
BEYOND THE POLITICS OF THE POSSIBLE

Corporations and the Pursuit of Social Justice

Inter Pares Occasional Papers Series

Inter Pares is a Canadian organization dedicated to promoting international social justice. In Canada and overseas we work to build understanding about the causes and effects of poverty and injustice, and the need for social change. We support communities in developing countries to create healthy, safe and secure futures. We support people's struggles for self-determination and their efforts to challenge structural obstacles to change and their alternative development approaches.

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Corporations and the Pursuit of Social Justice

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A Contribution to *Corporations as a Factor in Social Justice* a Forum organized by
Concordia University Institute in Management and Community Development
June 12-14, 2002

*Many a ruling class has sought to erase from historical memory the blood and squalor from which it was born. As Blais Pascal admonishes with arresting candour in his Pensées, 'The truth about the [original] usurpation must not be made apparent; it came about originally without reason and has become reasonable. We must see that it is regarded as authentic and eternal, and its origins must be hidden if we do not want it soon to end.'*¹

As I understand it, this forum is primarily about social justice; it is only secondarily about corporations, and corporate behaviour and values. When we factor corporations into the struggle for justice, we must first talk about how corporations exist as a factor in creating and sustaining *injustice*. Only then can we talk about them as a potential factor in promoting justice itself.

From this perspective, when we factor corporations into the pursuit of justice, we are talking not just about Corporate Social Responsibility, or even about corporate social responsibility at all. There are several fundamental issues to be dealt with before Corporate Social Responsibility can become even marginally relevant, let alone a concrete possibility. And when we do talk about CSR, we have to assure that CSR does not presume merely a reform of corporations and the rules that governs their behaviour. It should presume a transformation of corporations, and the fundamental assumptions under which they exist and operate.

CSR, and this discussion, therefore is less about corporations than it is about a radical repositioning of the State and the Citizen vis à vis corporations and the commercial sector itself. It assumes a transformation in the structures and norms through which the state and its citizens relate to corporations and the realities they impact.

Conventional wisdom concerning policy advocacy – including lobbying governments and corporations on matters of corporate social responsibility – tells us that if we want to have influence, we cannot say some things that everyone knows to be true, nor demand measures that radically and rationally respond to what we all know. Rather, we are

told, we have to be “realistic” and “pragmatic”; we must tailor our message carefully to what political and economic leaders are willing to accept at the moment. In this milieu, the policy advocate – whether an insider or an outsider – spends an inordinate amount of time trying to calculate the limits of the acceptable within whatever institution that is being lobbied, and tailors the message accordingly.

The irony is that, of course, it is we who are being lobbied and critically influenced in this situation. The form, structures and politesse of class and political power set the parameters of our language, our social critique, and our proposals.

We are seeing a very interesting example of this right now in the ambitious Oxfam International *Make Trade Fair* campaign. The strategy of the campaign has been to meet governments (and corporations) on their own ground, and to pitch the campaign in a discourse that is consistent with the prevailing ideology and economic catechism.

What has been the reaction to round one, launched the last week of April, 2002? On the one hand, many natural allies of Oxfam, north and south, have been critical of the message and assumptions of the campaign.² They argue that the campaign's premise – that increasing “market access” to the global economy will benefit, small (peasant) family producers – ignores the negative impact on local and national economies that export agriculture entails. These effects, the critics say, actually destroy the livelihood of most small producers and other local industry that relies on small producers. While a few may benefit, the majority lose, and are made redundant to the new economy.

At the same time as this critical response was coming from NGOs north and south, the Commission of the European Union issued a press release *welcoming* the Oxfam report. The release could barely conceal EC delight at the opportunity the campaign was providing for the EC to pitch its own policies – policies that Oxfam in the past has condemned, and to some extent continues to critique in this campaign. The EC clearly comes out on top, and cleverly so, by “welcoming” the Oxfam campaign as a “useful contribution” and declaring the analysis of the report as very close to its own: “*not only is trade crucial in combating poverty, it is also a powerful motor for development.*”

Now, this statement is an ideological generalization, and the documents of the U.N., the OECD, and the EC itself significantly nuance and condition the assertion even as it stands. I can say this with some confidence because I have participated in this debate from the inside, and have seen what the experts “know” and how the documents are negotiated and developed.³ But this is a PR war, and the EU press release is propaganda. The press release spins the big assumptions of the Oxfam report in its own favour – indeed appropriates the conclusions to its own ends – while dismissing the deeper analysis and critique that Oxfam has tried to bring to the debate. In welcoming the report and appropriating its conclusion, the EC pre-empt the debate and finesses the policy activists of Oxfam as neatly as you will ever see. I am sure that many of you have experienced the frustration of being finessed in precisely the same manner.

From this starting point, I want to frame our discussion by talking a little about the wider context in which this discussion is taking place, so that some key issues and assumptions are explicit from the outset for open examination and debate.

The Context of Modernity and the Hegemony of Market Capitalism

As I have detailed elsewhere⁴, the project of modernity began with the conviction that there is a natural order, design and progress in things, and that humans, as part of this design, have the capacity and responsibility to promote and direct progress through the application of science and technology. Within this framework, progress is equated with technological invention and capitalist enterprise, industrial development, economic growth, and the expansion and integration of markets. These have come to be the *essential* human activities, the normal and natural vocation of all human beings and societies. In the 20th century, modernity converged as the concerted program to bring the entire planet into one clear and unified road of progress, a road that is explicitly the road

of liberal capitalism. Within this framework, all problems and catastrophes that emerge within the project of modernity and progress are seen as quirks in the normal and natural course of things – indeed as aberrations – in spite of the fact that these effects are not rare at all, but the norm. They are a common element that marks our era.

In spite of this self-evident reality, social, cultural, economic and environmental disaster continue to be described as deviations from the march of progress, rather than as intrinsic to the project of global capitalism itself.

The Politics of Utility

How are the pervasively negative effects of “progress” rationalized and justified? At the core of the capitalist ethos is the ethics of utilitarianism. The criteria of politics and action are utility and pragmatism: *what is useful is true, and what works is good.*

The golden rule of the ages, “do unto others as you would have them do unto you” – a rule which in these times could be re-phrased: “guarantee for all what you expect as a right for yourself” – is replaced by the reductionist utilitarian principle, “the greatest good for the greatest number”. Pragmatism replaces justice as our guide. Individual morality and personal ethics are replaced by technique and disembodied social engineering.

Cloaked in the language of objectivity and good intentions, utilitarianism is promoted as democratic and inclusive, where the best thing possible is always done, and the majority always benefit. To the contrary, it is most often undemocratic and exclusionary, and *always* begins with the assumption that some people – a *lot* of people – must lose.

Utilitarianism is a win-lose proposition based on the explicit and calculated exclusion of some – often the majority – for the benefit of others. The cost/benefit analysis is virtually always done by those in a position to ensure their own interests, or by their proxies – including people like us in NGOs, universities, research institutions, and community agencies – operating in professional capacities.

In this context, the greatest dilemma of social justice advocates, including the CSR movement, is that we risk becoming an intrinsic part of the system that we should be committed to transform. Our role as advocates often becomes “to ameliorate the worst effects”, to care for those who cannot adapt, those who are left behind – that is, in effect, to “put a human face” on capitalism, corporatism, and the effects of economic globalization.

But of course, the issue is: *who* benefits and loses, and *who* decides? When a cost-benefit calculation is made, critical

issues include who makes the calculation, who benefits, and who pays the cost. And when we presume to make this choice on some calculation of a greater good for a greater number, what of others – the *lesser* number – who not only do not benefit, but actually pay the freight for the rest of us, often at the cost of their communities, their livelihoods and their very lives?

The choice of who pays, and who is left out, at the table of globalized progress, is not haphazard. We know who they are, and their characteristics – race, gender, and class – and we know where they live. As Susan George has said:

Politics used to be about who ruled whom and who got what share of the pie. Aspects of both these central questions remain, of course, but the great new central question is, in my view, “who has got the right to live and who does not?”. Radical exclusion is now the order of the day.⁵

The sustained project of a movement for social justice, including a movement to factor corporations into the pursuit of justice, should be to empower precisely those who are at the short end of the utilitarian equation: the permanently marginalized who are not scheduled – today, or tomorrow, or ever – to be included in the greater good that utilitarian pragmatism and its corporate sponsors promise.

I was chatting one night with a Peruvian friend presently working within the UN system. At one point we were talking of the work of Gustavo Esteva and his critique of development economics and the caricature of the poor such economics promotes.⁶ My friend exclaimed that we should be talking less about poverty, and more about *wealth*, and particularly the obscenely-increasing gap between the rich and the poor across the world, south and north. Indeed! If we are to confront the effects of poverty, ultimately we must confront wealth and its privilege.

A decisive obstacle to profound progressive social change – that is, fundamental social, economic and political transformation – is our fatal tendency to want things to change, without really changing anything – especially changing anything that affects ourselves.

But – and I think we all know this – we simply cannot transform the world without in the process transforming ourselves. We cannot stay fabulously rich and still pretend that we are committed to eradicating poverty. We cannot maintain our privilege, if doing away with inequality means – and does it not mean this? – that our privileges must be shared equally and universally. (The root of the word privilege is “private law”, as the root of the word deprivation is “the loss of the private”.)

And if privilege is shared, is it indeed no longer privilege, but a commons? Even if our goal at the outset is more gradualist and reformist, does not pursuit of justice imply at least a reduction of privilege, if not its outright eradication? And whose privilege is to be reduced, if not our own? And more specifically, whose privilege is to be reduced if not corporate privilege, and the private law accorded to corporations – the private law obscured within the mantra of economic “deregulation”?

If we are truly to engage in the pursuit of justice, we need to give breath and heart to alternative ideas to create and conserve vibrant, tolerant, caring and dynamic societies. It is a role of nurturing mutual support and social solidarity, of promoting values of social responsibility and reciprocity, of supporting and mobilizing citizenship in the interests of the entire community.

If any of this is to happen, capitalism itself has to be transformed (an ambitious enough project for any of us to devote a lifetime to!). And if corporations are to be a *positive* factor in the pursuit of justice they must 1) refute and reverse their relentless campaign to consolidate the neo-liberal revolution in public policy; and 2) participate actively in the task of rolling back the disastrous erosion of public control and accountability over corporations, their practices and their profits. Interestingly, this discourse is infiltrating the Davos circle as a reformist agenda almost at the same pace as it is promoted as a radical project by the activists who have made Puerto Alegre their counter-symbol.

What could be the agenda for this corporate transformation? The International Forum on Globalization, one of the forces behind the Puerto Alegre movement, outlines six “strategic options”⁷ that could certainly occupy us for a little while:

- 1) Corporate Responsibility (emphasizing voluntary reform and CSR codes);
- 2) Corporate Accountability (emphasizing legislated reform and codes);
- 3) Corporate Removal (emphasizing the forced relocation of corporate operations through citizen action at the local level);⁸
- 4) Corporate Re-chartering (emphasizing citizen participation in the process of granting, and revoking, corporate charters);
- 5) Corporate Restructuring (emphasizing a fundamental legal re-definition of the corporation as such, for example by targeting the legal construct of “limited liability”; and,
- 6) Corporate Dismantling (emphasizing the elimination of corporations as publicly-traded, limited liability entities).

The International Forum on Globalization also addresses the problematic of what it calls “corporate-state collusion”, outlining strategies that emphasize the elimination of bribery and corruption; tighter regulation of big business lobbying; the elimination of “corporate welfare”, special rights, and special exemptions; and establishing clear liability of corporate officers and shareholders for corporate wrong-doing.

It is said that politics is “the art of the possible”. To the contrary, politics *could* be the art of the possible. But historically, politics has largely been the business of persuading people that various transformative social visions and courses of action are *not* possible.

In the final analysis, this is what is at stake in our deliberations. Policy is made by people. People like ourselves. It takes courage and political will to challenge conventional irrationality and the balance of forces that reinforce prevailing policy prescriptions and maintain the world in its present trajectory. But other choices are possible. And if enough persons share a choice, and they have political power, that choice is not only possible, it is inevitable. As Francis Ponge tells us, “Beauty is the impossible which lasts”.

Amelioration and Transformation

Much of this debate revolves around the dichotomy between amelioration – advocacy to make things better; and transformation – activism for fundamental structural change.

Let us admit at the outset that we do not have the luxury of leaving the dichotomy intact, of choosing one and leaving the other. We will never be able to make things better unless our goal is to change things fundamentally. But we will also never change things fundamentally unless we are willing to work to make things progressively better by building social movements and creating living, working alternatives to the present structures. The enemy of both strategies is the person who argues either exclusively, at the expense of the other.

It is a disarming cliché of reformers that “best” is the enemy of “good” – that those not satisfied with anything but the most radical result undermine efforts of pragmatic “realists” to achieve good, although perhaps not perfect, measures that are within reach “now”.

It is well to remember that the corollary of this maxim is, inevitably, that the “good” is also enemy of the best, in precisely the same manner. The tendency to dismiss radical long-term goals to achieve some more limited good in the short-term, often undermines significant change proposals that are fundamental to the pursuit of justice, and

marginalizes those who make them. Those who set their sights on the basis of what is presently deemed “politically possible” too often resist and block the way to those who propose to change precisely the definition of what is considered possible, and create *new* possibilities.

The way out of this in our discussion is that we have to strive for the best possible result by doing “good” things that themselves contain the seeds of the better, and the best – that is, measures that contain the seeds of their own transformation, and ultimately the transformation of society. And this strategy should be open and explicit – what I have called elsewhere, an “open conspiracy”⁹ – rather than guising our strategies in moderate subterfuge that only reinforces the status quo.

In this, may I suggest that we take as our guide Stephen Viederman who offered these “parting thoughts” a few years ago on his retirement from the Jessie Smith Noyes Foundation:

A few years ago the report of a meeting on the future of philanthropy observed that “many social problems like poverty might best now be thought of as organic to capitalism and not subject to ‘cure’”. This is a stunning, and I believe, correct observation. As such it refocuses the challenge for change. The real issue becomes: how to progress from a capitalist economic model that tolerates or even creates poverty – the symptoms – to inventing an economic system that values equity, justice and the environment – the vision. Self-consciously identifying alternative paths inevitably leads to an examination of systematic constraints to change.

Positive change can occur at three levels: amelioration, reformation, and transformation ... amelioration rather than transformation seems organic to philanthropy at this time. However, this can be changed. Engagement with the power dynamic in society is necessary. Otherwise the status quo will be maintained.¹⁰

The same can be said of the social justice movement, and particularly those of us working to hold corporations accountable for their effects on society.

Realism and Idealism

Another cliché that people might be tempted to draw out in this forum is the distinction between the idealist and the realist, between the pragmatic achiever and the ineffective dreamer. Again a false, and treacherous, dichotomy. Each of us is, and must be, both. And the most effective of us is the one who acts on present reality on the basis of ideas

about the future. The most effective among us is the person who acts today on the basis of what she knows about existing reality, to achieve a future she is determined could be possible if the things that prevent that future were changed.

To this end, we might adopt Marcuse's device of working in two "dimensions".¹¹ This means examining critically what really is – one dimension of reality – while at the same time defining what is not yet, but which could be – a second dimension of reality. We can try together to live in the future, now. If we can do this, we can begin to imagine how to transform the present world, and ourselves, to create a new one.

Justice

I said earlier that this Forum is not primarily about corporations, but about justice, and the pursuit of justice. The definition of justice that I propose is simple, but difficult. I borrow from Andrea Dworkin – that most remarkable, courageous and relentless of feminist social critics. Dworkin asks simply for a world that offers "one common standard of dignity and opportunity for all".¹² This is the definition of justice I propose for this forum.

Let us use this standard in taking into account corporations, and the economic structures that promote and sustain them, as a factor in the pursuit of justice. How can we ensure that corporations do not undermine the achievement of one common standard of dignity and opportunity for all human beings on this planet? And how can we transform commerce, and the corporations that we have empowered to enact commerce on our behalf, so that they proactively contribute to creating and maintaining a common standard of dignity for everyone living on this precious planet?

Market corporate capitalism is a repudiation of the idea of justice as a natural principle and replaces justice with the feel-good notions of "fairness" and "fair play" and the "level playing field". These are not political concepts at all, but simple sports metaphors, and false metaphors at that. Life is not a game, nor is economic competition a game. Commerce is not a game, nor is profit-making. It is a transactional exchange, and if the exchange is unequal, it is a win-lose transaction. Market capitalism is not a game; it is more like war, and war is one of its foremost means, and often a business in-and-of-itself.¹³ The goal is to obliterate competition – not to foster it – and to concentrate wealth and economic power.

Wendell Berry has written a remarkable essay called "The Idea of a Local Economy". In it Berry declares,

The "law of competition" does not imply that many

competitors will compete indefinitely. The law of competition is a simple paradox: Competition destroys competition. The law of competition implies that many competitors, competing without constraint, will ultimately and inevitably reduce the number of competitors to one. The law of competition, in short, is the law of war.¹⁴

This is simply true. We see it daily. The increasing concentration of wealth and economic power is stunning. And the implications are profound and stark, because the law of competition, the law of war, is against the law of life, which is the law of diversity and interdependence.

Corporations are in a constant war mode; we must convert them to a peace mode. They are in a mode that is anti-life, and we must convert them into a mode that promotes life, defined by qualities of sustainability, diversity, mutuality, nurturance and interdependence.

Holding corporations accountable, then, and promoting corporate social responsibility, is not about changing the "rules of the game", but changing the "game" itself.

Justice is not a relative concept. We do not have more or less justice. We have it or we don't. The problem is not how to pursue justice, but how to eliminate injustice; the problem is not merely the conditions of poverty, it is the conditions of wealth.

There is a point at which profit itself is a social evil, as we see in the malignant concentration of wealth; in the bleeding of communities and local economies; in ecological, cultural and environmental destruction; and especially in the deepening poverty of fully one third the population of the planet, and the sustained poverty of another third.

It is important to note in our efforts to confront the hegemony of corporate rule that the basic assumptions underlying the current economic and political debate are essentially theological and ideological, rather than scientific. Capitalist economics (as Robert Heilbroner points out, "the only kind of economics there is"¹⁵) is limited to the study of capital, its creation, distribution and demise, and is incapable of studying or describing anything else in the "economic" realm. This economics is firmly rooted in an ontology – a paradigm of human nature, and of Nature itself – with fundamentalist theological and religious antecedents that are firm, dogmatic and absolute. Within this severe limitation of scope, this economics is most often applied as a post-hoc apologia for ideological prescriptions, rather than as an open-ended and critical inquiry. And in this regard, economic constructs and discourse are almost entirely metaphorical. This is OK – this is true of most

social science, and much of “natural” science as well – but we should recognize it.

For example, “trade” actually is not trade at all, but commerce; trading has been largely outlawed, and “free” trade is only extant on the greenest, and poorest, fringes of national economies.¹⁶ Commerce is now the exchange of “money” for commodities and services, and money itself is the single largest commodity that is exchanged: currency speculation and related ephemeral forms of market speculation lead all purchases made daily around the world. (Weapons, pharmaceutical and recreational drugs, and people are close behind: second, third and fourth, in that order). As Pietro Paolo Masina relates, “trade-related financial flows account for only 3 percent of the capital circulating in the financial markets every day. Even the largest corporations realize more profits on the financial markets than on selling their traditional products.”¹⁷

In the same vein, much is made of protecting “profitability”, which refers to return-on-investment. The issue of profitability begs the question: whose investment vs. whose return? And at what cost, and at whose cost?

On May 13, 2002, the *Globe and Mail’s Report on Business* fretted about the crisis of rising employment in Canada – what would appear to most of us to be *good* news, since it means that at least some unemployed Canadians are finally beginning to find decent jobs after a long period of high unemployment. For the *Globe* commentator, however, this was a very bad sign for the business community, indicating a lowering of “productivity” – that is, profit ratios. Bad for “the economy”, the article shouted. What economy? *Whose* economy?

In calculating “investment” the real cost of infrastructure, waste, environmental degradation, ecological disruption, pollution, and community health are never factored. We hear from the business lobby the mantra of “user fees” to reduce government expenditures, but these are always applied to consumers, not to corporations. Why do we have so many publicly-funded roads, and so few railroads and rapid transit? In Ontario, it is public policy to relentlessly pave over farm and forest to promote the trucking and auto industries.

All business is subsidized by the state, and by workers, and by nature. This subsidy obscures the real cost of doing business, and has to begin to be calculated and counted if the idea of corporate social responsibility is ever to be anything but a sham. Tax freedom day – that day at the end of June when individual Canadians on average have earned that proportion of our annual wages that goes to taxes – arrives for virtually all corporations in early

January before the twelve days of Christmas have ended. Some Christmas present! Santa is not the only one laughing all the way to the bank.¹⁸

“Competition” and “risk” are two other words that form the magic mantra of free-market capitalism and corporate values. In fact, they are qualities that are avoided rather than promoted. The system promotes the privatization and concentration of profit and wealth, while externalizing the risk and the cost.

The mechanics and object of market capitalism is to limit competition – through the concentration of capital and other means of production – not to increase competition; and to eliminate risk, not to manage and profit from it. The risk is almost entirely socialized by diffusing, in both direct and hidden ways, the costs and losses to the public and the commons, off-loading risk to the public sector and the “public” itself – elsewhere, and for other ideological purposes, called the “stakeholders”.

This last metaphor – stakeholder – is the most insidious in the neo-liberal revolution and has been adopted by the federal and provincial governments in Canada with a passion, but also unwisely taken on by social justice advocates as well, including those in the CSR movement.

Citizens are not stakeholders. And the community, let alone the nation, is not a corporation, nor is it property, nor “capital”. The government is not the manager of our collective “stake”. Yet without announcement, stealthily, we have become “stakeholders” in society, rather than citizens, as though society is merely an economic enterprise rather than a collectivity of citizens and interacting communities.

We have become fee-paying “clients” of our governments, as though basic social services are commodities rather than the entitlements of citizenship. Hospitals have been closed, schools boarded up, the local governance structures of towns and cities – many older than Canada itself – disbanded and amalgamated, all at the hands of politicians who see themselves as corporate managers rather than public servants. Education, health care and other basic social services, roads and highways – even our most primary natural resources such as water – are being privatized, and turned over to corporations as profit centres. And those who join together as responsible citizens to advocate different social priorities and policies are spurned as “special interests”, and a threat to good government.

This description of developments in Canada applies in every country in the world – and more tragically so in the countries in the south, which have been cruelly set back in their struggle to establish social democratic traditions

that Canadians, until recently, have enjoyed for decades as a right of citizenship. The strategic effect of prevailing economic policy has been to liberalize – that is, “free” – international financial and commercial enterprises from the influence of governments, through the deregulation of trade and commerce and the privatization of the social functions of the state. In this process, the idea that national governments should promote and protect the common interests of citizens has been betrayed, while private corporations have come to enjoy rights that no individual citizen can claim.

The prevailing economic ideology declares that the logic of the market is the motor of society, rather than that the logic of society itself should determine the mechanisms of the market and the economy. This fundamental inversion isolates and marginalizes those already remote from market mechanisms, and disenfranchises large swaths of entire societies – often a significant majority of the population. With the withdrawal of the state from its role as the promoter and protector of general social welfare, and the privatization of even the most essential social services, the affluent can purchase all the services they wish – water or electricity, education or medical care, police protection or legal assistance – while others have access to nothing, even the resources required to respond to their most basic needs. To the limited extent that the state intervenes to provide meagre assistance to those in need, it is dispensed as charity, not as an entitlement of citizenship. The result is a system that reinforces deep economic and social disparity in society, and in which the basic rights of citizens are privatized and commodified – available for purchase, but only for those with the means.

At the same time the private sector virtually “owns” the public sector, since governments have shifted from self-financing debt through their own monetary instruments – true public debt. They have turned over public debt to private financial institutions, to whom the government now must pay interest rather than simply paying interest into the public purse. This literally give banks the right to print money – once the exclusive prerogative of the Central Banks of the state. And since the money they lend to the government is not actually on hand (the amount of mandatory reserves that banks must hold has diminished precariously in the last few decades), these private financial institutions profit from the perpetual interest on public debt, at no cost, and no risk.

This practice presents the financial sector with a staggering windfall. Added to this windfall is the recent revolution in Canada Pension investment policy, which allows – in fact, requires – the public pension plan to invest its capital

(that is, to speculate) in the private sector equity and bond market. Through these two measures, the public sector has created an incredible infusion of no-cost, no-risk cash into the markets, all of it flowing primarily to banks and other financial institutions, and a few key industries that are in fact floated artificially by this constant infusion of low-cost public money.

All of this is essentially one more type of tax expenditure whereby ordinary citizens subsidize the same private corporations that aggressively lobby against public investment in universal social programs and social infrastructure that benefit the broad public and society as a whole.

What extra responsibility to society have these windfalls brought? None at all. To the contrary, accountability has been reduced, since governments which are responsible to all citizens have divested responsibility to corporations which are accountable only to their own shareholders, and then only remotely and symbolically.

It is in this light that corporate crime and malfeasance have to be seen, as yet one more social cost of “doing business”. In a section called “Corporate Crime and Wrong-Doing”, the original discussion paper of the Canadian Democracy and Corporate Accountability Commission (CAC) stated:

In the United States, reports from a decade ago suggest that every year approximately 30,000 people were killed and 20 million seriously injured from unsafe consumer products. Industrial accidents, many stemming from corporate cost-cutting exercises, claimed some 14,000 lives a year. Occupational diseases resulted in the death of 100,000 people. In Canada, in the mid-1980s, a worker died every six hours on the job. Studies suggest that more than half of these fatalities resulted from unsafe or illegal working conditions. And yet, while all political parties loudly denounce crime in the streets, corporate crime is, by comparison, badly neglected.¹⁹

If profit depends on limited liability, who pays for the phenomena for which corporations are not liable? Bhopal, Exxon Valdez, the Placer Dome spill disaster on Marinduque in the Philippines²⁰, or the Westray disaster right here at home: although there has been some liability, the real costs will never be “paid”, and in any case, money simply is not sufficient – there is no recompense.

These notorious cases we know, but for most damage there is no “event”, simply pervasive long-term catastrophe – social, economic, environmental and health – with an attendant tax expenditure that shifts the liability entirely onto citizens at large with no discussion, debate or even clear choice. It is all invisible, and justified on the basis of the

utilitarian law: the benefits outweigh the costs – without accounting *whose* benefit, and *whose* cost.

In this regard, very interesting concepts are “organized crime”, and “criminal organization”. When is “legitimate” business also organized crime? WorldCom and Enron are not the threshold; they are merely the logical extension of the norm. The failed Texas Savings and Loan companies that the Bush family were mired in are not the threshold, but merely a logical extension of the norm. Junk bonds are not the threshold, merely an extension of the norm.

What is the difference between the transnational oil company in Colombia that hires mercenary killers to protect its property, versus the large landowners who organize the same killers to protect their estates while driving peasants off traditional land so they can increase their own holdings; or the illegal drug combines that hire the same killers to enforce production and protect their commercial routes.

Are any of these less criminal, less a part of organized crime?

This question can be posed in a slightly different way concerning the peasant who illegally sharecrops coca – often under coercion – to make the only living she can. How does her “crime” compare to the multinational chemical company that produces – at amazing profit – the poisons that are sprayed on the peasant to kill the crop and drive the peasant off the land? How does her crime compare with that of DynCorp which profiteers on the war in Colombia by running the spraying program for the American and Colombian governments, while on the side deploying mercenary soldiers to advise and direct military operations?

It is of some satisfaction that a class-action lawsuit has been filed in Washington, DC, on behalf of 10,000 farmers in Ecuador by the International Labor Rights Fund. The suit documents how DynCorp – a subsidiary of Lombardi, one of the top 20 U.S. federal contractors – has already sprayed toxic herbicides over 14 percent of the entire land mass of the nation of Colombia, while causing more than 1,100 documented cases of illness among citizens in neighbouring Ecuador, destroying untold acres of food crops, displaced tens of thousands of peasant farmers, and harming the fragile Amazon ecosystem. In addition, DynCorp has also been exposed as a contractor of mercenary soldiers-of-fortune for the covert activities of the U.S. anti-insurgency program in Colombia.²¹

A skim of just three periodicals that arrived on my desk the week I began to prepare these notes reveals just the surface of this phenomenon – in Colombia, worldwide, and here at home.

In *The Nation* of May 6, Mark Shapiro provided an exposé of an incredible system of global cigarette smuggling and money laundering by Philip Morris and British American Tobacco.²² The article reveals the details behind a lawsuit filed by European and Canadian governments, and state governments in Colombia.

As someone who has travelled many times to Colombia, and whose work includes ensuring international protection for the victims of its violence, I find it hard to believe that there are executives who develop and execute such “business plans”.²³ Yet the details are now in the public record as part of the 500-page deposition filed in the class-action law suit. Some may dismiss this example by asking “What do you expect of “Big Tobacco?” but we would do well to remember that Philip Morris’ major product is not tobacco at all; rather it is among the largest food marketing conglomerates in the world, with literally scores of subsidiaries – including General Foods and Kraft – and hundreds of brand name products stuffing the pantry shelves of consumers the country round.

Another example: the May issue of *Mother Jones* features a story which begins, “The government continues to award federal business worth billions to companies that repeatedly break the law. A Mother Jones’ investigation reveals which major contractors are the worst offenders.”²⁴ The “dirty dozen” listed in the article include Ford Motor, TRW (air bags), Archer Daniels Midland, Exxonmobil, E.I Du Pont de Nemours, Avondale Industries (a shipmaking subsidiary of Northrup Grumman), General Motors, General Electric, Olin Corp, Atlantic Richfield, Daimler-Chrysler and Textron – good corporate citizens all, and themselves entities within complex integrated conglomerates that include hundreds of commodities and brand names.

Then the May 13 issue of *The Nation* includes an article²⁵ which documents a class action suit launched by Enron investors that alleges the intimate involvement of nine leading banks and financial houses in a conspiracy to devise, conceal and profit from the Enron scam. The nine: J.P. Morgan, Chase, Citigroup, Credit suisse, First Boston, Bank of America, Merrill Lynch, Barclays, Deutch Bank, Lehman Brothers and the Canadian Imperial Bank of Commerce – our own CIBC, which in the interests of full disclosure I must confess is my own personal bank, making me complicit in the whole affair.

The author, William Greider, states that these institutions, “collaborated with [Enron] in its financial sleight of hand...to inflate its profits, conceal its burgeoning debts and push its stock prices higher and higher”, and that through these actions the banks “earned hundreds of

millions, billions altogether, in securities commissions and consulting fees, as well as from the inflated interest rates they charged Enron on disguised loans.”

One easily concludes that the Law has very little to do with justice. What is not-illegal is not necessarily not-criminal, except in the most narrow definition. Not all crimes are against the law.

There is a very interesting discussion of this distinction available on the web site of *Harper's Magazine*, in the form of a panel discussion moderated by Lewis Lapham on the “crimes” of Henry Kissinger. A darling of Corporate America, who also draws corporate leaders in Canada to his speeches at \$25,000-\$50,000/hr, Kissinger has never been charged with, let alone convicted, of legal responsibility for some millions of deaths of non-combatants in various countries that occurred as a result of his explicit orders under two U.S. administrations. The website discussion wrestles with the dilemma of whether his actions, since they were government “policy” – albeit devised by himself among others – would ever be construed in the United States as illegal and, if not, whether they could be considered criminal regardless of legality. Such debates, whether in the realm of politics or business, make clear and absolute distinctions between morality and criminality, and remove morality from the equation. When we are in pursuit of justice, this sleight of hand is one of the first tricks we have to challenge.

The law is a useful tool in the struggle to promote justice. It is not however the sole tool, nor in the end is it the most important one. And the legal approach cuts two ways. It exposes the entire movement to the limits of a judicial universe, with its emphasis on litigation and litigation chill; and on the letter of the law rather than the moral and ethical considerations that underlie the law.

The struggle for justice is a moral, ethical, social and normative struggle. It is a struggle over the regressive structures of social and political and economic reality, not only over the laws that govern these structures, since it is structures that determine the law, not the obverse. Therefore we need to focus on structural change, as well as legislation.

Critical Questions

Is it ever justified to do evil to create or protect good? In fact, is it possible? The first principle of ethics is that good can never be created or protected by evil means. But the utility principle defies this logic by making the equation invisible, focusing on the “greater good” rather than the so-called “lesser” evil.²⁶

The Corporate Accountability Commission report made much of its analysis that corporate social responsibility is good for business and corporate image, and therefore contributes to profit. The starting point is not social responsibility, but the “legitimacy” of profit.

A critical question is: if it could be proven that social responsibility and accountability significantly reduce profit, would the conclusion be that corporations could ignore their responsibilities, or more importantly, not be held accountable for their actions?

And what is the threshold? Profit margins, or social impact? What is the first principle – profit, or justice?

Should the central strategy of the CSR movement be proving that social responsibility is good for business, and collaborating with the corporate sector to devise an acceptable balance between profit and responsibility? Is this the pursuit of justice? Or should competitiveness and profit be relegated to second- or third-tier criteria, and nurturing the commons and the social good come first?

In this regard a recent essay by Paul Hawken²⁷, distributed by Food First, is instructive and illustrates what is at stake. He refers to McDonald's *Report on Corporate Social Responsibility* (released April 14th), as “a low water mark for the concept of sustainability and the promise of corporate social responsibility.” Hawken laments: “That their report is based on the Global Reporting Initiative (GRIs) calls to question whether the GRIs have anything to do with the concept of sustainability or true corporate responsibility.”

Hawken continues:

At this juncture in our history, as companies and governments turn their attention to sustainability, it is critical that the meaning of sustainability not get lost in the trappings of corporate speak. There is a growing worldwide movement towards corporate responsibility and sustainability, led in many cases by companies whose history and products have brought damage and suffering to the world. I am concerned that good housekeeping practices such as recycled hamburger shells will be confused with creating a just and sustainable world. Transnational corporations such as McDonalds and their associated lobbyists and trade associations have led efforts to Americanize trade through representatives at the WTO. They have prevented the strengthening of environmental and labor laws and they have led the effort to eliminate the ability of smaller, more vulnerable nations to determine their economic destiny. In other words, they embrace “sustainability” as long as they can make money and it doesn't change their

overall purpose, which is to grow faster than the overall world economy and population and increase their share of the world's economic output to the benefit of a small number of shareholders.

“Sustaining” McDonald’s requires a simple unsustainable formula: cheap food plus cheap non-unionized labor plus deceptive advertising = high profits. An honest report would tell stakeholders how much it truly costs society to support a corporation like McDonald’s. It would detail the externalities borne by other people, places, and generations: The draining of aquifers, the contaminated waterways, the strip-mined soils, the dangerous abattoirs where migrant workers are employed, the inhumane, injury-prone dead-end jobs preparing chicken carcasses for Chicken McNuggets, the global greenhouse methane gas emitted by the millions of hamburger cows in feedlots, the impact of their \$2 billion advertising and promotional campaigns to convince young people to demand their food, the ethics of using toys to induce small children into their restaurants. The list is longer than this. What the report is short on is candor, transparency and corporate honesty.

From this, the question that we cannot avoid here: is CSR as promoted by the corporate sector pro-justice, or simply pro-business? What is the threshold? Do we assume the benevolence of corporations, or their malignancy? The very question, “Can a corporation be both socially responsible and profitable?” is evidence that there is an inherent potential contradiction between profit and the social good, and between license and freedom.

For justice to prevail in this tension, social good must always trump profit. This of course focuses us on the critical question, “What is social good?”, and under what circumstance – if any – is individual or corporate profit a “social good”?

In a discussion such as this – a discussion that dares to ask this question – what else can be challenged? What other questions can be posed? If market capitalism is predicated on injustice, how can we talk of corporations as a factor in promoting justice?

Now, the CAC quotes Max Clarkson as saying “Stakeholder theory should not be used to weave a basket big enough to hold the world’s misery.” And some here today may be muttering the same thing. Well, I agree, of course. No one can weave a basket big enough for *that* – out of *any* theory – and no one is trying to do so. This kind of assertion merely throws a red-herring in our path. And frankly, it reveals the flaw in the very notion of stakeholder theory itself.

The critical question should not be: “How can we act to convince corporations to promote justice?”. Rather, the question should be posed: “How we can activate to eradicate the injustice of corporate behaviour and the profit logic, and the unjust effects of corporate actions?”

For as I say, the issue here is the pursuit of justice, not the pursuit of profit, nor even the pursuit of justice *with* profit. We have to factor in corporations as they *really* factor, and this does not mean balancing the factor of corporate injustice with corporate benevolence.

It is quite remarkable that the starting point of the Commission on Corporate Accountability is the question:

Do the charters bestowed by governments to facilitate the generation of profits relieve corporations of broader requirements of responsibility and accountability to the societies in which they operate? Or do the very success of the corporations and the scale of corporate operations in the modern economy bring with them obligations?²⁸

In what moral universe is this a real question? No one, and nothing, is devoid of responsibility, and in the case of corporations this responsibility comes not from their “very success”, but from their very existence. The question is not responsibility, but accountability, and liability.

All rights rely on corollary responsibilities that defend and protect the rights themselves. That is, those with rights derived from society are responsible not only *to* the society from which the rights are derived, but *for* the society that offers and protects these rights. Freedom is not license. To the contrary, license is the enemy of freedom, and it is the licentiousness of corporate mores that need to be curtailed in the pursuit of justice.

The Challenge

In the social responsibility discourse promoted in the corporate world, the issue has largely been civility and *noblesse oblige*, rather than fundamental rights and justice for all. But justice is not fairness, nor some process of balancing the needs of corporations against those of citizens and their neighbourhoods. To shift this discourse to emphasize the pursuit of justice, the movement to promote corporate accountability will have to engage in dynamics that transcend the current polite consensus within the mainstream of the movement itself. This consensus is documented best, perhaps, by the Corporate Accountability Commission – whose discussion paper relies on a definition of “the public good or public interest” that is as utilitarian as it gets: “...that the mode of behaviour of all of society’s institutions must cohere with individual rights and the well-being of at least a majority of the free and equal citizens.”²⁹

But, “at least the majority” is not even democratic, let alone just, and increasingly this consensus is being challenged at the grassroots, by the anti-poverty movement, the peace movement and the anti-nuclear movement, by the biodiversity movement, natural food movement, by greens and other ecologists, by anarchists, by socialists, by all those that the media label “anti-globalization”, but whom in reality are globalizing social solidarity in profound and powerful ways. These folks have taken to different forms of agitation and confrontation, and do not feel obligated to emphasize civility in their critique.

These groups, their experience, their perspectives have to be brought into this conversation. This prospect may make some uncomfortable. But we would do well to remember that it is activists in the streets who have allowed CSR to become a viable discourse, and have created the space for CSR advocates in the boardroom and conference hall. It is these activists who maintain the tension that gives insider CSR advocates their ante at the table and their caché within the corporate sphere. And it these groups that educate and mobilize citizens around the daily issues that generate public opinion and citizen action. Those who live on the inside should never forget this. The freight is being paid on the streets, and that is where the truth lies. We need to reach out to this reality and honour it; we should never scorn it or, worse, slander it.

In all of this, I want to reiterate my opening premise that factoring corporations into the pursuit of justice does not just presume a reform of corporations and the law that governs their existence and deportment. It presumes a transformation of corporations, and the fundamental assumptions under which they exist and operate. It presumes a radical repositioning of the State and the Citizen vis à vis corporations and the commercial sector. And it presumes a transformation in the structures and norms through which the state and its citizens relate to corporations and the realities they impact.

I know that many people believe that some things will simply never change, including many of the realities I have described, and that we have to work within these constraints. For my part, I believe that while we must obviously work in the context of these constraints, it is on precisely those things that are believed will never change, that we should most relentlessly focus as change agents.

The fact that so many are dedicating our lives to these issues is an indicator that perhaps Leonard Cohen was too hasty in his famous lament: maybe the war is not over, and maybe the good guys have not yet lost – even if “winning” seems a distant prospect.

Endnotes

- ¹ Eagleton, Terry, “Capitalism and Form”, *New Left Review*, p.119.
- ² See, *Rigged Rules and Double Standards: Trade, Globalization and the Fight against Poverty*, Oxfam International, 2002; along with Bello, Walden, “What’s wrong with the Oxfam trade campaign?” and “The Oxfam Debate, From Controversy to Strategy”, Focus on the Global South, <http://www.focusweb.org>. This site also includes Oxfam’s response to Walden Bello by Angus Cleary.
- ³ See, Murphy, Brian K., “Thinking in the Active Voice”, an address to the Expert Consultation on Poverty Reduction DAC/POVNET (OECD), Callantsoog, Netherlands, September 12-14, 2000, published in *Negotiating Poverty: New Directions, Renewed Debate*, (ed. Middleton, Neil et al.), Pluto Books, London, 2001; and *An Honourable Commitment: Canada’s Relations with the Global South*, Inter Pares, Ottawa, 2001. The most recent “insider” challenge to the generalizations about the benefits to the poorest countries of economic globalization and trade liberalization are found in *Escaping the Poverty Trap*, UNCTAD’s Least Developing Country Report 2002, June 2002, available at <http://www.unctad.org/en/docs/ldc02ove.en.pdf>
- ⁴ Some formulations in this section have been adapted from Murphy, Brian K., “International NGOs and the Challenge of Modernity”, in *Development in Practice*, Volume 10, Numbers 3&4, August 2000, republished in *Debating Development* (eds. Eade, Deborah and Ernst Ligteringen), Oxfam GB/Oxfam International, 2001; and “Thinking in the Active Voice”, in *Negotiating Poverty: New Directions, Renewed Debate*, Pluto, 2001.
- ⁵ George, Susan, *A Short History of Neo-Liberalism: Twenty Years of Elite Economics, and Emerging Opportunities for Structural Change*, address to the Conference on Economic Sovereignty in a Globalizing World, hosted by Focus on the Global South, Bangkok, March 24-26, 1999, papers available at www.millennium-round.org; see also Susan George, “How to Win the War of Ideas, Lessons from the Gramscian Right”, in *Dissent*, Vol. 44, No. 3, Summer 1997.
- ⁶ See Esteva, Gustavo and Madhu Suri Prakash, “Beyond development, what?”, in *Development in Practice*, Oxfam GB/Oxford Press, Vol. 8, No. 3, August 1998, pp. 280-296.
- ⁷ “Reining in Corporate Power”, Chapter 5, Report Summary (20 pages) of *A Better World is Possible: Alternative to Economic Globalization*, available at the website of the International Forum on Globalization: <http://www.ifg.org>.
- ⁸ cf. Vidal, John, “Colombia’s U’wa have their prayers answered”, *Guardian Weekly*, May 23-29, 2002, p.26, which describes the recent victory of the U’wa in driving U.S.-based Oxy Petroleum out of their territory in the deep northeastern part of Colombia.
- ⁹ Murphy, Brian K., *Transforming Ourselves, Transforming the World: An Open Conspiracy for Social Change*, ZED Books (London and New York) and Fernwood Books (Halifax), 1999.
- ¹⁰ Viederman, Steve, “Parting Thoughts”, President’s Essay, June 6, 2000, www.noyes.org.
- ¹¹ Marcuse, Herbert, *One-Dimensional Man, Studies in the Ideology of Advanced Industrial Society*, Beacon Press, Boston, 1964.
- ¹² see, Dworkin, Andrea, *Right-wing Women*, Perigee Books (Putnam), New York, 1983.

¹³ For what is at stake in the campaign against militarism, see Rotblat, Sir Joseph, “Where do we go from here?”, Professor Rotblat’s keynote speech to the International Physicians for the Prevention of Nuclear War/PSR 15th World Congress, The Summit for Survival, in Washington, DC on May 4, 2002. The text can be found at: <<http://www.ippnw.org/rotblatDCPlenary.html>>. Rotblat, who is 90 years old, was part of the Manhattan Project and was inventor of the concept of nuclear deterrence, which he quickly realized was folly. The paper is a lucid and readable perspective, from someone who lived, created and knows intimately the history of nuclear weapons.

¹⁴ Berry, Wendell, “The Idea of a Local Economy”, *Harper’s Magazine*, April 2002, pp. 15-20; the full essay originally appeared in *Orion*, Winter 2001 [www.oriononline.org], and was published in book format in, *In the Presence of Fear: Three Essays for a Changed World*, by the Orion Society.

¹⁵ Heilbroner, Robert, *Teachings from the Worldly Philosophy*, Norton, New York, 1996.

¹⁶ In this regard, particularly, it is not nations that trade. *Canada* does not trade; Canada-based companies do business. This in spite of the constant so-called “Team Canada” trade missions led by our Prime Minister. These are corporate missions sponsored by the government, not diplomatic missions accompanied by corporations.

¹⁷ Masina, Pietro Paolo, “East Asia Economic Crisis, – or a Global One?”, *NIAS Nytt*, No. 1, May 2002, pp.14-16, Nordic Institute of Asian Affairs, available at <http://eurasia.nias.ku.dk/Nytt/stories>. Pietro Paolo Masina is an Assistant Professor of international political economy at Roskilde University Centre.

¹⁸ The Commission on Corporate Accountability obscures the unique privilege of corporations by making the repeated equation between corporations and labour unions as “collective entities” (mainly in recommending the prohibition of political donations). This is a false equation, and not even useful as an analogy. A corporation is not in any way a “collective”; to the contrary its rights and liabilities are specifically those of a very privileged “individual”. A labour union is a democratic association of workers, with no special rights at all, other than to bargain collectively in those rare cases when this natural right has not been removed by fiat of the state; and even when legislated, it is a right honoured more in the breach than in the observance. Labour unions, and union “centrals”, have none of the legal characteristics or protections of corporations. Capital always has pre-eminence over labour, and the perverse equivalency of unions with corporations obscures both the extent of corporate licence and the limits of workers rights. A related confusion that bears on this point is that, as a free association of individuals, unions are part of civil society; corporate structures, on the other hand, are not within civil society at all, but rather are embedded within the wider structures of the state.

¹⁹ “Corporate Crime and Wrong-Doing”, in *Canadian Democracy and Corporate Accountability, An Overview of Issues*, Canadian Democracy and Corporate Accountability Commission, 2001, p16. Available at <http://www.corporate-accountability.ca/>

²⁰ cf: the Statement of the International Mining Workshop, Bali, May 24-27, 2002 (PrepCom IV for the World Summit on Sustainable Development – Rio+10), available at the MineAction website: www.mpi.org.au/service/mineaction.html

²¹ The text of the legal complaint is available online: <http://www.usfumigation.org/compliant.htm>

²² Shapiro, Mark, “Big Tobacco, Uncovering the Industry’s Multibillion-Dollar Global Smuggling Network”, *The Nation*, May 6, 2002. [Documenting an investigation carried out by *The Nation*, the Centre for Investigative Reporting, and the PBS newsmagazine, *Now*, with Bill Moyers.]

²³ In regard to the behaviour of corporate executives, a recent essay in the *New York Times* documents the now common practice of including clauses in executive contracts that explicitly exclude felony convictions as just cause for dismissal: “There is only one type of job in which somebody can commit a felony and, after being fired as a result, still receive a severance package worth many years of salary. The job of chief executive of a large corporation.”¹ See, Leonhardt, David, “Watch It: If You Cheat They’ll Throw Money!”, *NYT*, Sunday, June 9, 2002, p. 1, Section 3 (Money & Business).

²⁴ Silverstein, Ken, “Unjust Rewards”, *Mother Jones*, May/June 2002, p.69.

²⁵ Greider, William, “The Enron Nine”, *The Nation*, May 13, p.18.

²⁶ The discussion by Wendell Berry of this element of free-market capitalism – he refers to it as “sentimental capitalism” – is compelling; see Berry, Wendell, “The Idea of a Local Economy”, *Harper’s Magazine*, April 2002, pp. 16-17.

²⁷ Hawken, Paul, “McDonald’s and Corporate Social Responsibility?”, in Food First e-newsletter, April 25, 2002. Paul Hawken is the author of *The Ecology of Commerce and Natural Capitalism*. He is the founder of the Sausalito-based Natural Capital Institute and is on the advisory board of Food First/Institute for Food and Development Policy. For a list of issues that McDonald’s did not deal with in its Report on Corporate Social Responsibility: <http://www.foodfirst.org/media/press/2002/mcdonaldsissues.html>. The McDonald’s *Report* itself is available at <http://www.mcdonalds.com/corporate/social/report/index.html>.

²⁸ “Executive Summary”, *Canadian Democracy and Corporate Accountability, An Overview of Issues*, Canadian Democracy and Corporate Accountability Commission, 2001, p. 2.

²⁹ *Canadian Democracy and Corporate Accountability, An Overview of Issues*, p. 8; my emphasis.

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