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FOREWORD

CORPORATE SOCIAL RESPONSIBILITY†

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The phrase "corporate social responsibility" falls trippingly from the tongue, especially in moralistic harangue, but that same phrase has proven remarkably resistant to definitive ethical analysis or practical application. Perhaps by breaking the phrase down into its constituent parts we can discover the causes of the difficulties it poses and set the scene for the articles that make up this symposium issue.

First, then, "social responsibility." If it were the case that quite independently of the "corporate" qualifier we had a widely-shared and well-grounded sense of what social responsibility amounted to, we would have a fairly easy time of it when that qualifier was added. In fact, however, we lack both unanimity and clarity in our thinking on social responsibility. We might usefully, if crudely, characterize that thinking as caught between two conflicting modes of analysis: the one minimalist, the other maximalist.

On the minimalist account, each of us is obligated individually (and all of us collectively) to refrain from harming others just so long as they accord us the same kind of basic respect. Beyond that we are responsible only for our own dependents and only to those whom we have somehow harmed by our conduct. We are, of course, free to assist others in distress, but we are not required to do so. What we do for them is, on this account, a matter of supererogation, not a constituent part of our social responsibility.

The maximalist account is at war with its minimalist counterpart. According to this account, we are obligated to regard each member of our current generation (and perhaps also the members of future generations) as persons for whose well-being we each have some responsibility. Moral failure at-

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tends each instance of indifference to the suffering of others even when the indifferent party was in no sense the cause of the suffering party's misery. Our social responsibility, on this account, is practically boundless, as in the real world there is, and there has apparently always been, such an overwhelming surplus of misery relative to the resources and imagination of the few who in their affluence might conceivably mitigate that misery that only a certain kind of saint might be said to have discharged the debt that his or her social responsibility entails.

The two accounts employ radically conflicting imagery and appeal to equally conflicting basic beliefs for whatever normative ground they attempt to provide for themselves. The imagery of the minimalist account is of persons as independent sovereigns entering into those compacts with other equally independent sovereign persons as to them seem mutually advantageous. The imagery of the maximalist account is of persons as interdependent family members each inextricably bound to all others by bonds that cannot be severed without doing moral injury to the one doing the severing. Minimalists ground their account in the philosophical tradition that stems from Hobbes and Locke. Maximalists ground theirs in the religious tradition of the Old Testament prophets and of the synoptic Gospels, although Schopenhauer in the nineteenth century and Rawls in the twentieth have both proposed ways of grounding maximalist accounts that in no significant way rely on the moral insights implicit in the Judeo-Christian tradition.

The real world is, of course, vastly more complex than either the image of sovereignty or that of family can express. Furthermore, the world has been so badly served by literal sovereigns that one could well wonder why we would want to people it with billions of quasi-sovereigns, and the implications of family are so extensive, suggesting both paternalism and fixidness in an inescapable web of particular relations, that one might well be loathe to take that metaphor too literally either. Even if one were inclined to commit himself or herself to one of the two extreme accounts, good questions regarding how this might be done would remain. Do we help the indigent to become sovereign with respect to their own lives by declaring them to be sovereign, or does it remain true that necessitous men are not free men, that real people often have no choice but to accept conditions that no one should be required to accept? Does commitment to the ideal sovereignty of each person entail anything with regard to a social responsibility to see that the material preconditions of genuine freedom of choice are met? Similarly with respect to the maximalist account, we would need to know how to render the family imagery operational, how to reconcile its implicit requirement that the affluent virtually impoverish themselves so long as real destitution exists in the world with our competing sense that that represents altruism gone berserk, how to confer some analytic utility upon a notion so prey to sentimental abuse, and so on.

Where both extreme positions are so manifestly questionable, one might expect a position that mediates between the two extremes to emerge, but—from the vantage point of this observer at least—none has. Our scholars, like our culture, live in the tension created by our partial, half-conscious commitment to both accounts, and as a result we are sure that we have some social responsibility to the children now starving in the Sudan even if their death is none of our doing, but no clear idea of what that responsibility amounts to and no way of establishing that it exists, even for that part of ourselves that calls our certainty on this point into question.

If "social responsibility" is problematic, "corporate" is more so. Sometimes the term functions as a synonym for "business," and even then it complicates the initial problem of social responsibility enormously. Sometimes, however, it serves to distinguish one form of doing business, the corporate form, from sole proprietorships and from other forms of business association, and then it raises a host of new and mind-boggling problems. The complexity introduced by "corporate" even in its "business" guise flows from the belief that, whatever may be the case when we consider ourselves simply as persons, we have a different and diminished form of social responsibility when we act in a business capacity. If we imagine social responsibility to be a kind of external restraint imposed upon our otherwise uninhibited freedom to do as we like just so long as we respect the freedom of others, we will be inclined both to take seriously suggestions that that burden can be made less onerous and to hope for their success. If, however, we envision the relationship between the self and the requirements of morality in a radically different fashion, then both the possibility and the desirability of a "business-world" diminution of social responsibility become highly suspect.

That different fashion of relating the self to ethics perceives moral obligations not as external to the self, limiting its otherwise ecstatic freedom to be as it chooses, but as internal to it, specifying somewhat schematically the kinds of action that are essential to human fulfillment. On this account fidelity, veracity, sincerity, courage, empathy and the rest are not burdens to be shirked; they are instead some of the ingredients of human flourishing. If the business world were in fact founded on premises overtly hostile to these virtues, then it—like crime—would simply be another form of life that we would be morally obligated to avoid. But the claim that the business world is especially hostile to the moral development of those who participate in it is surely open to serious question. At the very least it presupposes an extremely dubious notion of the sort of resistance that other arenas of human interaction (the family, the academy, even the monastery) offer to the emergence of morally decent persons.

When "corporate" operates literally as a modifier of "social responsibility," matters become more complicated than when that phrase goes unmodified or when "corporate" really means "business." The corporate form of doing business, especially in its contemporary incarnation, regularly involves the separation of ownership from control, such that the managers of corporate entities put the assets of people other than themselves at risk when they make corporate decisions. The implications of this fact for the ethical analysis of corporate social responsibility are far-reaching.

If a private individual incurs an expense or forgoes a gain because of a fallible belief that a more demanding morality than the minimalist one described above requires such self-denial, that is in some important sense his or her own affair, and in the ordinary case no harm is done even if it should appear that the belief that motivated the decision was in fact a mistaken one. The analysis changes, however, when that same person makes the same sort of decision relative to somebody else's expenses incurred and profits forgone, especially where the other person has in the first place entrusted his or her assets to that individual with a view toward a maximized return. But just how the analysis changes and what results it should produce is a matter that has proven terribly difficult to resolve.

Where the stockholder and the corporate manager share a minimalist approach to social responsibility, the problem of corporate social responsibility can easily be avoided simply because problematic cases are unlikely to arise for either of them. But this is mere avoidance and no solution for as long as the moral acceptability of the minimalist account remains in doubt. If neither investor nor manager is entitled to limit social responsibility as severely as the minimalist account requires, then the fact that they measure their conduct by its demands becomes a matter of slight moral relevance. Where the manager has in his or her personal capacity a more capacious notion of social responsibility than that captured by the minimalist account, and where the manager has no way of knowing what beliefs characterize current stockholders in the firm, as is ordinarily the case with large publicly-held corporations, the manager is in a genuine dilemma. Should he or she assume the correctness of a more maximalist position and act accordingly despite the fallibility of the reasoning that underlies that position and despite the possibility that it is not held by the stockholders? Or should he or she act on the least demanding ethic that could be attributed to minimally decent stockholders? The first option risks a kind of moral paternalism, the latter a kind of moral nihilism, both of which any manager should strive to avoid.

The preceding paragraphs touch on only a few of the many hard questions that any discussion of corporate social responsibility must face. Perhaps, however, these paragraphs give the reader a sense of the importance of the issue as well as of its difficulty. Perhaps also they will function as a sort of perimeter-setting introduction to the several articles that constitute this symposium.

The symposium begins with Judge John Noonan's summary of the magisterial study of bribery that he published in book form two years ago. Judge Noonan traces the steps by which bribery has come to be recognized as an evil. He finds in our religious tradition an emergent sense that there are some goods—salvation and justice, for example—that cannot be trafficked in without their being debased. He finds in our literary tradition a parallel sense that the attempt to traffic in these goods debases the trafficker as well. He then shows how, beginning with Bacon's conviction in 1621, Anglo-American legal thinking gradually generalized and enforced the prohibition against bribery.

Judge Noonan's essay is the first in this symposium for this reason: it powerfully reminds the reader both that the morality of human practices is subject to reasoned examination—that the moral insight of a person or of an epoch can be both flawed and shown to be flawed—and that even in the business world a person becomes what he or she does. If a course of conduct leaves people furtive and grasping, oblivious to trusts that others have put in them, then that course of conduct is subject to moral condemnation, even if "everybody does it." The relevance of these points to the overall symposium should become clear once our other contributions have been sketched.

The second article in the symposium is Professor Kathleen Brickey's study of corporate liability for criminal homicide. In this article Professor Brickey uses a recent Illinois case as a springboard for an argument that there is a legitimate role for using the criminal process to police life-threatening corporate conduct. In her article she offers several quite practical reasons for believing that the policing of the workplace should not be left solely to the limited resources of the Occupational Safety and Health Administration, but she at no point calls into question the political legitimacy of that organization's existence. In fact she appears to assume it and to hope that OSHA will some day have the resources adequately to police the workplace in the interest of enhanced worker well-being.

In his article, Professor Tibor Machan proffers a diametrically opposed assessment of the value and legitimacy of OSHA, arguing that both in theory and in practice the sort of regulation that Professor Brickey would have OSHA engage in is indefensible. Its theoretical indefensibility, Machan says, can be traced back to the absolute nature of property rights and to the role that, in his judgment, the state should play relative to their vindication. Its practical indefensibility stems from the deterrent effect that he sees such regulation having on the propensity of workers to fashion those organizational and litigational initiatives of their own of the workplace as would make the need for governmental regulation unnecessary. The perceptive reader will have little difficulty locating Professor Machan on the minimalist—maximalist continuum described earlier in this Foreword.

The fourth contribution is from Professor Kenneth Goodpaster, a philosopher whose specialty is the normative analysis of corporate business practices. From his close inspection of several large corporations he has concluded that we miss an entire normative dimension of corporate life if we focus on corporations solely as moral agents while overlooking their status as moral environments. That is to say that internal to each corporation is its particular ethos or normative climate. Some encourage ruthlessness and callous disregard for everything but the bottom line; others accept the requirements of respect for others but treat those requirements as external constraints on profit-maximization; others internalize the duty of respect and make conscious efforts to square it with enlightened corporate self-interest. In his essay Professor Goodpaster explores the different ways in which a corporate ethos is sustained and transmitted, devoting particular attention to how corporate leaders can avoid what he calls "moral imperialism" in their efforts to inculcate a certain attitude towards the public in their mid-level operatives.

In the final lead article of this symposium, Professors Peter Asch and Rosalind Seneca call into question the very idea of corporate social responsibility as a way of reducing such undesirable market outcomes as air pollution and unsafe products. They argue that the companies that take exhortations to corporate social responsibility seriously risk losing out competitively to less responsible competitors, and that even those responsible firms that win out competitively are unable to legitimize their allegedly responsible conduct in ways that government regulators can simply because the former lack the political accountability that, indirectly at least, the latter possess.

This symposium also features two student essays. First, James Carr surveys existing private and governmental programs which allow a working parent to remain at home with a newborn infant and proposes amendments to currently pending federal legislation to create a paid federal parental leave policy. Second, Kristin Tomonto evaluates Professor Martin Weitzman's "share economy" proposal to eliminate stagflation in the economy and recommends a share system stock option to make implementation of the proposal more effective.

Taken together, the seven articles that constitute this symposium display the variety, the complexity, and the importance of the issue of corporate social responsibility. It might appear to be a defect of the symposium that its several constitutent parts do not share a common set of background assumptions regarding the content of that responsibility or regarding the role of the state in making sure that corporations fulfill their social obligations. The demand for consensus on such matters, however, manifests a profound misunderstanding of the value and limits of moral inquiry. Consensus is, of course, desirable and in some cases it may even be achievable. But its absence is not indicative of the futility of the entire enterprise. All it may mean is that we have stumbled upon a question that reveals to us how much tension there is among the beliefs on which we are inclined to base our moral reflection. Nothing could be more healthy than for us to focus upon that tension, inquire into its causes, and ask ourselves about the extent to which it might profitably be resolved. If the articles in this symposium succeed in stimulating that sort of inquiry, they will have served their purpose.