Agenda, Volume 12, Number 4, 2005, pages 369-384

NON-AGENDA

With the view of causing an increase to take place in the mass of national wealth, or with a view to increase of the means either of subsistence or enjoyment, without some special reason, the general rule is, that nothing ought to be done or attempted by government. The motto, or watchword of government, on these occasions, ought to be — Be quiet...Whatever measures, therefore, cannot be justified as exceptions to that rule, may be considered as *non-agenda* on the part of government.

¾ *Jeremy Bentham* (c.1801)

Deconstructing Corporate Social Responsibility

Gary Johns

Corporate Social Responsibility (CSR) is a construct of non-owner, non-contract and non-government interests or 'stakeholders' to regulate corporations. It suggests that a corporation is not only responsible to the law, its investors, customers and employees, but to 'society'. As Henderson (2004:27) conceives it, CSR is a 'radical doctrine' because it purports to have its adherents 'both promote the general welfare and be seen to do so.' CSR does not, however, solve the problem of knowing what interests constitute society, nor of how to order its demands to achieve the general welfare. Until quite recently CSR has worked on private dealing between corporations and non-government organisations to bypass the traditional public consensus position as expressed in law. CSR is therefore a political ideology that wants private interests to be subsumed by the public interest as defined by a narrow range of players.

CSR encompasses two apparently contradictory forces: socialisation of the corporation and privatisation of regulation. In ideological terms, a left wing conspiracy dressed as a right wing conspiracy. Socialisation of corporations stems from a desire for public corporations to become public property, while leaving the financial risk with the owners. It seeks not only to internalise externalities but also the 'public interest', traditionally resolved in the public arena. Corporations will act as governments, political considerations will become more apparent, the language will become that of power rather than economics. Those most keen to socialise the corporation also want corporations to report their behaviour in dimensions that were previously thought to be the preserve of government — rights, equity and the environment. Furthermore, CSR is measured by a host of

Gary Johns is Director of the Governance Unit at the Institute of Public Affairs.

NGOs and professionals who are keen to expand their influence, or their income. Governments are left playing catch-up, the electorate left out of the picture.

The traditional regime for corporate regulation does not ignore CSR but seeks to secure the best rules for an entity's efficient organisation, give relief to those who do business with it, and prevent it from doing harm. In addition, it uses taxation and a host of very specific legislation such as contract, employment, insolvency, OH&S and pollution emission as the principal means of ensuring it contributes to the common good. In the new terminology, tax laws are social justice laws, environment and planning laws are sustainability laws, employment, OH&S, consumer and contract laws are human rights laws, and self-regulation is governance. CSR regulation seeks to overturn the traditional regime, which is based on a consensus regulator, the parliament and the courts, and whose tenor is liberal, allowing freedom of action consistent with protecting others from harm.

The paper outlines the reasons for the growth and appeal of CSR regulation, despite evidence that it is not profitable. It describes two types of private regulators and what each hopes to achieve from the CSR regime. Further, it outlines the Australian government's response to the regime, which is to facilitate measurement, and the corporate response, which is to use it as a recruitment tool.

Stakeholder Theory

An intriguing aspect of CSR is, why now? What is the evidence that corporations are bad for society? The iconic corporate collapses such as Ansett and HIH failed their owners, and workers or policy-holders, not society. They did not diminish the environment or abridge human rights. They sent broke those with a specific contract with the company. The upshot is greater scrutiny of corporations and more powers to regulators for transparent decisions on financial matters, but little for a CSR agenda that seeks a governance role for corporations in society. Measuring the triple bottom line does not prevent insolvency, but insolvency prevents the corporation from playing any role in society. Perhaps the answer lies in the fact that CSR advocates have discovered that they can place corporations under some pressure without recourse to government, the so-called soft path to power. An example is the UN Secretary-General Kofi Annan's self-declared, The Global Compact (GC). The GC has the modest mission of striving (UN, 2005):

> to be the world's most inclusive voluntary initiative to promote responsible corporate citizenship, ensuring that business, in partnership with other societal actors, plays its essential part in achieving the United Nations' vision of a more sustainable and equitable global economy.

In fact, the GC is a contrivance to entice the corporate world to deliver on the Universal Declaration of Human Rights, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work, the Rio Declaration on Environment and Development, and the United Nations Convention Against Corruption. Using corporations to deliver overt political change was once thought

to be imperialist or colonialist. Having them do so in the name of apparently good principles nevertheless leaves them open to the same accusation.

Note Annan's emphasis: business doing the work of government in conjunction with 'other societal actors'. The reference is to the fact that companies may 'negotiate performance standards with non-governmental organisations (NGOs) that include some form of monitoring. The NGOs arrogate to themselves, in this way, functions that belong to governments' (Wolf, 2004:10). The question must be asked, 'even if the public interest could be defined, why would a process of bargaining between publicity-seeking, single-issue NGOs and profit-seeking companies necessarily reach the right outcome? The process that generates the commitments to CSR is, let us be blunt, one of blackmail and concession' (Wolf, 2004:12). CSR diverts the corporation from its purpose, and places it, inappropriately, in the role of government.

The CSR phenomenon occurs at a difficult time to govern. The following observation of government holds true for corporations. 'It is clear that voters [shareholders] have, over time, become better informed about their governments' [corporations'] performance. Voters [shareholders] expect more of government [corporations] and their expectations are more divergent, consequently it becomes more difficult for government [corporations] to "identify any feasible set of policies that would satisfy its constituents" ' (Pharr, Putnam and Dalton, 2000:20). More broadly, there is a long-term trend toward the individual, a trend which 'undercuts the authority of institutions' and is driven by the information society which has caused a 'creative destruction … disrupt[ing] existing social patterns. This in turn creates anxiety and dissatisfaction in large parts of the public' (Nye and Zelikow, 1997:271). In addition to the loss of authority that corporations share in common with government, there is the added complication that the corporate 'constituency' should be widened from shareholder to stakeholder, which further serves to undermine the institution.

The decline in the trust of institutions and the dilution of the corporate constituency leads to a central problem, that all interests in an enterprise compete to obtain benefits from the enterprise but none has priority. This simple proposition is very confronting, because it is in effect posing the question, 'in whose interests should the enterprise be run?' (Weiss, 2002:1). It also assumes that society grants an enterprise the right to exist. Those whose business it is to advise corporations on social responsibility, for example SustainAbility (2004:38), are fond of arguing that corporations have a license to operate in the community. This is accurate at one level only; the community through its law-makers may grant licenses and certain privileges in return for the enterprise complying with the law. It does not license the activities of stakeholders at large to impose their views on the corporation.

The key perception is that company decision-makers 'need to consider a range of interests from customers and shareholders to employees, suppliers, local communities, pressure groups and even, potentially, future generations' (SustainAbility, 2004:38). A more honest assessment would be: a stakeholder is 'anyone who can do you damage'. The stakeholder dialogue ignores the fact that

directors have to weigh all of the relevant stakeholder interests for the purpose of the corporation. CSR displaces the corporation with an entity, for which the directors patently cannot be responsible, the society. This is the nonsense of CSR, it sidelines the democratically responsible method for defining the public interest and ordering private interests, and substitutes it with a narrow definition. Much of this ruse follows from an acceptance of the community license concept, which argues that corporations are essentially social agents created by states to deliver 'social goods', and that 'Society grants corporations a license to operate because of their unparalleled capacity to mobilise human, natural and financial capital to produce goods and services' (SustainAbility, 2004:38). Corporations rarely deliver public goods, unless by contract or arrangement with government, or as a by-product of producing private goods and services. The logic of the social license is breathtaking in its implications for private property.

Nor does the theory satisfactorily answer the question of who, or what, produces economic value. Instead Weiss (2002:6) says: 'its focus is on the distribution of outcomes, the harms and benefits, and not on who produced the harms and benefits. It assumes value is produced by the enterprise itself and that stakeholders have a claim on some of this value because the enterprise is a creature of society'.

It radically overturns the social contract for business, which includes obligations to obey the law, honour contracts and agreements and respect the rights of others. It ignores the fact that economic value is produced by owners who make their savings available to other members of society to put them to use in productive ways. The owners have an exclusive moral claim to the benefits produced by their activities, as others have a moral claim for the benefits produced by their labour or other contracted services. Such a base provides the certainty from which claims and counterclaims may be settled.

By contrast, a second strand of stakeholder theory focuses less on equating the interests of stakeholders with shareholders, and more on their ethical treatment. This means that stakeholders, employees, customers, suppliers, owners, financiers and the community should be treated fairly and justly (Corfield, 1998:218). This thinking is consistent with those who regard the corporation as no more than a process for grievance-settlement in society at large. For example,

> One of the most significant things that companies could do to make themselves good 'stakeholder corporations' is to ensure they give … rights to external review, to stakeholders … with legitimate complaints about the company. The right … to make claims against individuals and institutions in order to advance *shared ideals of social and political life* and to rectify relations that have gone wrong — is an essential part of citizenship in a contemporary democracy. (Parker, 2002:227)
>
> We are unnecessarily constrained by the belief that the representative institutions and legal system of the state should be the exclusive or even the primary, home of political deliberation. (Parker, 2002:7)

Parker may well have her wish come true. The attempt to build politics into the corporation, without a clear means of settling claims upon the corporation will inevitably lead to the politicisation of the corporation. Asserting that non-shareholders have claims does not settle the claims, it simply raises expectations. Nor is it likely that the productive elements of corporate organisation will be enhanced by the new focus brought to bear on the division of the spoils.

Stakeholder theory has no recognition in Australian Corporations Law. According to the Commercial Law Association (CLA), directors owe strict fiduciary duties to the company in equity and by statute. They also owe a duty of care to the company at common law, which is supplemented by a statutory duty of care and diligence. The latter is qualified by the 'business judgement rule' in s180(2) of the *Corporations Act 2001* (Cth). There are also various specific provisions in the Act and elsewhere imposing duties and liabilities on directors, particularly in insolvency (CLA, 2005:1). As McConvill (2005:3) argues:

> the momentum towards broadening the duties of directors under company law … is based on three false assumptions — company directors do not already take into account stakeholder interests; taking into account stakeholder interests is contrary to the best interests of the company; and emphasizing a stakeholder-oriented approach to corporate governance necessitates legislative intervention.

CSR Is Not Profitable

What of the claim that CSR is profitable as well as good? Claims about CSR occur in at least three areas of business — ethical consumerism, ethical investment and CSR ratings and profitability. Unfortunately, for the advocates, the claims are not well supported by the evidence.

A recent study (Auger *et al*, 2003:300) on the impact of ethical consumerism 'suggest[s] that consumers won't sacrifice product performance for ethical considerations in spite of what activists might hope'. The study tested the buying preferences of a large group of business students and by contrast, members of Amnesty International for personal products and sports shoes each parading various 'ethical' features such as biodegradable soap and runners made without sweatshop labour. The study attempted to clarify the extent to which consumers 'value' ethical product features when making purchases by using a 'structured choice' experiment. Rather than ask people what they liked in a product, the purchaser was faced with real trade-offs between features and price. Because of this realistic choice, the experiment was able to estimate the dollar value of specific products without the standard 'politically correct' (p. 281) bias that exists with traditional survey methods.

The study confirmed that while the ethical consumer exists, that is, that there is a market for ethical products, it made clear 'that the measurement of simple, unconstrained stated preferences will overestimate the importance of product features for which there are obvious, socially correct, responses' (p. 285).

Elsewhere, Auger and Devinney (2005:21) were critical of the 'boosterism' that came with 'traditional survey methods that make use of simple rating scales [as they] may be overstating the importance of ethical issues to the purchase behaviour of consumers' because of the 'tendency of respondents to answer questions about ethical issues in a socially-acceptable way'. The experiment also suggested that while companies can potentially lose from having their products identified as being made under bad conditions they have little to gain from marketing their products as being made under good conditions.

A study of the returns on ethical investment products in Australia by Ali and Gold (2002) revealed that there was no substance in the claims that it is possible to have an investment portfolio without the very profitable returns from alcohol, tobacco and gambling and outperform those which include them. 'The empirical analysis demonstrates that a financial sacrifice is involved when excluding sinful industries from a market portfolio in the Australian context' (p. 13). In other words, ethical investment comes at a cost. The authors concluded that ethical products and their spruikers were simply marketers using an attractive label to lure a boutique investor.

The authors assessed the performance contribution of 'sinful' industries (alcohol, tobacco and gaming) compared to the broad stock market (or 'normal' portfolio). The analysis, conducted over a seven-year period, concluded that overall the sinful industries contributed positively to the market portfolio. Excluding sinful industries from the market portfolio therefore meant foregone returns. The removal of the sinful industries from the broad market portfolio reduced returns from 12.7 per cent per annum to 12.0 per cent per annum—an overall cost of 0.70 per cent per annum. While the exclusion of sinful industries reduced the volatility of the market portfolio (from 12.4 per cent per annum to 12.0 per cent per annum), the reward ratio also fell, reflecting a less than optimal tradeoff. The authors also surveyed the management expenses for Australian SRI funds and found that investors generally faced additional imposts compared to mainstream funds with similar investment portfolios. Depending on the type of investor the management expenses for SRI funds were on average 13.78 per cent higher than their mainstream counterparts. These costs included investment management fees and in some cases, fees paid to external service providers such as index vendors and SRI research providers.

A study was conducted of a prominent Australian CSR index (Johns, 2003) to ascertain, among other things, if performance on the Index changed corporate behaviour. The Good Reputation Index (devised by Reputation Measurement, now Reputex, and published by Fairfax) measured a corporation's performance across six major categories: Management of Employees; Environmental Performance; Social Impact; Ethics and Corporate Governance; Financial Performance; and Management and Market Focus (Reputex, 2005). Some of the 'measures' imposed in the index were as simple as asking whether a corporation had signed up to the UN declarations. How such a declaration would substitute for compliance with Australian labour laws, for example, is unclear. The study tracked the performance of the outliers, those whose performance rose or fell

extraordinarily between two surveys. The conclusion from interviews with those who had completed the Reputex survey in the corporations was straightforward. 'Success in the rankings was determined by survey participation, not performance. The exercise had no apparent impact on the behaviour of the corporations. In that regard, it failed to achieve its objective' (Johns, 2003:15). In other words, it was a game played by the corporations to win the favour of the regulator, and by the regulator to advance their own interests and that of their constituency.

CSR measurement may not only be ineffectual it may not be profitable. A US study measured the relationship between CSR rank and profitability of 29 businesses that had been on the *Business Ethics* magazine '100 Best Corporate Citizens' list each year over the years 2000-2004. At the outset, the authors noted bias in the sample. CSR proponents defined a company as socially responsible, for example, if it maximized their economic, social and environmental impacts. Typically, the economic impact revolves around profitability, so a company is often defined as being socially responsible, in part, if it is profitable.

> Because of the inter-relationship between profitability and being defined as socially responsible, it should be expected that the companies that are empirically defined as being socially responsible have above-market returns (Laffer, 2004:2).

A second bias arose because only profitable companies can engage in CSR. Where firms do not have the resources to engage in any CSR programs they are unlikely to be successful, or incidentally to be measured by private regulators. As such, 'any company whose profitability falls below a certain threshold cannot be socially responsible if only because their revenues and energies must be focused on survival.' (Laffer, 2004:2)

In the analysis, the authors found no significant positive correlation between CSR and business profitability as determined by standard measures. In each of the three profitability comparisons (compound annual net income growth, net profit margin and stock price appreciation), only a minority of the 'CSR-leading companies in each comparison outperformed their peers. Being a CSR-leading company was negatively or not correlated with compound annual net income growth, net profit margin and stock price appreciation' (Laffer, 2004:6).

There was no relationship between CSR and profitability within the list of Business Ethics Top 100 Corporate Citizens. The five CSR factors were heavily correlated with ranking in the list, but the two business factors were essentially not, and stock price appreciation was only weakly correlated. The five CSR factors were strongly inversely correlated with the two traditional business factors. The results do not conclusively prove that CSR initiatives have a negative impact on a business's financial performance, but they strongly suggest that the claim that 'CSR initiatives have universal or systematic positive financial impacts on companies' is false. The authors further argued that CSR initiatives imposed significant program and administrative costs, and that the businesses that are inclined to engage in CSR initiatives tend to be those that are already financially

successful and can afford the added 'CSR overhead'. 'Since in these cases financial success occurred before CSR initiatives were implemented, it would be obviously incorrect to conclude that CSR-related activities caused the financial success, though a positive correlation may exist' (Laffer, 2004:6). CSR is an effect, not the cause, of profit and CSR advocates are not wealth producers, but rent-seekers.

CSR is not profitable *per se*. CSR may find a home in a niche market among some investors and consumers, but it is not clear that such products and purchases drive other than the values of some consumers and investors. If market decisions are not very powerful drivers of political change, in the way that advocates desire, it may be less costly to retreat to philanthropy and direct political action.

Private Regulators — NGOs and Professionals

Despite the weakness of stakeholder theory and evidence that CSR costs, it nevertheless continues to grow. A possible explanation is the broad-spectrum dissatisfaction with institutions in general — and corporations in particular — which has created 'an opening for new, alternative forms of authority' (Furedi, 2002:184), non-government organisations, which claim to represent the voice of the public. Their *modus operandi* is (p. 185):

> encouraging people to fear, mistrust, complain and litigate … as a socially responsible act. Consequently, [such] advocates do not merely reflect the existing state of mistrust: they play an active role in educating people to believe the worst in most circumstances.

Whatever the reason, CSR continues to grow in two dimensions; the responsibilities of directors and the measurement of non-financial performance. There are two views for reforming director's duties. The 'pluralist' view and the 'enlightened shareholder' view — a UK compromise suggests 'Enlightened Shareholder Value' (Department of Trade and Industry, 2005:5). The two compete to widen the responsibilities of directors to force them to take account of the interests of stakeholders. This of course they already do, if only through the work of 'activist' shareholders, so the real aim of the pluralist view is to award legal rights at large to non-owners. Further, in the pluralist view, informing shareholders and stakeholders on a range of non-financial performance is a tool in the transfer of power. In the enlightened shareholder view, the directors would be forced to report company activities in such a way as to 'inform' the shareholder, and indeed anyone else, of the impact of the company on all manner of things not necessarily their responsibility. In this less radical view, measurement is an end in itself, but would nevertheless enhance the opportunity to intervene and may result in the further regulation of corporations or the diffusion of power among stakeholders.

In a perverse way, the growth of regulators may also account for the growth of CSR regulation. In this regard, there are two types of private regulators active

in CSR, NGOs (which may be further divided into advocacy and regulatory) and professional associations. How do the private regulators line up in the two camps — pluralist and enlightened shareholder? Broadly, the NGOs want the pluralist view and the professionals want the enlightened shareholder view.

The Australian Conservation Foundation (ACF) cited some very mild transgressions of existing laws by corporations in a submission to a Parliamentary Committee on CSR. The examples were used to justify its view that:

> The *Corporations Act* should make explicit what is already the best reading of the text of section 181: that the obligation to act in the best interests of the corporation means a director should consider the interests of all corporate constituencies … The best way of doing this would be to specify a non-exclusive list of relevant constituencies. Such a list should specifically include employees, financial investors, shareholders, customers and suppliers, communities in which the corporation operates, and the environment. (ACF, 2005:8)

Note the concept of constituency, that the corporation is a democratic body responsible at large to constituents. The ACF is clearly in the pluralist camp.

Oxfam Australia not only desires a mandatory reporting mechanism for CSR, but also 'believes that an independent monitoring mechanism is crucial to the effectiveness and validity of corporate responsibility.' Oxfam cites its Mining Ombudsman Project, which 'has investigated community complaints against the actions of Australian Mining companies operating throughout Asia, Central America and the Pacific' (Oxfam, 2005:5). It does not mention that the Project is rarely linked to local communities and deals in accusation, not in established facts. The concept is one of universal but non-specific measures of good, promoted by NGOs and measured, not by government but by 'independent' NGOs. Oxfam is clearly in the pluralist camp.

The Australian Network of Environmental Defender's Offices (EDO, 2005:5) argue that 'companies ought to have regard to the broader interests of the community and other stakeholders to the extent that such interests are within their sphere of influence'. They suggest broad measures of compliance such as the UN conventions. The difficulty with the EDO proposition is that corporations cannot value environmental harm without an external measure or cost, and they cannot reduce inequality at large. Indeed, a successful corporation may increase inequality by reducing poverty for its own workforce or in the community in which it operates. That being so, either the EDO argument is that corporations should act outside of their powers, or the EDO is inviting further legislation that establishes measures to internalise costs, at least some of which should not be internalised by corporations. The EDO is also clearly in the pluralist camp.

The attention paid by the EDO, ACF, Oxfam and a host of other groups to corporations as the face of business, as well as the disregard for the wishes of consumers as expressed through market mechanisms, and the undercutting of the authority of legislators tends to suggest that, overall, the NGO-pluralist-

stakeholder regime is a recipe for private regulation of public mores. Such a regime is a radical departure from current practice, which is the expression of public mores through the formal democratic means expressed through statute and interpreted through the courts.

SustainAbility is a private regulator, an NGO which sets standards it believes are the best and uses persuasion, embarrassment, and campaigning to have corporations adopt them. Its *raison d'etre* is to measure rather than advocate, although clearly, its values are on display. For example, it argues that

> [Public] Governance is a social function designed to manage interdependencies within human societies. Governance systems include institutions, legal regimes and other arrangements that perform the function of governance by setting the 'rules of the game'. Governance can transcend government to encompass other actors including the business sector and civil society. (SustainAbility, 2004:38)

While it is true that not all rules of the game are held or established by statute or the common law — there is custom and practice — it is a new form of custom that witnesses private rule setters in the marketplace, often claiming to be the voice of the common good. In a parallel endeavour, the growth of *Transparency International*, a private regulator which tracks government and corporate corruption, has recently been charted in a paper, entitled, 'Transparency International: In Search of a Constituency' (de Sousa, 2005). The difficulty with the work of the private regulators is finding a convincing basis for their legitimacy. If it rests solely in their assertion of knowing what is 'good' then it is subject to challenge by any other group's view of what is good. In other words, it pre-empts rather than enhances democratic politics.

The *St. James Ethics Centre* (StJEC) can be categorised as a private regulator. It is not in the pluralist camp on directors' duties, in as much as it does not support recommendations to make it compulsory for company directors to base their decisions on the interests of stakeholders other than shareholders. However, it thinks that company directors should be required to consider those interests — even if in the end they opt to act exclusively in the interests of the company as a whole. In other words, the directors should be forced to justify their actions in acting in the best interests of the company. The Centre also recommends an amendment to the Corporations Act, similar to the provisions relating to the 'business judgment rule', allowing company directors to make decisions based on *bona fide* ethical considerations — and protecting them from liability for doing so when a reasonable person would judge those considerations to be well founded. As such, directors relying on the 'ethical judgement rule' as a defence would be required to produce documents demonstrating the quality of the reasoning employed in reaching their decision. Courts would be entitled to review only the substance of any decision if the quality of the decision-making process was first found to be inadequate (StJEC, 2005:4). The StJEC view is only slightly less antipathetic to corporations than the earlier NGOs, as it would require a

procedural fairness with all of the complexity inherent in administrative law regimes as they apply to government decisions.

The punch line is that StJEC recommends 'the encouragement of corporations to participate in voluntary exercises such as the Corporate Responsibility Index (CRI). StJEC (2005, 5) is the 'trustee' for this instrument in Australia and New Zealand. In other words, StJEC has a proprietary interest in CSR. It is driven as much by the measurement as the outcome, but its role helps to create a climate whereby CSR moves in a pluralist direction.

There are a number of examples of regulators among the professions. The *Association of Chartered Certified Accountants* (ACCA) for example, organises sustainability reporting award schemes in four continents (including Australia/New Zealand). In the UK, it has been awarded the Queen's Award for Enterprise: Sustainable Development. ACCA is represented on the Board and Technical Advisory Committee of the Global Reporting Initiative (GRl), which is an 'independent' institution 'whose mission is to develop and disseminate globally applicable Sustainability Reporting Guidelines.' The GRI is an official collaborating centre of the United Nations Environment Programme and works in cooperation with UN Secretary-General Kofi Annan's Global Compact.

In seeking to make money from measuring CSR the ACCA has not taken the pluralist route, arguing that

> it is, in principle, legitimate for the law … to incorporate specific measures designed to reflect and promote the wider public interest. We consider, however, that it is a dramatic and ill-advised step to go from this to suggest that directors of limited companies be required to adopt a fully pluralist [directors serving the interests of stakeholders. Stakeholders having a legal right of redress] approach to corporate governance. (ACCA, 2005:5)

Their view is that directors should retain the discretion to decide what constitutes the best interests of their company.

Finally, another private regulator is exemplified by *Standards Australia*, which released in June 2003, a five-part 'suite' of standards on corporate governance to encourage a culture of compliance in non-listed private companies, government departments and not-for-profit organisations. Guideline AS 8003 deals with Corporate Social Responsibility. Standards Australia is the peak non-government standards development body in Australia. Its international equivalent, the *International Organization for Standardization*, will publish an International Standard providing guidelines for social responsibility in 2008. These organisations appear to be far less inclined to join debate to boost CSR, but seek to maintain their position as premier measurement organisations, though without expressing a view on the role of shareholders.

Government Response to CSR — Facilitate Measurement

The picture so far suggests that, despite a weak rationale for CSR, a growing CSR phenomenon driven by an army of willing regulators has governments and corporations on the defensive. The government and corporate response to CSR is intriguing. Many corporations ignore CSR, seeing it as a threat to their autonomy, but some embrace it, possibly to forestall further regulation or as a public relations tool. The same applies to politicians; many look on unsure whether it is a useful instrument for regulation or for staving off regulation or a cheap means to look interested in the causes promoted by CSR. Many will encourage standard measures of CSR among private regulators in order to achieve a more *'informed market'*. A few will argue for changes to the laws governing directors in order to give power and standing to non-owner interests.

CSR has begun to seep into Australian legislation in an advisory form. For example, the Australian Securities and Investment Commission (ASIC, 2003) notes that the *Financial Services Act 2003* (amending the *Corporations Act 2001*) requires issuers of financial products that purport to be socially responsible, for example, ethical investments, to disclose the extent that social, environmental and labour standards are considered. The guidelines do not establish labour standards or environmental, social, or ethical standards, or what methodology product issuers should use for considering these issues. They do, however, make it clear that (ASIC, 2003:8):

> If a Public Disclosure Statement states that labour standards or environmental, social or ethical considerations *are* taken into account in selecting, retaining and realizing an investment, the PDS must have information on what those standards or considerations are.

The guidelines do not apply if the standards are not taken into account. The trouble is: who can say that some notice of ethical matters has not been taken into account? After all, selling legal products is to abide by the ethical standards of legislation. Which, of course, begs the question, is the legislation dealing with standards that the legislators have not signed up to?

The Parliamentary Joint Committee on Corporations and Financial Services is completing its inquiry into Corporate Responsibility and Triple-Bottom-Line reporting. It wants to know the extent to which organisational decision-makers have and should have 'regard for the interests of stakeholders other than shareholders, and the broader community' for profit and not-for-profit incorporated entities under the Corporations Act. There is also a March 2005 Reference to the Corporations and Markets Advisory Committee (2005) on directors' duties and corporate social responsibility. The issue concerns the extent to which the duties of directors under the *Corporations Act* 2001 should include corporate social responsibilities to take account of the interests of stakeholders other than shareholders.

In addition, Senator Ian Campbell, Minister for the Environment has asked the Australian Stock Exchange (ASX) Corporate Governance Council to 'consider developing a [non-compulsory] standard for sustainability reporting' for listed companies. Since 1 July 2004, listed companies in Australia have been required, in order to comply with the ASX *Principles of Good Corporate Governance and Best Practice Recommendations* (ASX, 2004) to have in place and post on their website, a Code of Conduct and Ethics indicating how they intend to deal with stakeholder concerns. Corporations must either comply with each recommendation, or explain why not in the annual report. Comparable guidelines apply to non-listed companies.

From the above, it is likely that some form of reporting, without set standards will be recommend by the Parliamentary Committee. This allows politicians to look interested, keeps the interest groups busy and allows corporations to think they may stave off more restrictive regulation.

Corporate Response to CSR — Recruitment

At an international level, some parts of the corporate world have organised around the World Business Council for Sustainable Development (WBCSD). WBCSD is a coalition of 175 international companies, which promotes sustainable development, as they see it, through economic growth, ecological balance and social progress. Members are drawn from more than 35 countries and 20 major industrial sectors. The organisation has a network of 50 national, regional business councils, and partner organisations involving some 1,000 business leaders. WBCSD believes 'that the pursuit of sustainable development is good for business and business is good for sustainable development' (WBCSD, 2005). The bravest interpretation of the group is that it is attempting to hold back the tide of CSR regulation by being CSR friendly. Particular examples are as follows.

Coles Myer (2005:1) has established a Board sub-committee 'to oversee the development of a corporate responsibility strategy' and in 2005 for the first time published The Corporate Social Responsibility report as an insert into the Coles Myer Ltd Annual Report. It baulked, however, at legislation, 'we at Coles Myer believe it would be extremely difficult to develop appropriate legislation and reporting standards'. Similarly, BHP Billiton (2005:4) argued that 'the existing legal framework does not discourage or preclude directors or officers from having regard to the interest of non-shareholder stakeholders and the broader community'. And, perhaps the most pro-CSR corporation (see Johns 2005), IAG Insurance (2005:14), 'believes that the current legal framework … provide[s] an appropriate incentive for our directors … to have regard to a wide range of stakeholder interests, while ensuring that the interests of investors are protected'.

Clearly, to forestall pluralist regulation, the corporate world is singing to a different tune to the NGO advocates and regulators. However, they run the risk of not distinguishing their case sufficiently for politicians who will play along with some version of CSR. There must be some gain in the CSR strategy, to offset the cost of CSR regulation, and it appears that the gain comes in using CSR as a

recruiting tool. For example, Westpac puts considerable effort into CSR ratings as a means of attracting and retaining staff. The bank in question (as had others) had reached a point, following events such rural bank closures and the ruination of clients with encouragement to deal in the foreign exchange market, where their staff were coming to work in civvies and changing in to their uniform at work! Turnover was very high, with all of the training and administrative costs that such turnover incurs. Involvement in CSR has apparently stabilised their staff turnover and presumably lowered their HR costs. Another example is a major Melbourne law firm, which undertakes pro bono work for various worthy charities, mainly environmental, as a means of attracting the brightest graduates.

These firms are not alone in using their version of CSR. A KPMG survey of 1600 of the world's largest companies across 16 industrialised countries, including Australia, examined why they are committed to corporate responsibility and what influenced the content of the reports (*Human Resources Magazine*, 24 August 2005). 'Almost half of the world's largest companies believe employee motivation is a key driver when it comes to corporate social responsibility.' The study, which included a detailed analysis of the reports of the global top 250 companies, found business drivers for CSR are economic (75 per cent) and ethical (50 per cent), while other drivers include innovation and learning (53 per cent) as well as improved shareholder value (39 per cent) and reputation or brand (27 per cent). The study also found that there has been a dramatic change in the type of CSR reporting, which has changed from purely environmental reporting up until 1999 to sustainability (social, environmental and economic reporting), which has now become mainstream among the global top 250 companies (70 per cent).

Conclusion — Inform the Shareholders

The debate over who owns the corporation is likely to prove too hot for legislators. The debate over the benefits and costs of CSR is likely to prove that better corporations indulge CSR. The evidence does not suggest that it helps make them better corporations or as Kofi Annan would wish, promote UN agendas. Some successful corporations use CSR as a recruiting tool and as a reputational device to mask the real decisions that they must make in order to survive. The outcome is increased compliance costs but little change in the way corporations do business. To the extent corporations' change because of CSR regulation there may be no benefit to anyone. Perhaps the most intriguing aspect of CSR is that it has spawned a whole range of private regulators.

One of the principal dangers of stakeholder theory is that managers who can claim to be serving the general interests of society in the name of the public good can invoke it. Such claims are not within the powers of managers. Only those with a mandate from the public — elected members of parliament — can make such claims, and they only do so cautiously, in the knowledge that if they do so wrongly, they will be lose their jobs.

It may be too strong a response by critics of CSR to insist that boards and CEOs gain the permission of shareholders before they invest in CSR programs.

At the very least CSR should be seen as a cost of regulation and the costs and benefits should be presented somewhere in the accounts so that shareholders can at least be informed of the 'good' that is done in their name.

References

Ali, P. and M. Gold (2002), 'Analysing the Cost of Ethical Investment.' *Journal of the Australian Securities Institute* Issue 3 (Spring):9-14.

Auger, P. and T. Devinney (2005), 'Do What Consumers Say Matter?', Melbourne Business School, unpublished.

Auger, P., P. Burke, T. Devinney and J. Louviere (2003), 'What Will Consumers Pay for Social Product Features?' *Journal of Business Ethics* 42:281-304.

Australian Network of Environmental Defender's Offices (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 28 September.

Australian Stock Exchange (2004), Principles of Good Corporate Governance and Best Practice Recommendations, http://www.asx.com.au/supervision/governance/corporate_governance_reporting.htm.

Australian Securities and Investment Commission (2003), 'Section 1013DA Disclosure Guidelines: ASIC Guidelines to Product Issuers for Disclosure about Labour Standards or Environmental, Social and Ethical Considerations in Product Disclosure Statements'.

BHP Billiton (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 9 September.

Coles Myer (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 6 September.

Commercial Law Association of Australia (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia,15 September.

Corfield, A. (1998), 'The Stakeholder Theory and its Future in Australian Corporate Governance: A Preliminary Analysis', *Bond Law Review* 10:217-29.

Corporations and Markets Advisory Committee (2005), 'Reference in Relation to Directors' Duties and Corporate Social Responsibility', March, http://www.camac.gov.au.

Department of Trade and Industry (2005), *Company Law Reform White Paper*, UK.

de Sousa, L. (2005), 'Transparency International in Search of a Constituency: The Franchising of the Global anti-Corruption Movement', Discussion Paper 05-14, Asia Pacific School of Economics and Government, The Australian National University.

Furedi, F. (2002), *Culture of Fear: Risk-Taking and the Morality of Low Expectation*, Continuum, London.

Global Reporting Initiative, http://www.globalreporting.org/G3/#.

Henderson, D. (2004), *The Role of Business in the Modern World: Progress, Pressures and Prospects for the Market Economy*, The Institute of Economic Affairs, London.

IAG Insurance (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 6 September.

Johns, G. (2003), 'The Good Reputation Index: A Tale of Two Strategies.' *IPA Backgrounder* 5(2), Institute of Public Affairs, Melbourne.

Johns, G. (2005), 'Insurance Company Whips Up a Storm', *The Australian Financial Review*, 16 August.

Laffer, A., A. Coors and W. Winegarden (2004) 'Does Corporate Social Responsibility Enhance Business Profitability?', Laffer Associates, unpublished.

McConvill, J. (2005), 'Directors' Duties to Stakeholders: A Reform Proposal Based on Three False Assumptions', *The Australian Journal of Corporate Law* 18:1-13.

Nye, J. and P. Zelikow (1997), 'Reflections, Conjectures and Puzzles', pp 269-285 in J. Nye, P. Zelikow and D. King (eds), *Why People Don't Trust Government*, Harvard University Press, Mass.

Oxfam Community Aid Abroad (2005), Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 9 September.

Parker, C. (2002), *The Open Corporation: Effective Self-Regulation and Democracy*, Cambridge University Press, Cambridge, UK.

Pharr, S, R. Putnam and R. Dalton (2000), 'A Quarter Century of Declining Confidence', *Journal of Democracy* 11(2):19-27.

Reputex, http://www.reputex.com.au/.

St. James Ethics Centre, 2005, Submission to the Parliamentary Joint Committee on Corporations and Financial Services, 'Inquiry into Corporate Responsibility', Parliament of Australia, 28 September.

Standards Australia. http://www.standards.org.au/default.asp.

SustainAbility and The Global Compact (2004), 'Gearing Up: From Corporate Responsibility to Good Governance and Scaleable Solutions', SustainAbility Ltd.

United Nations (2005), 'The Global Compact's Next Phase', 6 September.

Weiss, A. (2002), 'Cracks in the Foundation of Stakeholder Theory', http://www.mngt.waikato.ac.nz/depts/sml/journal/commissi/stake.htm.

Wolf, M. (2004), 'Corporate Social Responsibility', New Zealand Business Roundtable, Wellington.

World Business Council for Sustainable Development, http://www.wbcsd.org.

The author is grateful for helpful comments from two anonymous referees.