A Suggested Ethical Framework for Evaluating Corporate Mergers and Acquisitions

Daniel G. Chase
David J. Burns
Gregory A. Claypool

ABSTRACT. The 1980s witnessed a dramatic increase in hostile takeovers in the United States. Proponents argue that well-planned mergers enhance the value of the firm and the value of the firm to society. Critics typically argue that undesired takeovers ultimately harm society due to external costs not borne by the acquiring firm. To be socially responsible, the manager must consider the effects of the merger/acquisition on all stakeholders. Different traditional ethical frameworks for decision making are proposed and reviewed. A model is proposed.

Introduction

In the United States, the 1980s may legitimately be characterized as a decade of "merger mania" (Adams and Brock, 1989). While the exact number of mergers and acquisitions that occurred during that time period and the value of these transactions cannot accurately be known (Hanly, 1992), it is estimated that 57,000 mergers took place between 1980 and 1990, an increase of 119% from the previous decade (Buono and Bowditch, 1989).

An estimated 65% of these mergers and acquisitions were due to takeovers, or the direct result of a takeover attempt. While the phenomenon of corporate raiding did not originate in the 1980s, a significantly higher level of media coverage widened public interest in these activities. While smaller in numbers than the last wave of mergers and acquisitions in the late 1960s and early 1970s, the 1980s wave dwarfs all previous periods in transaction dollar value (Wirth, 1987) (although not when viewed as a percentage of GNP (Golbe and White, 1988)). Public reaction to this flurry of merger activity ranged from curiosity in the early part of the decade to judgmental by the latter part of the decade (Newton, 1988). For the first time, significant levels of ethical questions were raised about corporate takeovers (di Norcia, 1988). As a result, significant levels of ethical and moral criticism began to be leveled against those practicing the science of corporate acquisitions.

There appears to be two primary lines of thought regarding the ethics of mergers and acquisitions. The proponents of merger activity argue that the majority of mergers and acquisitions are ethical since they benefit society. This argument contends that mergers promote efficiency and benefit shareholders of both the acquiring and target firms (Jensen and Ruback, 1983; Slesinger, 1985; Vedder, 1989). Critics, however, contend that the basis of acquiring other firms amounts to nothing more than unbridled greed (Manning, 1988; Sigler, 1989), similar to the attitudes of big business during the 'roaring twenties' (Newton, 1989). From the critics' point of view, merger activity, therefore,

Daniel Chase, M.B.A., an independent financial counselor, was Corporate Cash Manager for National Life of Vermont. His research interests include business ethics and corporate structure.

David J. Burns, D.B.A., is Associate Professor of Marketing at Youngstown State University. His research has appeared in a number of journals. His research interests include business ethics, retail location, and the adoption of new products.

Gregory A. Claypool, Ph.D., is Associate Professor of Accounting in the Department of Accounting and Finance, Youngstown State University. His current research interests include issues in financial accounting and professional ethics.

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is thought likely to lead to great economic harm to the country. For instance, in his testimony before the House of Representatives, takeover critic Felix G. Rohatyn asserted:

> The present [takeover] environment is . . . reminiscent of the type of speculative excesses and corporate behavior of the late 1920s which . . . cost a great many people their life savings and put into question the integrity of our capital markets (Subcommittee on Energy and Commerce, 1984).

Interestingly, both groups, proponents and critics of takeover activity, agree that the acquisition decision affects more than just the target and acquiring firm's balance sheet (e.g., Jensen and Ruback, 1983; Manning, 1988). Little effort, however, has been given to quantify these effects.

The courts have been generally unwilling to intervene in the market for corporate control (Trevor, 1989). Federal courts have generally supported the 'right to raid', striking down most anti-takeover laws by declaring them unconstitutional on the basis that such laws are a burden on interstate commerce (Subcommittee on Telecommunications, Consumer Protection, and Finance, 1985). What has not been addressed in the court, however, are the societal issues that are intertwined with takeover attempts. This lack of judicial involvement has prompted many to call for government intervention on behalf of society. For instance, retired control Data Corporation Chairman William Norris testified:

> The debate over hostile takeovers has focused on . . . the rights of shareholders, bidders, and the efficient operation of the markets . . . But today's corporation is much more than that; the constituencies it serves and is responsible to – and who can thus be helped or harmed when it changes hands – reach into the entire fabric of our society. And that fabric is being torn (Subcommittee on Telecommunications, Consumer Protection, and Finance, 1985).

In the absence of court or governmental intervention, those that would desire to launch a takeover attempt may do so, provided that appropriate SEC regulations are followed.

While a takeover attempt may be legal, it does not necessarily follow that such an action is ethical. Due care for proper ethics should be the concern of a prudent and socially responsible manager operating in a pluralistic society. Both the pro-acquisition and anti-acquisition arguments have merits and drawbacks, but on the whole do little to assist the manager in formulating an ethical framework for decision making. This paper will examine several ethical frameworks that could be applied by a manager considering a takeover bid, evaluate the merits of each, and conclude with a recommended strategy.

Corporate Personhood

Before proceeding with the primary objective of this paper, a brief discussion on the nature of corporate 'personhood' is necessary. In the eyes of the law, a corporation is considered to be a person, albeit an artificial one. In fact, the corporation is viewed as "an artificial being, invisible, intangible, and existing only in contemplation of law" (Dartmouth College v. Woodward, 1918). As a result, the corporation is entitled to constitutional protections, including Fourteenth Amendment rights to due process, equal protection, and Fourth Amendment rights prohibiting unlawful search and seizure. First Amendment rights to free speech, however, were not accorded to corporations until First National Bank of Boston v. Bellotti in 1978.

While being considered a person from a legal sense, is the corporation a moral being, capable of accountability apart from the individuals comprising the entity? Differences of opinion exit. French (1979) suggests that significantly different types of responsibility ascriptions may be used to evaluate the capability of an entity to be a moral person. First is the assessment of blame. The second involves having an obligation to answer for its actions. Since a corporation is indeed generally regarded as having an obligation to answer for its actions, it is this second argument that French uses to assert that the corporation is a moral person, and as such, is entitled to the same rights as humans. French states that "corporations can be full-fledged moral persons and have whatever privileges, rights and duties as are, in the normal course of affairs, accorded to moral persons" (1979, p. 207). If corporations are moral persons, then it can be expected that the ethical frameworks that apply to humans also apply to corporations.

Manning (1984), however, disagrees with this contention. Her rationale for this position is that assignment of blame is inadequate for ascribing personhood. Instead, Manning (1984) suggests that feeling and emotion, such as a capacity to feel pain, are essential for ascribing personhood. Given these criteria, a corporation does not have emotions and cannot feel, it cannot be classified as a person. Similarly, a corporation is not accorded the full legal rights entitled to a human person. For instance, a corporation does not enjoy the Fifth Amendment privilege against self-incrimination. In the strictest sense, therefore, the corporation is not a legal person. If an entity is not a legal person, it would be difficult to ascribe personhood to that entity.

It must also be considered that, if a corporate entity is a moral person, there is no need to discuss the ethics of a hostile takeover. No civilized set of ethics would permit such action, since takeovers would be akin to "murders, attempted murders, attempts to enslave, etc." (Manning, 1988, p. 639). Although it appears that it may not be appropriate to convey personhood to the corporation in this instance, "one need not argue that a collective (corporation) is a metaphysical person in order to ascribe fault responsibility or accountability to it" (Manning, 1984, p. 83). Thus, for the purposes of this paper, it is assumed that a merger or acquisition has no affect on a corporation as pertaining to its personhood. The character of a firm is, per se, neutral.

Ethical frameworks

Although a number of ethics frameworks and systems have been proposed, the assumption that the corporation itself is not a person limits the number of applicable alternatives. The frameworks that appear to be most germane to the issue of mergers and acquisitions (and the frameworks most often utilized by proponents and antagonists of mergers and acquisitions in their analyses of these activities) are the market ethic, utilitarianism, and the proportionality principle. These frameworks appear to have the potential to act as useful tools by which a manager may evaluate the ethics of a merger or acquisition.

It should be noted that noticeably absent from the aforementioned ethics frameworks is the conventionalist ethic. This is deliberate. Popularized in the business world by Carr (1969), this view suggests that the pursuit of self-interest justifies virtually all activities associated with this quest, including 'bluffing' and other euphemisms for sub-standard moral practices, as long as the activity does not violate the law (Friedman, 1970). Under this framework then, the determination of the ethicality of a merger or acquisition is at best, merely a legal analysis of the undertaking.

Scenario

In order to have a common basis for evaluating merits and drawbacks of mergers and acquisitions of the market ethic, utilitarianism, and the proportionality principle frameworks, each framework will be applied to the following hypothetical case:

> Firm X is considering launching a takeover of competitor Y. The three plants operated by firm Y are critically inefficient, and Y's management has been unsuccessful in obtaining needed capital investments for new manufacturing technology. Furthermore, Y's management continues to have strained labor relations with their 5,400 unionized workers. Cash flow continues to be the most pressing crisis. Y's response to their difficulties has been to flood the market with inferior quality goods, priced to cover only variable costs. Firm Y's AMEX-listed stock has plunged 75% from \$19.75 four years ago to its current \$4.95 price.
>
> Firm Y's survival strategies have hurt what would otherwise be a successful high-quality-moderate-price market strategy by Firm X. Analysis shows that if X purchases Y, and subsequently sells all of Y's assets, X's market price should increase by 5% to 9% above normal market returns throughout the next 12 months, and continue in a positive direction throughout the

product life span. The reason for such improvement lies in the efficiencies that would result: X could operate at full capacity, and the economies of scale would allow X to sell a higher quality good to the public at a lower, but more profitable price. No significant human resources would be needed to achieve this end.

Due to the depressed price of Y's stock, internal analysts believe that all 2.8 million outstanding shares Firm Y can be obtained for $14.2 million, or $5.07 per share. Subsequent sale of Y's assets would net $12.9 million. The $1.3 million difference will be easily retrieved in 16 months due to the ensuing market share growth and cost efficiencies.

This case has been deliberately simplified to highlight issues and facilitate subsequent analysis. In practice, often merger and acquisition situations will possess higher complexity and involve competing economic and social logic.

The market ethic

The market ethic is the primary means used by proponents of mergers and acquisitions to justify the practice of hostile takeovers. Under this principle, any takeover initiated to maximize the value of the firm to shareholders is assumed to benefit society as a whole. Significant empirical evidence exists which illustrates that well-planned takeovers benefit the stockholders of the acquiring firm. For instance, Jensen and Ruback (1983) and Shleifer and Summers (1988) found that many successful takeover attempts do increase stockholder returns. Furthermore, Dodd (1986) observed that target firm shareholders also experience abnormal positive gains in market price, and the effects on the market price appear to be permanent.

Under the market ethic framework, market reaction to the takeover is viewed to be indicative of the value that the merger provides to society. In other words, if the shareholders of the affected firms realize gains, it implies that the value of the resulting combined company is greater to society than were the initial firms in their separate states. This argument postulates that takeovers allocate resources to higher valued uses, promoting economies of scale, and reinforcing market incentives for management to compete effectively (Jensen, 1984).

Society, therefore, benefits through the economic efficiencies created by allowing takeovers. The theory of market efficiencies indicates that analysts will 'bid-up' the price of the stock if they perceive any under-evaluation in the stock price, and will sell the stock if over-pricing exists. The manager must have reason to believe that analysts will perceive an added value to the acquiring firm if the takeover attempt is successful. In addition, the manager must also believe that the target firm's stockholders will also enjoy long-term gains as a result of the takeover. If the takeover results in a decrease in real value to the target firm's shareholders, then the acquiring firm has not acted ethically in the takeover. The takeover attempt then, will be ethical if society enjoys economic benefits as a result of the action. Within a pure market economy then, the market reaction is viewed to be indicative of the effect of the takeover attempt on the economy (Smith, 1776).

The market ethic framework for evaluating takeovers has two primary benefits. First, it is based on a commonly accepted set of principles. Unlike other ethical frameworks which tend to have a wide range of opinion on 'right' and 'wrong', the outcome of the market ethic argument is fairly uniform among its supporters. Thus if a decision maker has been diligent and professional in the analysis, he or she can enjoy a certain degree of comfort knowing that if another adherent was faced with the decision, that person would likely arrive at the same decision. The second benefit is that the decision making process is relatively simple to operationalize. With the market ethic, qualitative judgments logically flow from quantitative analysis. After completing the financial analysis, the ethical analysis should be relatively easy to complete, assuming that a prudent decision maker will have already compiled and analyzed the numerical data on the proposed takeover.

The market ethic framework, however, has some serious drawbacks that must be considered. Painfully exempt from the market ethic framework is consideration for the 'human side' of the transaction, since for instance, "employees are drastically affected by a merger or acquisition because in almost every case a number of jobs are shifted or even eliminated" (Werhane, 1988, p. 41). What effect will such job changes have on the company's employees and their families? Furthermore, under the market ethic framework, what ethical consideration is given to the economic effects on a community if plants are closed? Unfortunately, the answer is none. Indeed, these employment changes can often profoundly affect the economic health of regions (Holly, 1989). Finally, questions have been raised concerning whether the stock market is a true indicator of the value of a company (Drucker, 1986; Law, 1986; Lowenstein, 1985; Newton, 1988). It has been suggested that shareholders profit from the use of tax benefits, rent expropriation from workers, and other non-productivity-related issues – issues which have the potential to bias stock market valuations.

When the afore-mentioned scenario is analyzed according to the market ethic, the purchase of Y by X appears to be an ethical decision. Firm X's shareholders should see an abnormal positive return, and greater long term growth prospects than would otherwise be possible without the takeover. Firm Y's shareholders will realize an immediate gain of 12 cents per share. Society would benefit due to the efficient production of quality goods at a cheaper price.

This ethical framework, however, does not consider the needs of the relatively unskilled laborers who would be left unemployed in a sagging economy, nor does it consider the effects of the plant closings on the three communities. Clearly, many would argue that additional ethical criteria must be included in the analysis of the ethicality of the situation in the scenario.

Utilitarianism

Utilitarianism is based on the principle "the greatest good for the greatest number" (Robin and Reidenbach, 1987, p. 46). From this perspective, the ethicality of a merger or acquisition is based not only on the effect which the activity will have on the stock prices of the respective firms but instead, the ethicality is dependent on the effects which the merger will have on all involved stakeholders (Donaldson, 1989; Heffern, 1989; Tuleja, 1985), including direct claimants such as shareholders, customers, suppliers, and employees, and indirect claimants such as competitors, local communities, the general public, and affected governments (Eells and Walton, 1961). Hanly (1992) argues that implicit contracts exist between business firms and stakeholders. He contends that firms have at least a *prima facie* obligation to fulfill these obligations, as well as a general duty not to do harm. Evan and Freeman (1988) report that the legal environment is increasingly recognizing the interests of these other stakeholders. In fact, Hanly asserts that the inclusion of stakeholders in the ethical analysis is a "framework from which to approach moral evaluation of corporate practices" (1992, p. 896).

The morality or 'rightness' of specific activities within a utilitarianism framework is determined through an analysis of the resulting costs and benefits to each of these affected groups. Hence, utilitarianism depends on an impartial accounting of the costs and benefits of a particular activity relating to all individuals affected by the action.

Numerous objections have been voiced concerning the utilitarianism framework. Two objections which cannot be satisfactorily answered concern the relationship between utilitarianism and justice, and the difficulties involved with the accounting of costs and benefits.

Although Mill (1957) argued that utilitarianism and justice are interrelated concepts, utilitarianism does allow for the justification of significant costs to a minority of the population if the majority enjoys a larger net benefit. For example, substantial benefits might be obtained by large numbers of Americans if the resources of the fifty wealthiest individuals in the country were seized and redistributed, even if the wealthy individuals had to be eliminated to facilitate the process. Such an action could possibly easily pass the utilitarianism test of the 'greatest good for the greatest number', but justice would not be the outcome for the affected minority. Laczniak suggests that this to be the "crux of the objection to utilitarianism" (1983, p. 14).

The second unanswered argument focuses on the fact that the accounting process necessary for measuring the 'good' and 'bad' involved in an activity assumes that all of the resulting social externalities are somehow incorporated within the analysis. The viability of this assumption is questionable, especially if the activity under analysis conflicts with the ethical philosophy of others within the affected society – agreement on the identification of the 'good' and 'bad' affects will likely be lacking as well as the relative measures of each. Specifically, utilitarianism is unable to provide standards for assigning relative weights to all of the outcomes of a choice (Donaldson, 1989).

In applying the utilitarian principle to the hypothetical case, we find that only two people groups are numbered: Y's employees (5,400) and Y's stockholders (2,800,000). Assuming that the shareholders will want the higher return as a result of the takeover, 2,794,600 more people will benefit from the transaction than will be harmed. Thus, the ethicality of the decision appears to have the potential to be dependent on the relative values assigned to the benefits and costs. Furthermore, although they are not specifically mentioned in the scenario, the proposed takeover will directly affect a number of other stakeholders, such as those listed above. The effect which the takeover would have on each of these other stakeholders must also be determined and included in the analysis.

Proportionality

Proportionality, a concept which dates from medieval times (Steiner and Steiner, 1988), was also developed to address those decisions and actions which produce both 'good' and 'bad' consequences, such as the area of mergers and acquisitions. According to Garrett (1966), under proportionality, five factors must be evaluated in order to determine the ethicality of a business decision. First, the type of good and evil resulting from the action must be evaluated. For instance, something necessary to keep a business in existence (a necessary good), will take precedence over a normal dividend (a useful good) Garrett and Klonoski, 1986). Second, the effect of time on the degree of good and evil must be identified, i.e., will a delay in action change the good and evil outcomes? Thirdly, probabilities must be assigned to the good and evil outcomes. Fourth, the degree of direct causality must be determined. Finally, other alternatives available to the situation under analysis must be identified and evaluated. Proportionality then, is a much broader framework than utilitarianism and forces a much deeper analysis.

Proportionality has many benefits as an ethical framework. First, it recognizes that 'good' and 'evil' are qualitative issues, not strictly quantitative. Secondly, proportionality considers not only the immediate good and evil effects, but also the degree of causality linked with these effects. Thirdly, this ethic examines the effect of time on the decision making process. It forces the manager to answer the question, "What effects would a delay in implementation have on the outcome?". Finally, proportionality forces the manager to consider other alternatives which may be available to reach the desired objectives.

Proportionality, however, also has its shortcomings. First, similar to utilitarianism, the identification and impartial accounting of all of the effects produced by the decision would prove to be a formidable undertaking. Furthermore, unlike utilitarianism, a 'simple' accounting of the effects of the action is insufficient to fulfill the requirements of this framework as is detailed in the previous paragraph. Clearly, such analysis involves a number of very complex principles and considerations (Steiner and Steiner, 1988).

If the proportionality framework is applied to the hypothetical case, the decision maker might reach a different conclusion than if the market ethic or the utilitarianism frameworks were used. The decision maker may identify the following good and evil aspects, and the probabilities of each aspect occurring:

Good: Increased sales for company X, improved product for the consumer, fair return for company Y shareholders, long term positive returns for company X shareholders.

Evil: Unemployment for 5,400 low-skilled workers, local recession in communities near Y's plants (90%).

In addition, the manager considers what secondary effects this decision will have. On the good side, it can be assumed that the remaining businesses in the industry will benefit from reduced competition. However, on the evil side, it is reasonable to assume that more than 5,400 people will loose their jobs due to multiplier effects. It is also reasonable to assume that ills to society will occur as a result of the decision. For instance, a growth in domestic violence would be likely as a result of the increased pressure on the affected families.

The question of timing is particularly important in this case. A delay in the takeover attempt may change the effects. For instance, the question of "How long can firm Y stay afloat?" may directly affect the outcome of the analysis. Most of the evil side effects from the proposed takeover involve unemployment, a situation that may be the ultimate fate of firm Y's employees anyway. This situation in turn may affect the degree of causality associated with this evil in the analysis. Thus, if firm X does not launch a takeover, have they acted responsibly since the evil effects will likely occur regardless of X's action? Alternative strategies would also have to be identified and evaluated by firm X. One such alternative may involve a merger of X and Y, with necessary capital improvements being made in Y's assets. Another option may be to pursue a 'friendly takeover' with the support of company Y's management. With this alternate strategy, X may provide unemployment supplements for the displaced workers and continue their benefits for some time period.

The determination of the ethicality of the proposed merger under the proportionality principle is beyond the scope of this paper. Ultimately, the results of the ethical analysis of the situation presented in the scenario based on the proportionality framework may likely differ from the results of ethical analyses based on the other frameworks analyzed.

Recommendations

As previously described, each of the three ethical frameworks has its benefits and shortcomings. The market ethic is quick and easy to implement, but ignores qualitative, non-market issues which may result from the action. Utilitarianism attempts to account for such qualitative, non-market issues, but ignores a number of issues associated with the action which are under the authority of the decision maker. Finally, proportionality mandates a much more comprehensive analysis of the situation, but as a result, it is a very difficult analysis to implement. Given the shortcomings of each of these ethical frameworks, how can the manager facing a takeover decision evaluate the ethics of the impending actions? It would appear that the determination of the ethicality of a merger or acquisition decision can optimally be made via a multi-stage analysis process, whereby the merger or acquisition is analyzed based on each of the three discussed ethical frameworks as depicted in Figure 1.

The ethical analysis must begin with an application of the market ethic framework. Both proponents and critics of mergers and acquisitions typically agree that mergers and acquisitions which do not pass the market ethic will be infeasible or will not be ethical. Assuming an efficient market, if the shareholders of both firms do not benefit from the transaction, it signifies that the resulting combined firm may not possess greater value to society than the initial separate firms. More importantly, again assuming an efficient market, why would a merger be consummated which does not increase the benefits to all affected stockholders? It would appear that such a situation would exist only when the market was indeed not operating efficiently, or where the benefiting firm is able to exercise an amount of nonmarket force on the other firm. Interestingly, although the shareholders of target firms in mergers and acquisitions nearly always benefit from the transaction (Dodd, 1986), the same cannot be said for the acquiring firm. Indeed, it is more common for the acquiring firm to suffer a persisting loss in stock value as the result of the merger or acquisition (Magenheim and Mueller, 1988). It appears, therefore, that the

Stage 1 <u>Market Ethic Analysis</u>

What will the effect of the action be on the stock prices of the acquiring firm (short and long term)?
What will the effect of the action be on the stock prices of the target firm?

If the merger or acquisition appears to be ethical, proceed to Stage 2.

Stage 2 <u>Utilitarianism</u>

What is the total good which will result from the merger or acquisition?
What is the total evil which will result from the merger or acquisition?
Does the total good exceed the total evil?

If the merger or acquisition appears to be ethical, and if the situation warrants additional analysis, proceed to Stage 3.

Stage 3 <u>Proportionality</u>

What are the types of good and evil which will result from the merger or acquisition?
What is the urgency of the situation?
What are the probabilities of the possible good and evil outcomes?
What is the degree of causality associated with each of the outcomes (the intensity of one's influence)?
What alternatives to the proposed merger or acquisition are available? How does each of the available alternative fare under this analysis process?

Fig. 1. A proposed ethical analysis framework for mergers and acquisitions.

majority of mergers and acquisitions which are completed today would likely not occur if a market ethic analysis was accurately undertaken, with the results of such an analysis used as a basis for decision-making.

A merger which does pass the market ethic, however, is not necessarily ethical. Most critics and some proponents of mergers would suggest that these results only imply that the possibility exists that the merger or acquisition may be ethical. In order to consider stakeholders other than only the shareholders of the affected firms, the analysis must proceed to a second stage. It would appear, therefore, that if all reasonable evidence suggests a positive market reaction, then the next step must be an evaluation of the merger from an utilitarianism point of view.

As a part of the utilitarianism analysis, the manager evaluates the effects of the takeover on all relevant stakeholders. At this stage, the frame of analysis must broaden to permit a determination of all stockholders that may be affected directly or indirectly by the merger or acquisition. In addition, each of the outcomes of the proposed action, direct and indirect, must be identified and the effects of these outcomes on stakeholders must be determined. Finally, each of these outcomes must be weighted, or the value of the benefit or cost must be determined. This is clearly not an easy task. In fact, due to the presence of a number of qualitative variables in the analysis and the difficulty inherent in the assignment of objective values and weights to the various outcomes, this analysis may be best conducted by individuals or a firm who have the capability to conduct this analysis impartially.

If the proposed merger or acquisition passes the utilitarian analysis, the ethicality of the proposed action is still not yet fully ascertained. Given the weaknesses of the utilitarianism framework discussed earlier, the proposed merger or acquisition may encounter one more test – that based on the proportionality framework.

The analysis utilizing the proportionality framework is clearly the most complex of the three recommended stages of analyses. The complexity of this analysis will likely necessitate the use of trained individuals outside of the firm with the necessary skills and resources to undertake this endeavor. Furthermore, given the magnitude of the undertaking required by this analysis, it is likely that such an analysis will only be undertaken when the proposed merger or acquisition is of sufficient size and/or has the potential to adversely affect large numbers of individuals such as the scenario discussed above. In the situations where the merger or acquisition is small, when the acquiring firm (the firm engaged in the ethical analysis) is a relatively small business, or where the merger/acquisition does not appear to have the potential to negatively impact large numbers of people to any great extent, it would appear that an ethical analysis based on proportionality probably would not be warranted. In these cases, the costs of the analysis may outweigh the possible costs incurred in the merger or acquisition itself.

Conclusions

It appears that an ethical analysis of a proposed merger or acquisition may not be a simple undertaking. Instead, an ethical analysis will optimally involves a multi-stage procedure whereby the proposed merger or acquisition is analyzed via a two or three stage process (a choice dependent on the size of the firms involved and on the nature of the probable costs and benefits). Formally conducting such an analysis will likely provide the involved managers with insights to which they otherwise would likely not have been exposed. Indeed, the findings of Magenheim and Mueller (1988) that, in a majority of mergers and acquisitions, the stockholders of the acquiring firm will likely suffer a persisting loss in stock value as the result of that undertaking, indicate that it is likely that an analysis of prospective action based in the market ethic does not adequately occur. Given this, it is very unlikely that analyses based on utilitarianism or proportionality generally occur.

The possible benefits which a firm can derive from these analyses are many. An analysis based on the market ethic will provide insight into the probable financial outcome of the proposed merger or acquisition. Given that most mergers and acquisitions have been found to adversely affect the stock price of the acquiring firm, it appears that additional analysis in this area is needed.

The utilitarianism and proportionality analyses can produce at least two distinct types of benefits. First, these analyses will better permit the business firm to gain an increased understanding of the 'intangibles' associated with the proposed merger or acquisition. One such 'intangible' may include the effect which the endeavor will have on employees, including the morale of the employees who are retained. This issue alone may have the ability to affect whether the merger or acquisition will be successful. Second, these analyses will provide managers with an understanding of how the undertaking will affect society as a whole. This is an issue which can no longer be ignored. A business firm has the potential to materially benefit as a result of running an ethical, proactive socially-conscious firm.

Limitations

This study is based on the merger and acquisition activity in a single nation, namely the United States. As a result, the conclusions presented here may not be generalizable to other counties. Since merger and acquisition activity is affected by social, legal and regulatory environments of the countries involved (Cooke, 1988), it is logical to expect that differences may exist among countries. It is expected, however, that merger and acquisition activity is set to significantly increase in the European Community (Bishop and Kay, 1993) and in Japan (Ishizumi, 1990).

This study also is based on the business environment as it presently exists in the United States. Significant changes to this business environment may also lead to changes in the conclusions presented. For instance, since merger and acquisition activity tends to lead to increased industry concentration (Karier, 1993) prompting periodic government intervention, change in the business environment can be expected to change within countries over time.

References

Adams, W. and J. W. Brock: 1989, 'Merger-Mania: An Empirical Critique', in D. L. McKee (ed.), *Hostile Takeovers: Issues in Public and Corporate Policy* (Praeger, New York), pp. 33–43.

Bishop, M. and J. Kay (eds.): *European Mergers and Merger Policy* (Oxford University Press, Oxford).

Buono, A. F. and J. L. Bowditch: 1989, *The Human Side of Mergers and Acquisitions* (Jossey-Bass, San Francisco).

Carr, A. A.: *Business is a Game* (New American Library, New York).

Cooke, T. E.: 1988, *International Mergers and Acquisitions* (Basil Blackwell, Oxford).

Dartmouth College v. Woodward. 4 Wheat 515, 4 L Ed 629.

Di Norcia, V.: 1988, 'Mergers, Takeovers, and a Property Ethic', *Journal of Business Ethics* **7**, 109–116.

Dodd, P.: 1986, 'The Market for Corporate Control: A Review of the Evidence', in J. M. Stern and D. H. Chew (eds.), *The Revolution in Corporate Finance* (Basil Blackwell, Oxford), pp. 343–356.

Donaldson, T.: 1989, 'Corporate Takeovers: The Moral Takeovers', in M. W. Hoffman, R. Frederick, and E. S. Petry, Jr. (eds.), *The Ethics of Organizational Transformation: Mergers, Takeovers and Corporate Restructuring* (Quorum Books, New York), pp. 3–13.

Drucker, P. F.: 1986, 'Corporate Takeovers – What is to be Done', *The Public Interest* **82**, 3–24.

Eells, R. and C. Walton: 1961, *Conceptual Foundations of Business* (Irwin, Homewood IL).

Evan W. and R. Freeman: 1988, 'A Stakeholder Theory of the Modern Corporation: Kantian Capitalism', in T. L. Beauchamp and N. E. Bowie (eds), *Business Ethics* (Prentice Hall: Englewood Cliffs NJ).

First National Bank of Boston v. Bellotti. 435 U.S. 765.

French, P. A.: 1979, 'The Corporation as a Moral Person', *American Philosophical Quarterly* **16**, 297–215.

Friedman, M.: Sept. 13 1970, 'The Social Responsibility of Business is to Increase Profits', *New York Times Magazine*. Reprinted in T. L. Beauchamp and N. E. Bowie (eds.), *Business Ethics* (Prentice Hall, Englewood Cliffs NJ).

Garrett, T. M.: (1966), *Business Ethics*. New York: Appleton-Century-Crofts.

Garrett, T. M. and R. J. Klonoski: 1986, *Business Ethics* (Prentice Hall, Englewood Cliffs NJ).

Golbe, D. L. and L. J. White: 1988, 'A Time-Series Analysis of Mergers and Acquisitions in the U.S. Economy', in A. J. Auerbach (ed.), *Corporate Takeovers: Causes and Consequences* (University of Chicago Press, Chicago), pp. 265–302.

Hanky, K.: 1992, 'Hostile Takeovers and Methods of Defense: A Stakeholder Analysis', *Journal of Business Ethics* **11**, 895–913.

Heffern, G. E.: 1989, 'Ethical Considerations in Takeovers', in D. L. McKee (ed.), *Hostile Takeovers: Issues in Public and Corporate Policy* (Praeger, New York), pp. 79–84.

Holly, B. P.: 1989, 'Corporate Takeovers and Regional Economic Development: An Ohio Perspective', in D. L. McKee (ed.), *Hostile Takeovers: Issues in Public and Corporate Policy* (Praeger, New York), pp. 59–68.

Ishizumi, K.: 1990, *Acquiring Japanese Companies: Mergers and Acquisitions in the Japanese Markets* (Basil Blackwell, Cambridge MA).

Jensen, M. C.: 1984, 'Takeovers: Folklore and Science', *Harvard Business Review* **62**, 109–121.

Jensen, M. C. and Ruback, R. S.: 1983, 'The Market for Corporate Control: The Scientific Evidence', *Journal of Financial Economics* **11**, 5–50.

Karier, T.: 1993, *Beyond Competition: The Economics of Mergers and Monopoly Power* (M. E. Sharpe, Armonk NY).

Laczniak, G. R.: 1983, 'Framework for Analyzing Marketing Ethics', *Journal of Macromarketing* **3**, 7–18.

Law, W. A.: 1986, 'A Corporation is More Than Its Stock', *Harvard Business Review* **64**, 80–83.

Lowenstein, L.: 1985, 'Management Buyouts', *Columbia Law Review* **85**, 730–784.

Magenheim, E. B. and D. C. Mueller: 1988, 'Are Acquiring-firm Shareholders Better Off After Acquisition?' in J. C. Coffe, L. Lowenstein and S. Rose-Ackerman (eds.), *Knights, Raiders and Targets* (Oxford University, New York), pp. 171–193.

Manning, R. C.: 1984, 'Corporate Responsibility and Corporate Personhood', *Journal of Business Ethics* **3**, 77–84.

Manning, R. C.: 1988, 'Dismemberment, Divorce and Hostile Takeovers: A Comment on Corporate

Moral Personhood', *Journal of Business Ethics* **7**, 639–643.

Mill, J. S.: 1957, *Utilitarianism* (Liberal Arts Press, New York).

Newton, L. H.: 1989, 'Takeovers, Makeovers, and Destruction: The Ethics of Corporate Transformation', in M. W. Hoffman, R. Frederick, and E. S. Petry, Jr. (eds.), *The Ethics of Organizational Transformation: Mergers, Takeovers and Corporate Restructuring* (Quorum Books, New York), pp. 27–42.

Newton, L. H.: 1988, 'Charting Shark-Infested Waters: Ethical Dimensions of the Hostile Takeover', *Journal of Business Ethics* **7**, 81–87.

Robin, D. P. and R. E. Reidenbach: 1987, 'Social Responsibility, Ethics, and Marketing Strategy: Closing the Gap between Concept and Application', *Journal of Marketing* **51**, 44–58.

Shleifer, A. and L. H. Summers: 1988, 'Breach of Trust in Hostile Takeovers', in A. J. Auerbach (ed.), *Corporate Takeovers: Causes and Consequences* (University of Chicago Press, Chicago), pp. 33–56.

Sigler, A.: 1989, 'What is a Corporation's Responsibility in the U.S. Today', in M. W. Hoffman, R. Frederick and E. S. Petry, Jr. (eds.), *The Ethics of Organizational Transformation: Mergers, Takeovers and Corporate Restructuring* (Quorum Books, New York), pp. 85–90.

Slesinger, R. E.: 1985, 'The Market for Corporate Control', in U.S. Congress Joint Economic Committee (ed.), *Economic Report of the President* (U.S. government Printing Office, Washington DC), pp. 187–216.

Smith, A.: 1776, *An Inquiry into the Nature and Causes of the Wealth of Nations*, Reprint ed. (Modern Library, New York), 1967.

Steiner, G. A. and J. F. Steiner: 1988, *Business Government and Society: A Managerial Perspective* (Random House, New York).

Subcommittee on Energy and Commerce: 1984, *Testimony before the Subcommittee on Energy and Commerce, U.S. House of Representatives, 98th Cong., 2d Sess*. (U.S. Government Printing Office, Washington DC), Serial No. 98–142.

Subcommittee on Telecommunications, Consumer Protection, and Finance: 1985, *Corporate Takeovers: Hearings Before Subcommittee on Telecommunications, Consumer Protection, and Finance*. (U.S. Government Printing Office, Washington DC).

Trevor, L. B.: 1989, 'Hostile Takeovers: A U.S. Falkland Islands Where the Argentines Always Win', in D. L. McKee (ed.), *Hostile Takeovers: Issues in Public and Corporate Policy* (Praeger, New York), pp. 16–32.

Tuleja, T.: 1985, *Beyond the Bottom Line: How Business Leaders Are Turning Principles into Profits* (Facts on File Publications, New York).

Vedder, R. K.: 1989, 'Three Cheers for the Corporate Raider', in D. L. McKee (ed.), *Hostile Takeovers: Issues in Public and Corporate Policy* (Praeger, New York), pp. 3–15.

Werhane, P.: 1988, 'Two Ethical Issues in Mergers and Acquisitions', *Journal of Business Ethics* **7**, 41–45.

Wirth, T. E.: 1987, *Public Policy Implications for the Economy and Corporate Governance* (U.S. Government Printing Office, Washington DC).

Department of Marketing
Williamson College of Business
Youngstown State University
Youngstown, OH 44555