Christopher D. Stone

Why Shouldn't Corporations Be Socially Responsible?

Christopher Stone teaches law at the University of Southern California.

The opposition to corporate social responsibility com-prises at least four related though separable positions. I would like to challenge the fundamental assump-tion that underlies all four of them. Each assumes in its own degree that the managers of the corporation are to be steered almost wholly by profit, rather than by what they think proper for society on the whole. Why should this be so? So far as ordinary morals are concerned, we often expect human beings to act in a fashion that is calculated to benefit others, rather than themselves, and commend them for it. Why should the matter be different with corporations?

THE PROMISSORY ARGUMENT

The most widespread but least persuasive arguments advanced by the "antiresponsibility" forces take the form of a moral claim based upon the corporation's supposed obligations to its shareholders. In its bald-est and least tenable form, it is presented as though management's obligation rested upon the keeping of
a promise—that the management of the corporation "promised" the shareholders that it would maximize the shareholders' profits. But this simply isn't so. Consider for contrast the case where a widow left
a large fortune goes to a broker, asking him to invest and manage her money so as to maximize her return. The broker, let us suppose, accepts the money and the conditions. In such a case, there would be no dis-agreement that the broker had made a promise to the widow, and if he invested her money in some venture that struck his fancy for any reason other than that it would increase her fortune, we would be inclined to advance a moral (as well, perhaps, as a legal) claim
against him. Generally, at least, we believe in the keeping of promises; the broker, we should say, had violated a promissory obligation to the widow. But that simple model is hardly the one that ob-tains between the management of major corpora-tions and their shareholders. Few if any American shareholders ever put their money into a corporation upon the express promise of management that the company would be operated so as to maximize their returns. Indeed, few American shareholders ever put their money directly into a corporation at all. Most of the shares outstanding today were issued years ago and found their way to their current sharehold-ers only circuitously. In almost all cases, the current shareholder gave his money to some prior share-holder, who, in turn, had gotten it from B, who, in turn, had gotten it from A, and so on back to the pur-chaser of the original issue, who, many years before, had bought the shares through an underwriting syndicate. In the course of these transactions, one of the basic elements that exists in the broker case is missing: The manager of the corporation, unlike the broker, was never even offered a chance to refuse the shareholder's "terms" (if they were that) to maxi-mize the shareholder's profits. There are two other observations to be made about
the moral argument based on a supposed promise running from the management to the shareholders. First, even if we do infer from all the circumstances a "promise" running from the management to the shareholders, but not one, or not one of comparable weight running elsewhere (to the company's employ-ees, customers, neighbors, etc.), we ought to keep in mind that as a moral matter (which is what we are discussing here) sometimes it is deemed morally justified to break promises (even to break the law) in the furtherance of other social interests of higher concern. Promises can advance moral arguments, by way of creating presumptions, but few of us

believe that promises, per se, can end them. My promise to appear in class on time would not ordinarily justify me from refusing to give aid to a drowning man. In other words, even if management had made an express promise to its shareholders to “maximize your profits,” (a) I am not persuaded that the ordi-nary person would interpret it to mean “maximize in every way you can possibly get away with, even if that means polluting the environment, ignoring or breaking the law”; and (b) I am not persuaded that, even if it were interpreted as so blanket a promise, most people would not suppose it ought—morally—to be broken in some cases. Finally, even if, in the face of all these consid-erations, one still believes that there is an overrid-ing, unbreakable, promise of some sort running from management to the shareholders, I do not think that it can be construed to be any stronger than one running to existent shareholders, arising from their expecta-tions as measured by the price they paid. That is to say, there is nothing in the argument from promises that would wed us to a regime in which management was bound to maximize the income of shareholders. The argument might go so far as to support compen-sation for existent shareholders if the society chose to announce that henceforth management would have other specified obligations, thereby driving the price of shares to a lower adjustment level. All future shareholders would take with “warning” of, and a price that discounted for, the new “risks” of share-holding (i.e., the “risks” that management might put corporate resources to pro bonum ends).

THE AGENCY ARGUMENT

Related to the promissory argument but requir-ing less stretching of the facts is an argument from agency principles. Rather than trying to infer a promise by management to the shareholders, this argument is based on the idea that the shareholders designated the management their agents. This is the position advanced by Milton Friedman in his New York Times article. “The key point,” he says, “is that . . . the manager is the agent of the individuals who own the corporation. . . .”1 Friedman, unfortunately, is wrong both as to the state of the law (the directors are not mere agents of the shareholders) and on his assumption as to the facts of corporate life (surely it is closer to the truth that in major corporations the shareholders are not, in any meaningful sense, selecting the directors; management is more often using its control over the proxy machinery to designate who the directors shall be, rather than the other way around). What Friedman’s argument comes down to is that for some reason the directors ought morally to con-sider themselves more the agents for the sharehold-ers than for the customers, creditors, the state, or the corporation’s immediate neighbors. But why? And to what extent? Throwing in terms like “principal” and “agent” begs the fundamental questions. What is more, the “agency” argument is not only morally inconclusive, it is embarrassingly at odds with the way in which supposed “agents” actually behave. If the managers truly considered themselves the agents of the shareholders, as agents they would be expected to show an interest in determining how their principals wanted them to act—and to act ac-cordingly. In the controversy over Dow’s production of napalm, for example, one would expect, on this model, that Dow’s management would have been glad to have the napalm question put to the share-holders at a shareholders’ meeting. In fact, like most major companies faced with shareholder requests to include “social action” measures on proxy state-ments, it fought the proposal tooth and claw. It is a peculiar agency where the “agents” will go to such lengths (even spending tens of thousands of dollars of their “principals’” money in legal fees) to resist the determination of what their “principals” want.

THE ROLE ARGUMENT

An argument so closely related to the argument from promises and agency that it does not demand exten-sive additional remarks is a contention based upon supposed considerations of role. Sometimes in moral discourse, as well as in law, we assign obligations to people on the basis of their having assumed some role or status, independent of any specific verbal promise they made. Such obligations are assumed to run from a captain to a seaman (and vice versa), from a doctor to a patient, or from a parent to a child. The antiresponsibility forces are on somewhat stronger grounds resting their position on this basis, because the model more nearly accords with the facts—that is, management never actually promised the share-holders that they would maximize the sharehold-ers' investment, nor did the shareholders designate the directors their agents for this express purpose. The directors and top management are, as lawyers would say, fiduciaries. But what does this leave us? So far as the directors are fiduciaries of the share-holders in a legal sense, of course they are subject to the legal limits on fiduciaries—that is to say, they cannot engage in self-dealing, “waste” of corporate assets, and the like. But I do not understand any proresponsibility advocate to be demanding such corporate largesse as would expose the officers to legal liability; what we are talking about are expen-ditures on, for example, pollution control, above the amount the company is required to pay by law, but less than an amount so extravagant as to constitute a violation of these legal fiduciary duties. (Surely no court in America today would enjoin a corporation from spending more to reduce pollution than the law requires.) What is there about assuming the role of corporate officer that makes it immoral for a man-ager to involve a corporation in these expenditures? A father, one would think, would have stronger obli-gations to his children by virtue of his status than a corporate manager to the corporation's shareholders. Yet few would regard it as a compelling moral argu-ment if a father were to distort facts about his child on a scholarship application form on the grounds that he had obligations to advance his child's career; nor would we consider it a strong moral argument if a father were to leave unsightly refuse piled on his lawn, spilling over into the street, on the plea that he had obligations to give every moment of his atten-tion to his children, and was thus too busy to cart his refuse away. Like the other supposed moral arguments, the one from role suffers from the problem that the strongest
moral obligations one can discover have at most only prima facie force, and it is not apparent why those obligations should predominate over some contrary social obligations that could be advanced. Then too, when one begins comparing and
weighing the various moral obligations, those run-ning back to the shareholder seem fairly weak by comparison to the claims of others. For one thing, there is the consideration of alternatives. If the share-holder is dissatisfied with the direction the corpo-ration is taking, he can sell out, and if he does so quickly enough, his losses may be slight. On the other hand, as Ted Jacobs observes, “those most vi-tally affected by corporate decisions—people who work in the plants, buy the products, and consume the effluents—cannot remove themselves from the structure with a phone call.”[2]

THE “POLESTAR” ARGUMENT

It seems to me that the strongest moral argument cor-porate executives can advance for looking solely to profits is not one that is based on a supposed express, or even implied promise to the shareholder. Rather, it is one that says, if the managers act in such fashion as to maximize profits—if they act as though they had promised the shareholders they would do so—then it will be best for

all of us. This argument might be called the polestar argument, for its appeal to the interests of the shareholders is not justified on sup-posed obligations to the shareholders per se, but as a means of charting a straight course toward what is best for the society as a whole. Underlying the polestar argument are a number
of assumptions—some express and some implied. There is, I suspect, an implicit positivism among its supporters—a feeling (whether its proponents own up to it or not) that moral judgments are peculiar, arbitrary, or vague—perhaps even "meaningless" in the philosophic sense of not being amenable to rational discussion. To those who take this po-sition, profits (or sales, or price-earnings ratios) at least provide some solid, tangible standard by which participants in the organization can measure their successes and failures, with some efficiency, in the narrow sense, resulting for the entire group. Sometimes the polestar position is based upon a re-lated view—not that the moral issues that underlie social choices are meaningless, but that resolving them calls for special expertise. "I don't know any investment adviser whom I would care to act in my behalf in any matter except turning a profit. . . . The value of these specialists . . . lies in their limi-tations; they ought not allow themselves to see so much of the world that they become distracted."3 A slightly modified point emphasizes not that the executives lack moral or social expertise per se, but that they lack the social authority to make policy choices. Thus, Friedman objects that if a corporate director took "social purposes" into account, he would become "in effect a public employee, a civil servant. . . . On grounds of political principle, it is intolerable that such civil servants . . . should be se-lected as they are now."4 I do not want to get too deeply involved in each
of these arguments. That the moral judgments un-derlying policy choices are vague, I do not doubt—although I am tempted to observe that when you get right down to it, a wide range of actions taken by businessmen every day, supposedly based on solid calculations of "profit," are probably as rooted in hunches and intuition as judgments of ethics. I do not disagree either that, ideally, we prefer those who have control over our lives to be politically account-able; although here, too, if we were to pursue the matter in detail we would want to inspect both the premise of this argument, that corporate managers are not presently custodians of discretionary power over us anyway, and also its logical implications: Friedman's point that "if they are to be civil ser-vants, then they must be selected through a political process"5
ad absurdum—not, at any rate, to Ralph Nader and others who want publicly elected directors. The reason for not pursuing these counterargu-ments at length is that, whatever reservations one might have, we can agree that there is a germ of valid-ity to what the "antis" are saying. But their essential failure is in not pursuing the alternatives. Certainly, to the extent that the forces of the market and the law can keep the corporation within desirable bounds, it may be better to trust them than to have corporate managers implementing their own vague and various notions of what is best for the rest of us. But are the "antis" blind to the fact that there are circumstances in which the law—and the forces of the market—are simply not competent to keep the corporation under control? The shortcomings of these traditional re-straints on corporate conduct are critical to under-stand, not merely for the defects they point up in the "antis'" position. More important, identifying where the traditional forces are inadequate is the first step in the design of new and alternative measures of cor-porate control.