REGULATING CORPORATE SOCIAL PERFORMANCE: A NEW LOOK AT SOCIAL ACCOUNTING, AUDITING, AND REPORTING

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Abstract: Traditional approaches to regulating corporate behavior have not, and cannot, produce socially responsible corporations. Although many of the problems with these approaches were identified twenty-five years ago by Christopher Stone, an effective regulatory system still has not been implemented. A model of regulation is needed that is flexible enough to accommodate the variety of contexts in which corporations operate, but also makes corporations responsive to the ever-changing societal expectations of proper corporate behavior. To accomplish these goals, a reflexive law regulatory system is needed. Under this approach, corporations should be encouraged to engage in corporate social accounting, auditing, and reporting (SAAR). The development of SAAR standards informed by reflexive law theory will create a regulatory system that is consistent with the latest thinking in business ethics, including Stakeholder Theory and Integrative Social Contracts Theory.

Introduction

Societies rightly demand socially responsible corporations, although there are differences as to the meaning of social responsibility.[1] Traditionally, societies seek to compel their vision of responsibility through legislation, judicial intervention, and direct administrative regulation. Almost twenty-five years ago, Christopher D. Stone, in his classic book *Where the Law Ends*,[2] identified the intractable problems these traditional legal mechanisms have in controlling the irresponsible behavior of corporations. Thus, it is not surprising that our current regulatory system—even with the mass of legislation on social issues beginning in the 1960s and continuing through today—still has not adequately addressed these problems. This strongly suggests a need for a new regulatory approach to produce socially responsible corporations. In response, this article argues for a reflexive law approach incorporating corporate social accounting, auditing, and reporting, as a superior method for influencing the behavior of corporations.

Reflexive law is a recent development in legal theory which argues that to achieve desired regulatory goals in our increasingly complex society, the legal system must employ indirect means with a focus on procedures.[3] A reflexive law

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approach moves away from direct intervention by the state and instead works to encourage "self-reflective and self-critical processes" within the corporation.[4] The basic idea is to create what may be called "regulated autonomy."[5]

The specific reflexive law approach recommended here is corporate social accounting (the measurement and recording of information), auditing (the evaluation of a company's performance against certain standards or expectations), and reporting (the compilation and public disclosure of the information),[6] referred to collectively as SAAR or simply social reporting. As reflexive law, social reporting would not require corporations to act in a specific manner (e.g., increase minority hiring), but would work toward establishing procedures to institutionalize responsible decision making within corporations.

This article argues that such a regulatory system can provide effective control of corporate behavior in a manner that is consistent with the latest thinking in business ethics. While social reporting is not a new idea, its usefulness as a regulatory tool will be greatly enhanced if its development is informed by reflexive law theory. This article will (1) establish the need for a new regulatory approach; (2) argue for a reflexive law approach as an alternative to the current regulatory system; (3) describe the necessary requirements of social reporting to achieve the regulatory goals; and (4) explain how such a regulatory system is consistent with the latest thinking in business ethics.

The Evolution of Law and the Need for a New Regulatory System

Gunther Teubner argues that as society becomes increasingly dynamic and complex over time, legal systems evolve through three stages: formal, substantive, and reflexive law.[7] Formal law involves the application of universal rules to create a framework in which private actors are free to make their own value judgments. The focus is on individualism and autonomy. With increasing regulatory intervention by the state, substantive law emerges. Substantive law involves direct state intervention in the affairs of private actors to compensate for the failures of the marketplace. Under such a system, the state mandates that certain predetermined outcomes be reached.

In the third and final stage of the evolution of legal systems, reflexive law emerges. Teubner states that reflexive law "shares with substantive law the notion that focused intervention in social processes is within the domain of law, but it retreats from taking full responsibility for substantive outcomes."[8] Instead, "reflexive law restricts itself to the installation, correction, and redefinition of democratic self-regulatory mechanisms."[9] This regulatory approach is oriented toward the use of procedures. Through procedural requirements, the state indirectly ensures that private actors take into account all externalities resulting from their actions by guiding their decision processes. In addition, through the use of the processes, the state does not suppress the diversity and complexity in society, but preserves the benefits of a highly differentiated society.[10]

Current regulatory approaches in the area of social responsibility rely on substantive law. The substantive law regulatory system began to take shape in the 1930s, but became most prominent in the 1960s and 1970s. This time period brought direct legislative intervention in the affairs of the corporation in the hopes of obtaining predetermined, socially responsible outcomes. In this period, legislation was adopted in a wide variety of areas, including pollution and hazardous waste control (e.g., Federal Water Pollution Control Act, The Clean Air Act Amendments of 1977), the workplace (e.g., The Occupational Safety and Health Act of 1970, The Equal Employment Opportunity Act of 1972), and consumer protection (e.g., The Consumer Product Safety Act, The Federal Hazardous Substances Act). Such legislation was typically along the lines of command-and-control. For example, in the area of environmental performance, the state may control the level of pollutants a firm is allowed to emit or may command that certain technologies be used.

While the regulatory approach of the past few decades has clearly improved corporate social behavior in a number of areas, exclusive reliance on such an approach has considerable problems that prevent the production of socially responsible corporations. Many commentators have pointed out the failings of the current substantive law approach. In a noted article on the "paradoxes of the regulatory state," Cass Sunstein stated: "[A] large source of regulatory failure in the United States is the use of Soviet-style command and control regulation, which dictates, at the national level, technologies and control strategies for hundreds, thousands, or millions of companies and individuals in a nation that is exceptionally diverse in terms of geography, costs and benefits of regulatory controls, attitudes, and mores."[11] In reference to current approaches in environmental law, a United States Environmental Protection Agency officer stated: "Most observers would agree that we are at a point of diminishing returns; whatever we have achieved so far with the current model of environmental regulation, we will achieve less for the level of effort expended from here forward."[12]

Teubner's theory of the evolution of law toward reflexive law allows us to identify and fully understand the specific problems of the current substantive law approach and the benefits of a reflexive law approach. The problems of the substantive law approach include general ones applicable to all substantive law approaches, and problems that are unique to the application of substantive law to issues of social responsibility.

Eric Orts has identified two general problems with substantive law approaches.[13] First, there is a problem of too much law, what Teubner has termed "juridification."[14] As more and more laws are enacted to reach the outcomes we desire, a mass of laws is created that is beyond any individual's comprehension.[15] Orts states that "When a body of laws becomes so complex and arcane that it cannot even be known, let alone fully complied with or enforced, one cannot hope that its objectives will be realized."[16] A second problem, termed normative legitimacy, results from the growing separation of lawmaking from democratic processes. Examples of this problem include the greater discretion given to agencies in interpreting and enforcing laws, and the inability of legislatures to coordinate and reconcile statutes and regulations that may affect the same behavior but in contradictory ways.

Christopher Stone's well-known criticisms of substantive law in the area of corporate social performance—though he did not use the substantive law terminology—are even more pertinent and problematic today. Stone's main criticisms included that substantive law is primarily reactive (acting only after a problem has occurred), requires significant policing and enforcement costs by the state, attempts the impossible task of framing society's values in regulatory language, and focuses on duties instead of aspirations (i.e., "thou shalt not discriminate" instead of "thou shalt do justice").[17] These problems are made all the worse in a society whose values are constantly evolving and can vary greatly based on the circumstances.[18] Furthermore, this a society of pluralistic values. Edwin Epstein states that "such key, and sometimes conflicting, values as success, freedom, justice, equity, efficiency, contractualism, communitarianism, utilitarianism, and individualism, together with deeply ingrained notions of personal and property rights, influence our concepts of ethical and responsible behavior."[19]

From these critiques, we can see that even though substantive law has proved to be beneficial to society in many respects, it is constitutionally incapable of producing socially responsible corporations in this current age of complexity and value pluralism. Under a substantive law approach, corporations are not being encouraged to develop new solutions to existing (or potential) problems, but only to meet a certain minimum level of behavior. Further regulating increasingly more aspects of business life limits the alternatives available to business to respond to society's expectations, and reduces the benefits accruing to society when corporations are able to respond to societal pressures in a manner most appropriate for their situation. This is not a return to a *laissez-faire* system, but as Christopher Stone stated: "[m]any corporate social problems do not feasibly lend themselves to the traditional legal treatments even to start with. In those cases, what seems needed as a 'remedy' is some institutional analogue to the role that responsibility plays in the human being, guiding action toward certain values where the ordinary legislative prohibitions are unavailable or, on balance, unwise."[20] Thus, reflexive law is needed to take over where substantive law ends.

The primary goal of a reflexive law approach is to "utilize the law to compel firms to behave 'morally.'"[21] Such an approach seeks to impact the day-to-day decisions made at all levels of the corporate hierarchy. This approach also seeks to create corporations that are proactive, engage in continuous improvement, and strive to go beyond minimal substantive legal requirements. To do this, corporations need the freedom to respond to their unique situation in the best manner possible. These results cannot be achieved by more substantive law, but by procedures that require corporations to meaningfully reflect upon their practices and consider the demands placed on them by the parties their actions affect. Those necessary procedures are corporate social accounting, auditing, and reporting.

A Brief History of SAAR and a Look Forward

SAAR is not a recent development. The 1970s was the most active period in the development and use of social reporting. Researchers were developing a variety of SAAR methods, ranging from those solely for management's internal use to those also for the benefit of the corporation's stakeholders. Some of the significant works in this period include: Clark C. Abt, *The Social Audit for Management* (1977); Raymond Bauer and Dan H. Fenn, *The Corporate Social Audit* (1972); David Blake, William Frederick and Mildred Myers, *Social Auditing* (1976); and Ralph Estes, *Corporate Social Accounting* (1976).

These works suggested considerably different methods. Abt, for example, attempted to create a social balance sheet by placing dollar values on the firm's "social assets" and "social liabilities."[22] This approach was criticized by those who preferred a more qualitative approach, arguing that "the very problems we want [social] accounting to cover have become problems precisely because they lie outside the world of transactions."[23] The diversity of proposed methods was not viewed as an obstacle, however, as experimentation and lively debate was considered a necessary prelude to the adoption of a conventional approach.[24]

At this time, large corporations, including General Motors and Bank of America, were experimenting in social reporting.[25] In a 1974 survey of large corporations, 76 percent of the 284 respondents (and 86 percent of corporations with sales over $10 billion) claimed to have recently attempted to assess their social activities.[26] One-third of the responding companies made some type of disclosure on social performance to the public, while 14 percent issued a stand-alone social report.[27] Social reporting was thought to be on the rise, and many executives thought the government would require social reporting of some form in the near future.[28]

The 1980s, however, did not see a continuation of this movement and social reporting received attention from very few corporations. In a 1990 survey of the 250 largest corporations in America, of the 138 respondents, not one could be found to have published a social report on an annual basis, and only two could be confirmed to have published at least one comprehensive report in the 1980s.[29] General Motors, which distributed a "Public Interest Report" at this time, was not one of the respondents, but was likely the only large corporation producing an annual social report at that time.

Many factors likely contributed to the decline in social reporting in the 1980s. One factor was that the primacy given to business interests in that decade overpowered any pressure on corporations to disclose their social performance.[30] Another factor was the recession of early eighties. Ralph Estes, a long-time advocate of social reporting, stated that "When the recession came, many corporate executives decided they did not want to be seen doing something that stockholders might view as frivolous or a luxury; when they stopped reporting, accounting firms and organizations lost interest."[31]

Another possible contributing factor was that the business community did not view social reporting as a way to improve corporate performance, but viewed it as a method whereby public interest groups would have the information needed to label corporations as either "good" or "bad."[32] Writing in the early 1980s, Neil Chamberlain noted that there were "widespread corporate qualms about possible adversarial use of any [social] reports including critical commentary."[33] The quality of the reports—likely due to management's concern over the disclosure of sensitive information—or perhaps the public's understanding of and ability to utilize the reports may also have prevented social reporting from gaining widespread acceptance; that is, the inability of the public to understand and appreciate the reports lowered the demand for such reports.

In the 1990s, social reporting continued to remain low on American corporations' agendas, but environmental audits became more widespread. Environmental audits are conducted by corporations both for their own benefit—to improve efficiency and to understand and lower potential liabilities—and, sometimes, for the benefit of the public. For example, many companies are adopting the CERES principles, which require a publicly disclosed environmental report. Most significantly, the European Union has established a voluntary environmental audit scheme called the European Eco-Management and Audit Scheme (EMAS).[34] Corporations choosing to participate in EMAS conduct internal environmental audits and disclose environmental statements to the public. In a short period of time, environmental audits have emerged as an accepted and common practice.

Encouraged by the success of environmental auditing, there has been a recent resurgence of the social reporting movement in Europe. Interested parties in Europe have established several research centers and organizations on SAAR, and The Institute of Social and Ethical Accountability in London, the Centre for Environmental and Social Accountancy Research at the University of Dundee, the New Economics Foundation in London, and the European Institute for Business Ethics at Nijenrode University, are working to advance the field.[35] Social reports conducted by The Body Shop International and Ben and Jerry's Homemade have also brought recent attention to this field.

Will this resurgence suffer the fate of the social reporting movement of the 1970s? There are several reasons to believe that it will not. First, the environment in which businesses must now operate is significantly different from the 1970s. We are now in the "information age" where stakeholders have greater access to information than at any other time. With this access to information, stakeholders have placed corporations under greater scrutiny than ever before. Although a corporation is justifiably concerned about disclosing negative information about itself, it is reasonable to believe that in this age any such information will eventually be discovered by the public, and perhaps disclosed from a very biased perspective. In such an environment, it is to the corporation's advantage to be forthright and proactively manage the disclosure of that information.[36] This will give the corporation a chance to justify its actions or explain how it plans to deal with the matter. Failure to do so can have a significant negative impact on the corporation's reputation, an asset that is becoming increasingly more valuable.

In recognition of the value of reputation, several proponents of social reporting are actually making the case for SAAR, at least in part, from a strategic management perspective.[37] Under "instrumental" stakeholder theory, corporations are expected to benefit financially from strengthening their relationships with key stakeholder groups. There is growing empirical evidence in support of this view.[38] A properly implemented social reporting process, it is argued, can be a valuable tool in developing these relationships for the benefit of the firm. Furthermore, SAAR can aid corporations in fully understanding the marketplace of morality, which can be a key factor in avoiding negative backlash and increasing positive responses from the marketplace.[39] As Cynthia Williams stated, "today's social issue is tomorrow's financial issue. Ultimately, it is quite difficult to draw a meaningful distinction between a corporate 'financial issue' and a corporate 'social issue,' because social, consumer, and investor trends with respect to the corporation's relationship with society can eventually affect a company's profitability, for good or ill."[40] In addition, a social audit can serve as a risk-management tool for a corporation, providing the corporation with advance warnings of potential legal liabilities.

The 1990s have also brought a developing sense that stakeholders have a right to a wide variety of corporate information, and not simply financial information. These points are discussed further below, but it is apparent that consumers, investors, and potential employees are all seeking and demanding information on a corporation's social performance. For example, a 1994 study of 1,037 American households found that 16 percent of the respondents "always" or "frequently" study information on a company's practices and social performance before making their purchasing decision.[41] This is creating a grassroots demand for social reporting, something that was lacking in the 1980s, when corporate management could drop social reporting activities with little protest from the public.[42] In addition, we are arguably moving into an era where top management is becoming more accepting of obligations toward all its stakeholders. For example, the Caux Round Table, an international organization of corporate executives, explicitly recognized an obligation toward stakeholders in its *Principles for Business*.

In this new environment, a reflexive law approach to social reporting can take advantage of the recent advances in legal theory and business ethics to create a SAAR regulatory system that will not suffer the same fate as the social reporting movement of the 1970s. SAAR should not be considered a "luxury" afforded stakeholders, but a critical component of a regulatory system based on reflexive law principles. Standards of social reporting informed by reflexive law theory must be developed and corporations must be encouraged to engage in SAAR. The next section turns to an initial approximation of what a reflexive law approach to SAAR would require.

An Initial Outline of SAAR Legislation

This section will first describe the current state of social reporting to provide an understanding of available approaches and then discuss the basic requirements of SAAR that are necessary to achieve the goals of a reflexive law regulatory system.

The Current State of Social Reporting

The Council on Economic Priorities (CEP) has long published reports and books on the social performance of a limited number of large corporations. Their reports are based upon a wide variety of sources including surveys, data collected by non-governmental organizations, and various periodicals. In their reports, the CEP gives corporations grades in a several categories based on their performance in those categories.[43] For each category there is a list of criteria and the firm's grade depends on how well it is meeting those criteria. For example, in the category of "minorities," the CEP considers the number of minorities on the board, programs to develop minority advancement, purchasing from suppliers owned by minorities, and related factors.[44] Thus, the CEP discloses a limited amount of information on a limited number of companies. These reports may be called "external" social reports, as the appraisal of a company is conducted by the CEP. The social reports described below are all "internal," with the disclosure of information coming from the company itself.

Recently, law professor Cynthia Williams argued in the *Harvard Law Review* that the SEC should (and has the power to) require corporations to make disclosure on certain social issues.[45] She argues that this information is valuable to both "economic investors" (those presumed to be interested only in financial returns) and "social investors" (those with an interest in the broader impact of corporate activities). In her proposal, she divides social information into two basic types: (1) compliance with statutes and international treaties; and (2) conduct that is legal but controversial. She argues that corporations should be required to make disclosure on both types of information in several general categories (listed in Table 1). The Center for the Advancement of Public Policy (CAPP) also argues that companies should disclose certain types of social information. Rather than focus on general issues, however, the CAPP's proposal focuses on the information needs of customers, employers, suppliers, stockholders, and the community.[46]

Though limited to labor issues, the Council on Economic Priorities Accreditation Agency (CEPAA) has developed a scheme that does not focus on disclosure but upon the recognition of compliance with established standards.[47] The CEPAA's standards for ethical sourcing are entitled Social Accountability 8000 (SA8000). Rather than disclosing detailed information to the public, an audit team certifies that a company has complied with the standards of SA8000 and that its suppliers are also meeting those standards. The standards focus on compliance with appropriate behavior in areas such as workplace health and safety,

Table 1

CEP's Corporate Report Card*	**Williams's SEC Disclosure Proposal****
The Environment	Products
Women	Countries in which the company does business
Minorities	Compliance information generally
Charitable Giving	Domestic & International labor information
Community	Domestic & International environmental
Family Benefits	Domestic & international political contributions
Workplace Issues	Community and charitable contributions
Social Disclosure	Accuracy
Animal Welfare	
Weapons Contracts	
Gay/Lesbian Issues	

*The CEP does not provide rankings for the last three categories.
***See* Williams, *supra* note 40, at Appendix A.

child labor, compensation, and discrimination. Through certification, the public is assured that the corporation is acting "responsibly" with respect to labor issues. To be certified, a company must also have in place a "Social Management System" (SMS). The SMS is a comprehensive system covering the management, implementation, monitoring, and review of the firm's compliance with the standards.

A reflexive law approach to social reporting seeks to move beyond simple disclosure requirements, and toward creating processes within the corporation that will encourage socially responsible behavior. SA8000 does require certain procedures, but those procedures are focused on assuring compliance with predetermined outcomes. Williams's proposal requires the disclosure of only the procedures a corporation has adopted to ensure that it is in compliance with all laws. In Europe, however, recent proposals are recognizing the importance of mandatory procedures in addition to the disclosure of social information.

Simon Zadek, Peter Pruzan, and Richard Evans, through their work at organizations such as the Institute of Social and Ethical Accountability, have established eight principles to judge the quality of social reports.[48] Those eight principles are: inclusivity, comparability, completeness, evolution, management policies and systems, disclosure, externally verified, and continuous improvement.[49] Without discussing the details of each principle, it is easy to see how these principles differ from the social reports described above. Specifically, these principles focus on the *process* of creating the report and not simply on listing what information is to be included in the final report. This is not saying that the substance of the report is irrelevant, but that to improve social performance, the process by which corporations collect and review the information is vitally important. The SAAR process must allow corporations to understand the demands placed on them by stakeholders and must require processes that allow the corporation to learn from those dialogues and its past experience. These are necessary elements of a social reporting scheme that will satisfy the goals of a reflexive law approach.

SAAR Requirements

A definitive social reporting process cannot be provided at this time; however, we can identify some general requirements to guide thinking about SAAR from a reflexive law approach. These requirements are: a stakeholder-oriented approach, the appropriate procedures and policies, verification by independent auditors, and the requirement of an annual, publicly disclosed report. In addition, due to the current early stage in the development of SAAR, social reporting legislation should encourage active participation in experimenting with SAAR. It is only through extensive experimentation that researchers and practitioners can develop a conventional approach to SAAR. The discussion of the SAAR requirements below includes brief illustrations of how two companies—The Body Shop and Ben and Jerry's Homemade—are attempting to implement some of these principles in their own social reports.

Achieving Participation

The first step in social reporting legislation is to gain the necessary practical experience to develop standards generally applicable to all corporations. Eventually, this progress may allow a move toward a mandatory system. Without a mandatory system, however, most corporations will need some incentive to participate in such a process. One possible incentive mechanism is the development of a compliance label given to corporations who produce social reports that meet certain minimum requirements. Corporations could use these labels on their products or in their promotional literature.[50] This label would not declare that the corporation is certified by the State as a socially responsible corporation, but only that the complying corporation has met the minimum necessary SAAR requirements.

Other incentive mechanisms that regulators may consider include giving tax deductions for expenses incurred in creating a social report or giving complying corporations preferential treatment for government contracts. Again, corporations would be rewarded for complying with SAAR standards and not for obtaining State-determined goals of social performance, such as increasing minority employment.[51] Incentives to conduct social reports could also come from stakeholders themselves, including pressure from consumers, banks, suppliers, insurance companies, and others.

Over time, we can expect that more corporations will engage in social reporting, and the quality of social reports should improve in the same manner as environmental audits have improved over the past few years. This accumulated experience will then allow further refinement of SAAR standards. These standards must balance the universality needed to ensure that minimum standards are met and the flexibility needed to meet industry- or firm-specific contexts. Most importantly, the standards established must be guided by the principles of reflexive law. These include establishing the necessary procedures to guide corporations in fully understanding the demands of its stakeholders and being responsive to those demands.

SAAR Requirements

The following are four general requirements to guide the future development of SAAR standards from a reflexive law approach.

(1) Stakeholder-Oriented. There are three elements to the social reporting process being stakeholder-oriented. First, the corporation must take into account the views of all stakeholder groups.[52] Second, it is important that the social reporting procedure develop a dialogue between the corporation and its stakeholders. Third, the social report must be capable of handling the diversity of views of the various stakeholder groups.

To ensure that the corporation is meaningfully considering all stakeholder groups, and not just the most influential (or at least those presumed to be the most influential), the social report should be divided into separate sections for each group. Because the relevant stakeholder groups, and the information requirements for each group, will vary from industry to industry, and based on other factors, the standards adopted must be flexible enough to allow for this variation. In addition, the standards will have to take into account the practicality of conducting a social report when deciding whether to adopt a narrow or more broad definition of stakeholder.[53]

Table 2 provides a list of stakeholder groups and an illustrative list of potential issues of importance to those groups. While the social report process itself will identify the issues of importance, lists of issues such as those published in the *Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance*[54] and the Caux Rountable's *Principles for Business* provide guidance on the issues corporations should address in their reports.

Table 2: Stakeholder Issues

Stakeholder Group	Illustrative Issues of Concern
Customers	– Product safety and content – Customer complaints and lawsuits – Advertising practices – Customer concerns on the trade-off between product/service price and environmental and social issues
Community	– Charitable contributions – Local employment – Environmental impact of activities – Political activity – Regulatory compliance
Employees	– Wages (compared to industry and community standards) – Health and safety of the workers – Benefits (pensions, child care, health insurance, etc) – Training and advancement of workers – Gender and race issues
Environment	– Compliance with regulatory standards – Emissions and use of hazardous materials – Waste reduction & recycling programs in the company – Environmentally "friendly" packaging
Shareholders	– Financial returns – Accurate and timely disclosure of operations and performance – Corporate governance, including executive compensation – Shareholder proxies
Suppliers	– Supplier's social and environmental performance – Standards for selecting and monitoring suppliers
Franchisees (if applicable)	– Policies on issues such as termination, renewal, encroachment, use of advertising fees, etc. – Training – Communication of franchisor's strategy

The social reports of the Body Shop and Ben and Jerry's Homemade follow this basic approach and divide their reports into approximately the six stakeholder groups in Table 2.[55] There will of course be practical limits on the number of stakeholders the corporation can include, but the corporation should not be allowed to systematically exclude those stakeholders whom the company believes may have negative opinions of the company or have unusually high expectations for the company's performance. The Body Shop has attempted to do this by not only surveying the opinions of current customers, but also nonusers, and lapsed users (those who have purchased a Body Shop product but not within the last twelve months).[56]

The social report must also establish a dialogue with the stakeholders.[57] Such a dialogue is necessary to understand not simply what stakeholders' opinions are, but the basis of those opinions. At the Body Shop, a dialogue is conducted with focus groups of stakeholder representatives, which is then followed up with a large-scale survey that reflects the outcome of the focus group discussions.[58] Ben and Jerry's has experimented with alternating yearly between larger-scale surveys and focus groups.[59] A reflexive law approach requires this information exchange for a corporation to take into full account the expectations of its stakeholders when it acts.

It is expected that the corporation's stakeholders will often have conflicting views and the social report must be able to handle this diversity of opinions. Through the social reporting process, the corporation will gain an understanding of its stakeholders, and the stakeholders will gain an understanding of the corporation as well as its relationship with other stakeholders. By understanding each other's perspective, the stakeholders can hopefully work on their points of disagreement,[60] and trade-offs can be worked out between the corporation and all stakeholder groups. Through the SAAR process, the corporation will improve its decision making and also give all stakeholder groups a sense of procedural fairness.[61]

(2) SAAR Procedures and Policies. Certain procedures and policies are necessary to ensure that the corporation is meaningfully fulfilling all SAAR requirements. Such procedures should include: creating (and continually updating) a statement of values, educating employees on the reporting process, putting procedures in place for the collection of data, giving regular reports to upper and lower levels of management, and establishing procedures to ensure that feedback is provided to the relevant departments of the corporation.[62]

The Body Shop's general process of creating a social report is presented in Table 3. Their reporting process is conducted under the auspices of the Ethical Audit department, which is organized along the lines of the various stakeholder groups.[63] A key step in the process is number eight in Table 3, the internal audit. During this step, the internal divisions and departments of the company are audited on the compliance of their management systems with the company's policies on social issues and the social reporting process. Another vital step involves receiving feedback from stakeholders once a report is completed, and ensuring that this feedback is provided to those members of the organization who deal directly with those stakeholders. This is essential for the reflexive law approach to SAAR; corporations must understand the demands placed on them by their stakeholders and those in a position to respond to those demands must have the necessary information.

Table 3: The Body Shop's SAAR Framework

1. Publication of statement
2. Stakeholder Dialogue
3. Policy Review
4. Determination of Audit Scope
5. Agreement of Standards and Performance Indicators
6. Stakeholder Consultation
7. Stakeholder Surveys
8. Internal Audit
9. Preparation of Accounts and Internal Reports
10. Verification
11. Return to step 1

Source: Adapted from The Body Shop, *Values Report 1997*, p. 8.

(3) Verification.[64] Independent auditors should conduct a verification of the report and include a report of their findings in the company's published social report. Verification is necessary to ensure that the report is an accurate and truthful assessment of the corporation's performance on social matters and of the opinions of stakeholders. The role of the independent auditor is a vital one, as many may be skeptical of social reporting—viewing it as suffering from a potential problem of form over substance. Likewise, some may fear that such social reports may merely be used as marketing ploys. It is therefore the job of the independent verifiers to ensure that the appropriate procedures and policies are in place and being meaningfully followed, and that the views of stakeholders—and all reported information—are clearly and truthfully represented. With this verification, we can have more confidence that the organization is not merely "going through the motions," but that the members of the organization are collecting and using the information appropriately.

The verifier's report may also be a place where the external auditor can point out the company's progress on certain matters and how the company is responding to certain stakeholder demands. For example, the auditor's report in Ben and Jerry's Homemade social report noted the lack of racial diversity in that company.[65] The auditor stated that while two African Americans were added to the senior management team in 1997, four African Americans resigned from management positions. The auditor's report did not attempt to reach a conclusion on why this was the case, but identified it as an area that future social reports should address.

(4) Annual, Publicly Disclosed Social Report. The verified report must be disclosed in a document that is intelligible, not misleading, and allows comparison to the performance of other firms. In addition to stating the basic findings of the evaluation, the report should provide management the opportunity to explain the findings and to state their plans for future improvement. The most likely place for disclosure of the report is the company's web site. This makes the report accessible to the greatest number of people, as well as reducing distribution costs for the firm.

Public disclosure serves many purposes. Disclosure is a necessary part of the creation of a dialogue between the corporation and its stakeholders. From the report, the stakeholders can provide the corporation with feedback, which then starts the next cycle of the social reporting process and may lead to changes in corporate behavior. Disclosure can also help to improve corporate behavior due to any corporation's desire to avoid negative publicity, and their need to justify and stand behind their actions.

SAAR and Business Ethics Theory

An approach to SAAR in compliance with the four basic requirements discussed above is consistent with the idea of social responsiveness, as popularized in the 1970s by such researchers as William Frederick, Robert Ackerman, and Raymond Baur. Simply stated, social responsiveness is the "capacity of a corporation to respond to social pressures."[66] A corporation is *responsive* not just by reacting to societal pressures, but by having procedures and mechanisms in place to anticipate and react to such pressures in "fruitful, humane, and practical ways."[67] The supporters of social responsiveness commonly advocated social audits as a way to implement this theory.

A reflexive law approach to SAAR may also be seen as an implementation of stakeholder theory. Simply stated, stakeholder theory dictates that those who have a "stake" in a corporation's decision—such as those who may be affected by a firm's action—have a right to have the corporation consider their interests when making that decision. In other words, the corporation is responding to stakeholder issues.

Commentators have argued that social responsiveness and stakeholder theory leave many fundamental questions unanswered. How should corporations respond to societal pressures? What normative standard should guide corporate responsiveness? How should corporations balance the competing interests of stakeholders? Who is a stakeholder? Without answers to these questions, it is argued, the ideas of social responsiveness and stakeholder theory fail to improve managerial decision making in a meaningful way.

Thomas Donaldson and Thomas Dunfee argue that their revised version of social contract theory, termed Integrative Social Contracts Theory (ISCT), can provide the needed normative guidance.[68] Under ISCT, society's various economic communities (which can be grouped by industry, firms, departments within a firm, geographic region, profession, etc.[69]), are free (have "moral free space") to determine their own norms for economic behavior. Norms that are consented to by the members of the community are considered "authentic." To be obligatory, the norm must also be "legitmate," which means that the norm must be compatible with hypernorms. Hypernorms are those norms that are fundamental to human existence, such as basic human rights.[70]

In reference to stakeholder theory, Donaldson and Dunfee state:

> Authentic ethical norms, grounded in specific communities, define stakeholder status and provide criteria for sorting out conflicting stakeholder interests. Hypernorms place limits on authentic norms and may mandate the recognition of certain fundamental stakeholder claims. Relevant political, social, or economic communities may act to define the primary boundaries of stakeholder obligations for organizations operating within their boundaries.[71]

Thus, applying stakeholder theory would require looking to the relevant community norms to determine who is a stakeholder and what obligations the corporation owes those stakeholders. By fully understanding the various microsocial contracts that it is a party to—as well as participating, and letting all relevant stakeholders fully participate, in their creation—the corporation can be fully responsive to these expectations and demands. In situations where there are no clearly defined norms to govern behavior, or norms are in conflict, it is reasonable to assume that the corporation should try to create dialogues with the relevant stakeholder groups to come to a resolution on what should be the proper norm or course of action.

From this brief description of corporate social responsiveness and stakeholder theory, and how they can be guided by ISCT, it is easy to see how a reflexive law approach to SAAR is compatible with these theories. Through SAAR procedures, the organization is able to understand the demands and norms of the various "communities" in which it operates and how these norms are evolving. The stakeholders in those communities are also able to judge how well the organization is living up to their expectations. The SAAR process described here not only transfers information between the stakeholders and the organization, but also between the various stakeholder groups. This allows all stakeholders (or communities) affected by the corporation to understand each others' demands and attempt to work out acceptable norms of appropriate behavior.[72] In addition, publishing the report changes the "front page test"—where an individual imagines that his or her business decision will be published on the front page of the newspaper—from a hypothetical exercise to reality; the organization must now actually face the public's reaction to its decisions.

A reflexive law approach to SAAR is also consistent with the idea of a Marketplace of Morality, as Thomas Dunfee has labeled the existence of moral preferences in the commercial world.[73] Under this view, market participants essentially "vote" on appropriate corporate behavior with their purchase decisions, choices of employment, investment decisions, and so on. Recently, it appears that society's use of its franchise is getting stronger and more sophisticated. Consumers have shown a willingness to punish those companies with a poor record of social performance and to reward those companies viewed as socially responsible. A recent survey found that 47 percent of consumers would be "much more likely" (88 percent were "somewhat more likely") to buy from a socially responsible company when choosing between equal products.[74] In addition, 57 percent of consumers indicated they would be "much less likely" (92 percent were "somewhat less likely") to buy from a company that was not socially responsible.[75] Socially screened investment funds have shown that they are not a fad, but a long-term trend. Currently, nine percent of all professionally managed investments in the U.S. are screened for social factors.[76]

Nike's recent experiences with its overseas manufacturers is one example of a situation where, upon obtaining the appropriate information, society has demanded a change in a corporation's social performance. In 1996 and 1997 Nike was accused of operating sweatshops in Indonesia[77] and Vietnam.[78] Nike attempted to deny these allegations, but as some of this information came from an internal report that was leaked to the public,[79] Nike had to answer to its stakeholders. In response to these events, Nike announced several measures to rectify the situation, including prohibiting the use of underage workers in its overseas manufacturers and taking measures to ensure that these plants meet the health and safety standards of the United States.[80] When making these changes to the company's policies in Asia, Nike's Chief Executive, Phillip Knight, stated, "The Nike product has become synonymous with slave wages, forced overtime and arbitrary abuse. . . . I truly believe the American consumer does not want to buy products made in abusive conditions."[81] Thus, while Nike had seemingly permitted these practices to occur for years, it was only when its stakeholders became fully aware of the situation and demanded change that Nike took action.

For the marketplace of morality to work efficiently, society must have the ability to state the norms they expect corporations to abide by, and corporations must be able to recognize and respond to those demands. To be able to "vote" intelligently, all transactors (not just social activists) need full and accurate information. On the supply side, corporations must understand and be responsive to the moral preferences within capital, consumer, and labor markets, to produce the output desired by the market and, ultimately, to increase the value of the firm.[82] A social report conducted in accordance with the basic principles laid out here will give the corporation this necessary information.

In summary, the goal of the regulatory system should be to guide corporations in being responsive to the expectations and demands of its stakeholders. The ideas of ISCT are necessary to determine the nature and scope of this responsiveness. ISCT is found to be especially important when it is recognized that what is considered "responsible" or "ethical" corporate behavior at one time may not be considered so at another point in time. In addition, this determination can vary greatly based on the circumstances. ISCT establishes that communities should be free to establish their own norms of appropriate behavior (as limited by the micro- and macro-social contracts) and to expect corporations to abide by those norms. Furthermore, the interactive nature of the reflexive law approach advocated here may allow society's inchoate demands and expectations of socially responsible behavior to fully develop and become concrete, especially with respect to any particular firm. Thomas Dunfee has warned that "[l]aw without reference to ethics and community moral values is in danger of becoming disconnected from the public will."[83] To take heed of this warning and to develop a regulatory system that is consistent with current business ethics theories, we must strongly consider a reflexive law approach to corporate social reporting.

The Costs of a Reflexive Law Approach

Corporations have, and are likely to continue, to justify a refusal to conduct social reports on the basis of "excessive cost." Closer examination, however, reveals that a substantial amount of the work necessary to comply with the SAAR procedures outlined above is already being done. Laws on occupational safety, equal employment opportunity, and other areas, already require corporations to collect some of the necessary information. Furthermore, corporations voluntarily conduct environmental audits or workplace surveys for their own benefit. In their annual reports, corporations routinely disclose considerable amounts of information on social issues. Professor Rob Gray of the Centre for Environmental and Social Accountancy has used this information to create social reports for companies, which he terms a "silent account."[84] Clearly, simply compiling this information in a user-friendly report is not sufficient to satisfy the SAAR standards proposed, but it is significant step in the right direction. With this quantitative information, a meaningful dialogue with stakeholders can begin.

Also on the matter of cost is the issue of potential legal liability for matters disclosed. While this is a legitimate concern for management, it does not appear that the companies that have issued social reports have faced increased liability.[85] One possible response is to give corporations leniency on matters they disclose, similar to what is currently being done with corporations who disclose environmental violations and demonstrate that they are working to rectify the situation. A related legal issue is that of liability for false statements. Verification by independent auditors should significantly reduce this problem and increase the public's trust in the reports. To allay management's concerns, however, it reasonable to only hold corporations liable for intentional dissemination of false information in a social report.

Most importantly, however, a new perspective on the issue of the costs of SAAR is needed. Just as corporations must disclose financial information as a cost of doing business, it is reasonable to hold them responsible for disclosing information on matters of importance to the various stakeholder groups.[86] Furthermore, there is nothing inherently "correct" in extant accounting practices, as those practices are the result of social and political choices.[87] To the extent that the SAAR procedures advocated here require corporations to incur costs beyond disclosure (e.g., opening up a dialogue with stakeholders), these costs can also be justified on the grounds of creating an effective reflexive law regulatory system. The debate over cost must then consider the issue of a reflexive law system with private costs versus a substantive law system with public costs.

The benefits of a reflexive law approach are seen in its comparative advantage over a substantive law approach. Producing socially responsible corporations is not a task that can be accomplished by creating more and more substantive law. The many contexts in which businesses operate and the various community norms they operate under, as well as the "value pluralism" in society today, makes it virtually impossible for the State to enact consistent and effective uniform laws. Business ethics theorists have long accepted and appreciated the complexity and diversity in society, but substantive law has made it difficult to create a system of regulating corporate behavior that does the same. A move, at least in part, to a reflexive law system can create a regulatory system that meets these needs. Using SAAR as a reflexive law regulatory system avoids substantive law's main problems in the area of social performance and helps alleviate those problems to create more efficient and effective regulation.

Conclusion

Informed by a reflexive law approach, SAAR provides a regulatory system that will work in today's complex society and can improve the social performance of corporations in a manner consistent with the latest thinking in business ethics. Through SAAR, corporations will systematically consider the norms they are expected to abide by and how to best improve their social performance. SAAR also allows stakeholders to hold corporations accountable to community norms and expectations. As stated by David Linowes, an early advocate of social reporting, SAAR "could exert a sufficiently strong influence on corporate policy to take the built-in payoff out of social irresponsibility."[88] Overall, this approach places the business community and all stakeholders in their appropriate place, at the forefront of producing socially responsible corporations.

Notes

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[1]Most discussions of the meaning of social responsibility begin with Milton Friedman's classic statement that being socially responsible means only to "make as much money as possible while conforming to the basic rules of society" (Milton Friedman, "The Social Responsibility of Business is to Increase Its Profits," *New York Times Magazine*, September 13, 1970, at 32, 33) and then debating the merits of moving away from such a definition.

[2]Christopher D. Stone, *Where the Law Ends: The Social Control of Corporate Behavior* (1975).

[3]The seminal writing on reflexive law is Gunther Teubner, "Substantive and Reflexive Elements in Modern Law," *Law and Society Review* 17 (1983): 239 [hereinafter Teubner, *Reflexive Elements*]. On reflexive law generally, see also Gunther Teubner, "Autopoiesis in Law and Society: A Rejoinder to Blankenburg," *Law and Society Review* 18 (1984): 291; Eric W. Orts, "Reflexive Environmental Law," *Northwestern University Law Review* 89 (1995): 1227–1340; Ralf Rogowski and Ton Wilthagen, *Reflexive Labor Law* (1994).

[4]Eric W. Orts, "A Reflexive Model of Environmental Regulation," *Business Ethics Quarterly* 5: (1995): 779, 780.

[5]Teubner, *Reflexive Elements*, supra note 2.

[6]*See* Meinolf Dierkes, "Corporate Social Reporting and Auditing: Theory and Practice," in *Corporate Governance and Director's Liabilities* (Klaus Hopt and Gunther Teubner eds. 1985).

[7]The following discussion is based on Teubner, *supra* note 2, at 252–57.

[8]Teubner, *Reflexive Elements*, *supra* note 2, at 254.

[9]Ibid., p. 239 (quoting from the abstract).

[10]Orts, *supra* note 3.

[11]Cass R. Sunstein, "Paradoxes of Regulatory State," *University of Chicago Law School* 57 (1990): 407, 412.

[12]Daniel J. Fiorino, "Rethinking Environmental Regulation: Perspectives on Law and Governance," *Harvard Environmental Law Review* 23 (1999): 441, 442.

[13]Orts, *supra* note 3.

[14]Gunther Teubner (ed.), *Juridification of Social Spheres*, (1987).

[15]Orts, *supra* note 3.

[16]Orts, *supra* note 4, at 782.

[17]Stone, *supra* note 2.

[18]See Epstein, "The Corporate Social Policy Process and the Process of Corporate Governance," *American Business Law Journal* 25 (1987): 361.

[19]Ibid. at 361.

[20]Stone, supra note 2, at 120.

[21]Gunther Teubner (ed.), *After Legal Instrumentalism? Strategic Models of Post-regulatory Law* 320, in *Dilemmas of Law in the Welfare State* (1986).

[22]Clark C. Abt. *The Social Audit for Management* (New York: AMACOM), 1977.

[23]Neil W. Chamberlain, *Social Strategy and Corporate Structure* 81 (1982) (quoting Daniel Gray).

[24]Ibid., p. 82.

[25]*Business Week*, "Social Auditing in the US Gets a Slow Start," November 6, 1978, at 178.

[26]Thomas G. Marx, "Corporate Social Performance Reporting," *Public Relations Quarterly* 37 (December 22, 1992): 38.

[27]Ibid.

[28]Chamberlain, *supra* note 23.

[29]Marx, *supra* note 26.

[30]"The 1980s in some ways did not provide a conducive environment for the development of social auditing. It was a period when business was arguably given more of a 'green light' to set its own terms for engagement with society than at any other time in this century, certainly in the industrial world." Simon Zadek, Peter Pruzan, and Richard Evans, *Building Corporate Accountability* 18 (1997).

[31]Author email correspondence with Ralph Estes, October, 1999.

[32]Author telephone interview of Alan Parker of SAAR Associates, April, 1998.

[33]Chamberlain, *supra* note 23, at 82.

[34]For a description of EMAS and its various provisions, see Orts, *supra* note 2, at 1287–1311.

[35]In addition, much work is being done at the Copenhagen Business School under the direction of Professor Peter Pruzan.

[36]Author telephone interview of Alan Parker of SAAR Associates, April, 1998.

[37]*See* Zadek et al., *supra* note 30; Simon Zadek, "Balancing Performance, Ethics, and Accountability," *Journal of Business Ethics* 17 (1998): 1421.

[38]*See, e.g.*, The Conference Board, "The Link Between Corporate Citizenship and Financial Performance," Conference Board Research Report, New York 1999; Waddock, Sandra A. and Samuel B Graves, "The Corporate Social Performance-Financial Performance Link," *Strategic Management Journal* 18 (1997): 303.

[39]*See* Thomas W. Dunfee, "Corporate Governance in a Market with Morality," *Journal of Law and Contemporary Problems* 62 (1999): 129.

[40]Cynthia A. Williams, "The Securities and Exchange Commission and Corporate Social Transparency," *Harvard Law Review* 112 (1999): 1197, 1284.

[41]Robert Gildea, "Consumer survey confirms corporate social action affects buying decisions," *Public Relations Quarterly* 39 (1994/1995 Winter): 20.

[42]Author email correspondence with Ralph Estes, October, 1999.

[43]Council on Economic Priorities, *The Corporate Report Card* (1998). The following description of the CEP's reporting practices is based primarily on the information in the CEP's online version of the "Corporate Report Card" available at <http://www.cepnyc.org/quicktakes.htm>.

[44]<http://www.cepnyc.org/criteria.html>.

[45]Williams, *supra* note 40.

[46]*See* "The Sunshine Standards" at <http://www.essential.org/capp/sunstds.html>.

[47]The following discussion of SA8000 is based on: Council on Economic Priorities Accreditation Agency, *Social Accountability* 8000 (1997) (copy on file with author); Andreas Sturm et al., *SA8000: Corporate Social Accountability Management* (1999), available online at <www.ellipson.com/sa8000>.

[48]*See* Zadek et al., *supra* note 30; Zadek, *supra* note 37. Since the time this article was submitted for publication there have been significant advancements in the field of SAAR. Most notably, the Institute of Social and Ethical AccountAbility published *AccountAbility 1000 (AA1000)* as a "foundation standard" for social auditing and reporting (for further information see <http://www.accountability.org.uk>). In addition, the Global Reporting Initiative (GRI) published guidelines on social reporting and recruited companies to pilot test the guidelines (for further information see <http://www.globalreporting.org>). Both are consistent with the principles discussed by Zadek et al., and appear to be consistent with the reflexive law approach discussed in this article.

[49]Zadek et al., *supra* note 30, at 41–44.

[50]*See* Orts, *supra* note 2, at 1324–27, for a discussion of potential incentives to encourage corporations to undertake environmental auditing.

[51]See Chamberlain, *supra* note 23, at 88 (arguing for rewarding companies "whose social performance coincided most effectively with public objectives").

[52]*See* Zadek et al., *supra* note 30, at 42 (discussing the principle of inclusivity).

[53]For a discussion of the various stakeholder definitions, see Ronald K. Mitchell, et al., "Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts," *Academy of Management Review* 22 (1997): 853, 855–63.

[54]This document was joint product of the Interfaith Center on Corporate Responsibility, The Ecumenical Council for Corporate Responsibility, and The Taskforce on the Churches and Corporate Responsibility.

[55]Ben and Jerry's Homemade has experimented with these stakeholder groups but the report for 1997 used the groups of: workplace, operations, environment, franchise and retail operations, sales/marketing/international, philanthropy, and finance and shareholders. *Ben and Jerry's 1997 Annual Report*, at 12–28.

[56]The Body Shop, *Values Report 1997*, at 108.

[57]*See* Zadek et al., *supra* note 30, at 42.

[58]The Body Shop, *The Body Shop Approach to Ethical Auditing* (1998), available online at <www.the-body-shop.com>.

[59]*Ben and Jerry's 1995 Annual Report.*

[60]Richard Evans, "Accounting for Ethics: Traidcraft, plc" in *Building Corporate Accountability* 87 (Zadek et al. eds. 1997).

[61]Thomas Jones and Leonard Goldberg, "Governing the Large Corporation: More Arguments for Public Directors," *Academy of Management Review* 7 (1982): 603, 604–5 (arguing that due to the conflicting interests between the many corporate constituencies, improved social responsibility can be judged in terms of "greater procedural fairness rather than substantive fairness").

[62]*See* Zadek et al., *supra* note 30, at 43.

[63]The Body Shop, *supra* note 58, at 8.

[64]*See* Zadek et al., *supra* note 30, at 44; Orts, *supra* note 2, at 1322–23 (discussing the verification requirements for a proposed American environmental audit scheme).

[65]Ben and Jerry's Homemade, *supra* note 59, at 9.

[66]William C. Frederick, "From CSR1 to CSR2: the maturing of business-and society thought," *Business and Society* 33 (1994): 150. *See also* Robert Ackerman and Raymond Bauer, *Corporate Social Responsiveness: The Modern Dilemna* [sic] (1976).

[67]Frederick, *supra* note 66.

[68]Thomas Donaldson and Thomas W. Dunfee, *Ties that Bind: A Social Contracts Approach to Business Ethics* (1999) [hereinafter Donaldson and Dunfee, *Ties that Bind*]. On ISCT generally, see also Thomas Donaldson and Thomas W. Dunfee 1995, "Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory," *Academy of Management Review* 19 (1994): 252 [hereinafter Donaldson and Dunfee, *ISCT*]; Thomas Donaldson, and Thomas W. Dunfee, "Integrative Social Contracts Theory: A Communitarian Conception of Economic Ethics," *Economics and Philosophy* 11 (1995): 85.

[69]Donaldson and Dunfee define a community as "a self-defined, self-circumscribed group of people who interact in the context of shared tasks, values, or goals and who are capable of establishing norms of ethical behavior for themselves." Donaldson and Dunfee, *ISCT, supra* note 68, at 262.

[70]As norms between communities may come into conflict (i.e., a certain practice may affect multiple communities), there are priority rules to determine which norm should be followed. Donaldson and Dunfee, *ISCT, supra* note 68, at 268–70.

[71]Donaldson and Dunfee, *Ties that Bind, supra* note 68, at 245.

[72]This point comes from Alan Parker of SAAR Associates.

[73]Thomas W. Dunfee, "The Marketplace of Morality: First Steps Toward a Theory of Moral Choice," *Business Ethics Quarterly* 8 (1998): 127.

[74]Gildea, *supra* note 41. This was a 1994 survey of 1,037 Americans.

[75]Ibid.

[76]*Business Bulletin, Wall St. J.*, February 4, 1999, at A1.

[77]Del Jones, "Critics Tie Sweatshop Sneakers to 'Air' Jordan," *USA Today*, June 6, 1996, at 1B; "Protestors Rally for Nike Workers in Asia," *Chicago Tribune*, June 16, 1996, at 9.

[78]Steven Greenhouse, "Nike Shoe Plant in Vietnam Is Called Unsafe for Workers," *New York Times*, November 8, 1997, at A1.

[79]William Lewis, "Nike Under Fire on Conditions in Vietnam," *The Financial Times*, November 10, 1997.

[80]John H. Cushman, "Nike Pledges to End Child Labor and Apply US Rules Abroad," *New York Times*, May 13, 1998, at D1.

[81]Ibid.

[82]*See* Dunfee, *supra* note 39.

[83]Thomas W. Dunfee, "On the Synergistic, Interdependent Relationship of Business and Law," *American Business Law Journal* 34 (1996): 317, 319.

[84]Rob Gray, "The Practice of Silent Accounting," in *Building Corporate Accountability* 201–217 (Zadek et al., eds., 1997). Gray took Glaxco Holdings plc's 1994 annual report and produced a social report covering such issues as the company's mission and policy, and the company's impact on the community, environment, customers and employees. Ibid. at 205.

[85]Author email correspondence with Ralph Estes, October, 1999.

[86]Ralph Estes, among others, believes that this "an appropriate condition for participation in a free market system." Author email correspondence with Ralph Estes, October, 1999.

[87]Rob Gray, "Social and Environmental Accounting Research," available online at <http://www.dundee.ac.uk/accountancy/csear/briefing.htm> (last visited October 29, 1999). Gray argues that accounting practices are not as neutral and as objective as many people seem to believe. Gray states:

[T]here is a growing awareness that accounting, reflexively, also helps to *construct* the social reality. That is, the very essence of an organisation and its defining boundaries are increasingly synonymous with the accounting system; the way in which organisations are viewed and their success judged is through accounting. Thus society's discourse over what is and what is not "an organisation", what is and what is not "successful" and what is and what is not "rational", "efficient", "desirable" owes much to accounting practice.

[88]Quoted in Chamberlain, *supra* note 23, at 88.