperation (Rawls 2001 p19).

The United Nations (UN) is the obvious candidate for creating and enforcing global governance and has a long history of advocating universal human rights. Indeed, perhaps the most famous UN document is the *Universal Declaration of Human Rights* proclaimed by the General Assembly in 1948. The UN has also focused on issues of social justice and the environment under the broad heading of 'sustainable development'. Activities in this area began in 1972 with the first UN conference on the Human Environment followed by World Summits on Sustainable Development in 1992 and 2002. The UN has largely adopted a Kantian position on the universality of rights and the goal of creating a global civil society.

However the UN primarily plays a facilitative role among nation states, and with little authority its principles are not universally administered. Binding targets from the Summits, such as the Kyoto Protocol, have been ignored by countries such as the US and Australia, as it is not in their national interest to comply. If the UN and its agencies are ignored or bypassed by powers such as the US this obviously undermines the ability of the UN to provide effective global governance. (Tharoor (2005 p15) explains the competing paradigms at the heart of this issue.) In addition, the UN is not immune to corporate capture. Bruno (2005) suggests that as the UN has been starved for funding by nation states it has turned to the group with the best resources – multinational corporations – for assistance. Through initiatives such as the Global Compact, corporations can agree to non-binding targets and in receive UN endorsement in return. It is no wonder Nike CEO Phil Knight is smiling while shaking hands with Kofi Annan in the photo accompanying Bruno's article. Ma'anit (2005) discusses the case of the Kyoto protocol and suggests powerful corporate lobby groups have created a relationship of 'partnership' with the UN rather than being subject to environmental governance. Indeed, Ma'anit believes the 'bias of the UN is less about succumbing to corporate pressure and more about pursuing corporate-friendly solutions as a matter of course' (p19). Ransom (2005 p11-12) reports that in Iraq: 'the UN has been paying Halliburton \$18 million, Bectel \$7 million and Nestle \$2.6 million, through its Compensation Commission. All told, more than \$21 billion of Iraqi oil revenues have been quietly handed over

to Western oil companies since 1991. “This is the first time, as far as I know,” comments Claude Aime, who headed the Commission until 2000, “that the UN is engaged in retrieving lost corporate assets and profits”.’

In terms of global governance, another critical body is the World Trade Organization (WTO). The WTO has achieved a greater degree of authority over nation-states and multinationals than the UN (albeit within a limited scope). The WTO administers a binding dispute resolution system, with trade sanctions imposed if the WTO panel rulings are not followed (World Trade Organization 2003). However, issues such as environmental protection and worker rights are outside the scope of the WTO (developing countries actually opposed introduction of minimum working conditions via the WTO fearing they would become a smokescreen for protectionism). Therefore, while embodying the principle of universality, the main rights being upheld by the WTO are property rights. Singer (2002 ch3) acknowledges the WTO has in the past placed economic considerations above social and environmental concerns. However, he believes that due to its power, the WTO could in the future pursue these objectives or another body constituted to take its place:

we could in time come to see the WTO as a platform from which a policy of laissez-faire in global trade is replaced by a more democratically controlled system of regulation that promotes minimum standards for environmental protection, worker safety, union rights and animal welfare . . . [if not] it would be best for its scope to be curtailed by a body willing to take on the challenges of setting global environmental and social standards and finding ways of making them stick (p106-107).

Perhaps the European Union (EU) is the closest modern embodiment of an effective international legislative body constituted along social democratic rather than libertarian lines. Like the WTO, the concept of the EU originated in trade but also included the hope that the organization would help unite World War II antagonists. The modern EU is much more than just a trading bloc - the European Parliament (elected by citizens of member states since 1979) enacts laws which directly impact the millions of EU citizens. For example, in the area of human rights the EU equivalent of the UN Declaration is the *Charter of Fundamental Rights of the European Union* (European Union 2000). This document is much more specific than the UN equivalent, including clauses that ‘no one shall be condemned to the death penalty, or executed’ (Article 2), ‘the reproductive cloning of human beings is prohibited’ (Article 3), ‘the right of every worker to minimum working hours and paid holidays’ (Article 31) and so on. In addition, the EU has an annual independent review of its performance in ensuring the actualization of these rights for all its citizens (see for example the comprehensive 2003 review by the EU Network of Independent Experts on Fundamental Rights (2004)). The EU also redistributes wealth from richer to poorer member states in the form of infrastructure grants to create roads, railways and so on.

While the EU may provide an example of effective trans-national governance, from the discussion above it is apparent that laws alone can never be the answer. There will always be delays, loopholes and corporate capture of the political process. Given the inherent limitations of the corporate form, an important question is whether economic activities must necessarily operate within it or whether other organizational structures provide greater scope for ethical conduct.

Given the current prevalence of corporations it is easy to forget they are a relatively recent phenomenon. Corporations date from the East India Tea Company (est. 1600) and Sumitomo (est. 1590), but only began to be created in large numbers in the last 150 years. Other organizations created long before the first corporations still survive such as Oxford University (established around 1100) and Cambridge University (established 1209). Such institutions have been labelled non-government organizations (NGOs) but could just as easily be thought of as non-corporate organizations. While the term 'NGO' typically brings to mind charities and advocacy groups such as Oxfam, Amnesty International and Greenpeace, it also encompasses organizations such as mutual associations, credit unions and cooperatives. The last twenty years have seen the increasing rise of both the numbers and influence of NGOs - between 1990 and 1999 the number of NGOs grew from 6,000 to over 26,000 (The Economist 1999). In the corporate-centric West we might be surprised to learn that a significant proportion of the world's workers - over 750 million people - operate within cooperatives (Sanchez 2004).

NGOs are created for a particular purpose, and while NGOs obviously require financial resources to operate, they do not have to maximize profits. NGOs are not vulnerable to hostile takeovers as their ownership is not for sale on capital markets. These characteristics mean that NGOs, unlike corporations, have the potential to act in a genuinely ethical manner. Given that such organizations are established to serve a purpose other than pure self-interest, they may meet the tests for acting ethically under the Kantian framework as discussed by Sorrell and Hendry (1994), Community-focused NGOs may also meet the criteria for acting ethically under a utilitarian framework.

NGOs are also much closer both ideologically and legally to the Evan and Freeman stakeholder model discussed above. Ideologically, though most NGOs focus on a specific issue, in order to achieve their goals they require the coordination of the interests of their stakeholders. Legally, there is no requirement for NGOs to prioritize the financial interests of their members. Therefore managers of NGOs are in a position where they can adopt Evan and Freeman's mandate as facilitators of stakeholder interests.

In the economic sphere, though some charitable and advocacy groups sell goods (t-shirts, Christmas cards etc.), by far the most important organizational type is the cooperative. Indeed Mill (1909 IV.7.21) believed that if mankind was to improve, the cooperative 'must be expected in the end to predominate'. Former Costa Rican President Oscar Sanchez is an outspoken advocate of cooperatives and believes they embody a new ethic of solidarity, honesty, transparency, faith and compassion. Sanchez elected to use the cooperative structure in preference to a corporation when privatising CASTA (a state-owned sugar enterprise) as 'it was clear that selling this enterprise to private investors would have concentrated the profits in a few hands and the benefits to Costa Ricans would have been negligible' (Sanchez 2004 p34). Cooperatives are not limited to the developing world - the Mondragon cooperative in Spain employs 68,000 people and is Spain's seventh largest business organization ranked by sales volume (Mondragon Corporation Cooperative 2001 p27-28).

Of course, if we accept the proposition that, unlike corporations, NGOs have the freedom to act ethically, we must also accept they have the ability to act unethically. Recently NGOs have been the subject of much criticism - see for example Roy (2004) and Shamir (2004). Nevertheless,

alternate organizational forms such as the cooperative are worthy of serious consideration as an alternative to the flawed corporate model.

We have shown that the public corporations (and most private corporations) are inherently limited in their ability to act ethically and are best considered amoral entities. Given the size and power of corporations, this poses significant challenges for society. However, we believe improved regulation (especially at the trans-national level) and the use of non-corporate organizational forms hold promise for delivering economic progress without the adverse social and environmental outcomes typical of corporate activities.

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