

28 Words to Redefine Corporate Duties

The Proposal for a Code for Corporate Citizenship

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One of my heroes is the late Buckminster Fuller. At the age of 32, with a wife and newborn child, he decided he would stop trying to earn a living and instead try to discover what he might do on behalf of all humanity.

He theorized that the "great intellectual integrity of the universe", would watch out for him. If he was doing what this intellectual integrity thought needed to be done, then his well being would be looked after. If he found that his well-being was suffering, then he would know that he had strayed from doing what had to be done. In that case, he would change his course looking for a return to smooth sailing. He was indeed a man of great faith.

Bucky solved problems by what he called "anticipatory design." He reasoned he could only change human behavior by changing their environment. He would do this by designing new things that people would use and thus, coincidentally, cause them to abandon their previous problem-producing behaviors and devices.

Before he died in 1983, Bucky concluded that mankind had reached the point where it had the ability to ensure a high standard of living for all human beings. He believed that what was keeping us from achieving this was four power structures of our society that were developed in the Dark Ages: national governments, the military, institutionalized religions and monetary power-wielders.

I believe Bucky had a point when it came to monetary power-wielders. For more than 25 years, I have closely observed corporations, our largest monetary power-wielders. As a corporate lawyer for more than 20 of those years, I am an expert in how corporations are structured and know something about how they behave.

A corporation is something of a Dark Ages concept even though it was invented well after the Dark Ages. At its core, it is nothing more than a license from the sovereign (that is, state government) to conduct business in a certain form. This license is not dissimilar from a medieval baron receiving a title from the King and thereby being given the power of sub-reign over the land in his new domain and the people who inhabit it.

In both cases, the sovereign grants authority to someone who agrees to pay taxes and the grantee sets out to use its authority to increase its net worth by dealing with the public.

Both result in the establishment of power structures that significantly affect the public interest, but whose primary goal is the advancement of the power structure's private interest.

Bucky did not advocate the elimination of corporations, but neither did he believe the solutions to the world's great problems: pollution, war and achieving a high standard of living for all human beings, could be achieved as side effects to the pursuit of profit. To him, corporations, governments, the military or institutionalized religions were not the obstacle to the solutions. The human race putting its faith in these institutions was the obstacle.

He predicted that, unless we, as individuals, had the personal integrity to address the larger problems of society through anticipatory design rather than through these out-moded institutions, then we would either destroy ourselves as a species or condemn ourselves "to a Dark Ages world of unconscious crowd-following mass psychology....for another aeon."

While it is probably unrealistic for us to abandon the corporation, we must abandon the idea that its pursuit of profit will ultimately solve the world's great problems. The corporation is merely a tool to make money and until we realize that, they will continue, as they have throughout their history, to damage the public interest in the pursuit of their own.

The corporation is a creature designed by laws. Remarkably, the corporate design contained in each of the hundreds of corporate laws throughout the world is identical. Each jurisdiction makes a group of people responsible for managing the corporation--usually a board of directors. Officers are then directly responsible to directors. Other employees are then responsible to the officers.

Each law also dictates the responsibilities of these people. These can be summed up in three imperatives: make money, don't steal, and don't break the law.

The weakness of this design is not obvious. Most would think that the third imperative, don't break the law, would keep corporations from violating the public interest. Unfortunately, this is not so. Since the time that corporate laws were first enacted, corporations have collectively come to hold the first imperative, making money, in much higher regard than the third.

Obedying the law is viewed by many corporations today as merely a cost that makes making money more difficult. As

a cost, they do everything they can try to minimize it. This includes lobbying, legal hairsplitting and jurisdiction shopping. No consideration is given by corporations to whether or not such actions are in the public interest.

The consequences of this viewpoint are exacerbated by the hierarchical management structure imposed by the law. Prof. Larry Mitchell at George Washington Law School has written extensively on this subject. He points out that when someone assumes a corporate role by becoming a director, officer or employee there is significant pressure in the corporate system to sacrifice one's total personhood in order to play the role that is assigned. He goes on to say that the inequality of power in each of the roles creates a situation where the weaker parties' moral development is stifled and the stronger parties become inattentive to rationality or justice. Too often this results in role players acting on the corporation's behalf in a manner that is contrary to the public interest. This occurs even though they would not think to take the same action if they were acting simply on their own behalf.

The consequence of the corporate design is that too many corporations care only about making money and are willing to damage the public interest in order to achieve it. Take a moment this is Earth Day to consider the damage corporations have done to our environment over the past 150 years.

In addition to the environment, consider the human rights and labor abuses that are now occurring in the name of globalization and are the subject of protest this weekend in Quebec.

Consider the injuries and deaths caused by defective products before their defects became publicly acknowledged, but well after the manufacturers knew the defects existed. Think of the hundreds of thousands of deaths caused every year by the tobacco industry.

Consider all the deaths that have resulted from dangerous working conditions.

Consider towns like Lincoln and Passadumkeag here in Maine whose economies are about to be ruined by companies closing their doors and refusing to sell their closed facilities to buyers willing to keep them running.

We must ask ourselves how we can continue to be deluded into thinking that by following entities dedicated to the pursuit of their own self-interest, we will provide a high standard of living for everyone on this planet?

But once freed of that delusion, how can we free ourselves from the grip of corporate political power? We live in a democracy and corporations today seem firmly in control of the wheels of power. Here again our situation seems like it came out of the Dark Ages. If corporations are so powerful that their rule cannot be challenged, then our political position is little better than that of serfs in feudal times. If corporate rule cannot be challenged, Bucky's prediction was right, we are condemned to live in a Dark Ages world for

another aeon.

I do not believe our fate is sealed. I believe that by re-designing the corporate environment, we can change the way people in corporations behave so that they no longer damage the public interest in the pursuit of profit. Corporations already have all the rights of citizens, these rights can be balanced by obligations to the public interest that the vast majority of people recognize they should bear.

However, if this is to be achieved, each of us will have to become better citizens ourselves.

In order to modify a design that exists in our laws, we must amend our laws. In our democracy this is accomplished either by electing representatives pledged to do this for us or, if this fails, by referendum.

In order to make corporations more responsible to the public interest, the law that must be amended is the one that says the pursuit of profit takes precedence over protection of the public interest. In the corporate law, this is contained in the first imperative imposed on people in corporations that I described before--the duty to make money for shareholders.

I am proposing that this imperative be modified by adding a Code for Corporate Citizenship to say that the duty to make money: may not be satisfied by damaging the environment, human rights, the public safety, the communities in which the corporation operates or the dignity of its employees.

These 26 words will put protection of the public interest on an equal footing with the pursuit of profit. This is not unreasonable. The corporation was developed to serve mankind not so mankind could serve corporations. Furthermore, balancing the rights of shareholders with obligations to the general public is justified. Corporations would not even exist if the citizenry had not enacted laws that allow them to be organized and operate. In this sense, they owe their existence as much to the public as they do to their shareholders. They should have obligations to both.

This duty to balance the public interest with the pursuit of profit will significantly change corporate behavior. Directors, required by law to protect the public interest, will require their management to do the same. Officers and employees will change their behavior accordingly. New projects will not receive funding from lenders or shareholders unless they will meet the new standard.

The combination of these forces will not destroy the profit motive, only modify it. They will change the corporate purpose from merely making money to making money without damaging the public interest. These two goals are not mutually exclusive.

Finally, the Code will allow the people acting in corporations to act much more in line with their total personhood. No longer will they have an unqualified duty to pursue their company's private interest. Their roles will no longer put them in the position of subverting the public interest in order

to retain their job and support their families.

Changing the corporation is possible. Since corporations became powerful, there have been numerous successful campaigns to improve their behavior. These campaigns have reduced child labor, made work places safer and less discriminatory and resulted in safer products, more environmentally benign manufacturing and many other victories. Each campaign was met with corporate resistance and the threat that economic disaster would surely be the result. Each victory proved such threats to be without basis. Indeed, in spite of the victories, corporate power has steadily increased.

Secondly, never has the political climate been better for requiring corporations to do their share to protect the public interest. In each of the past two years, Business Week and the Harris Poll organization have asked Americans with which of the following two statements do they agree more strongly:

ONE: Corporations should have only one purpose--to make the most profit for their Shareholders - and pursuit of that goal will be best for American in the long run.

or

TWO: Corporations should have more than one purpose. They also owe something to their workers and the communities in which they operate, and they should sometimes sacrifice some profit for the sake of making things better for their workers and communities.

The first statement actually reflects the corporate law. This is how corporations are designed. However, each time the poll has been taken, 95% of those polled chose the second statement over the first.

The poll shows there is an overwhelming desire to leave the Dark Ages concept of the corporation behind for something more in line with the re-designed corporation that includes the Code of Corporate Citizenship. All that is needed is the recognition by each of us that this re-design is a political possibility and the will power, Bucky would say the courage and integrity, to follow through.

Collective willpower, courage and integrity starts with individuals.

Each time corporate behavior that damages the public interest comes to your attention, realize that it occurs because of a law that says the duty of the people in that corporation is to pursue profit without regard to the public interest. Each of us is responsible for that law and only we can change it. Let us pray this Earth Day that we will find the way to do so.