Corporate Social Responsibility: Comments on the Legal and Economic Context of a Continuing Debate

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The modern corporation may be described in any number of ways. It is at the very least a legal, political, social and economic institution. And when we speak of "corporate social responsibility," we evidence concern that the corporation might be made "responsible" from each or all of these perspectives. My purpose, however, is not to explore the many forms that corporate responsibility might take, but to comment on the subject primarily from an economic point of view.

That the business corporation is an economic entity is hardly in dispute. Rather the economic function of corporations is so well established that it gives rise to the converse question: Can a well functioning market economy also regulate corporations to achieve social and political ends? For, as we shall see, analysis of the economic context of corporate social responsibility (sometimes hereafter "CSR") may suggest either (1) that attempts to promote CSR will entail unreasonably large economic costs or (2), somewhat more modestly, that such efforts can never be demonstrated to improve social welfare. Before taking up these issues directly, we should spend a few moments bringing the subject matter of this essay into sharper focus.

I. The Unruliness of Our Subject

In the world of ordinary political discourse and managerial decision-making, the concept of corporate social responsibility is reasonably well understood. Interested observers immediately comprehend the issue to be concerned with the activities of private,
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for-profit enterprises operating under market constraints that fail to provide appropriate incentives for socially useful behavior. Although many may be skeptical that CSR can be distinguished operationally from behavior directed toward some corporate goal such as long-term profitability, in this essay we shall assume that activities motivated by a concern for profitability should not be characterized as CSR. Corporate social responsibility is to be distinguished from maximizing returns to shareholders.¹

Yet to say what CSR is not is hardly to say what it is. And here there is a rather spirited disagreement in the scholarly and polemical literature. For many, corporate social responsibility is largely, if not exclusively, an issue of corporate compliance with social and legal norms.² For others,³ the question is one of what behavior beyond rational, self-interested compliance with established norms—sometimes called "voluntarism"—ought to qualify as socially responsible action. The first school of thought is primarily interested in means, or more grandly, in the analysis of strategies of implementation; the second in ends, or more grandly still, in moral and political theory.⁴

This dispute about the nature of the topic might be avoided by pragmatically assigning it to a dustbin labeled "arid semantic quibbling." After all, we can imagine ourselves to have two related topics that might be separately or coordinately pursued. This dispute, however, is not merely semantic. There is a real issue here—an issue concerning the province and insights of economic analysis that is quite fundamental. Moreover, attention to this dispute reveals serious limitations in the approaches of both groups of CSR theorists. In short, my claim is that to explore the true dimensions of this controversy is to describe a real debate both about the proper place of corporate social responsibility in corporate decision-making and about the appropriate vision of the economic and legal context within which corporations operate.

To develop this thesis I will first give a sketch of the disputed ter-

² See, e.g., Stone, The Place of Enterprise Liability in the Control of Corporate Conduct, 90 YALE L. J. 1 (1980); R. NADER, M. GREEN & J. SELIGMAN, Taming the Corporate Giant (1976).
⁴ These categories obviously oversimplify positions and group together authors, such as Nader and Stone, who have substantial disagreements. Nevertheless, some such heuristic is essential to make the topic manageable.
ritory and the conflicts over economic theory that inhabit it. This precis will unfortunately render the subject matter of the debate even more unruly than has already been suggested. I will then turn to a more orderly analysis of the contending positions in order to elaborate three related arguments. First, there are perfectly good economic arguments for CSR. Second, the type of CSR contemplated, the market context and the firm’s legal-institutional constraints, combine to determine both a corporation’s capacity for CSR and the likely incidence of the costs and benefits of “responsible” behavior. This analysis, therefore, counsels caution, particularity and attention to incidence effects when addressing the topic of CSR. Third, there may be a role beyond charity and compliance for creative corporate voluntarism in the shaping of public values, a role that is economically feasible and politically legitimate.

In the end we will still be left with two possible subjects. But our understanding of them will have changed and they will no longer seem so compatible as a joint project. Indeed, corporate social responsibility will be revealed as a topic that might inhabit two entirely different realms of intellectual discourse and take on radically different meanings in each.

II. A Sketch of the Real Dispute

For present purposes I shall divide the corporate social responsibility debaters into two general camps, “compliance critics” and “voluntarist apologists.” These mots de guerre suggest attitudes both toward the definition of the subject matter of the debate and toward the acceptability of the contemporary practices of corporations. Compliance critics view compliance with established norms as the chief CSR battleground and are critical of the corporate performance. Voluntarist apologists, on the other hand, tend to view voluntarism (action beyond simple compliance) as the only true CSR and are generally apologists for corporate conduct oriented exclusively towards profit maximization.

While we cannot here canvass the whole of the debate, the concrete issue of corporate behavior that seems most clearly to separate compliance critics from voluntarist apologists is their respective answers to the question: “Should corporations comply fully with established legal norms?” Compliance critics answer emphatically, “Yes!” They usually view the desirability of perfect compliance with legal norms as non-problematic. For them, it is simply too clear for extended comment that corporations should always follow the dic-
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tates of environmental protection, product safety, anti-fraud, anti-monopoly and other laws—the governing political expressions of social consensus. Failure to comply is, for these analysts, a failure in social responsibility. Indeed, the belief that such failures are fairly widespread poses strategic problems of effective enforcement with which compliance critics are most intensely concerned.  

While generally agreeing that legal norms represent social consensus, voluntarist apologists attack the compliance critics' position from two directions. One form of voluntarist, whom I will call the "moderate apologist," notes that the behavioral signals provided by legislation, regulations and common law rules are not exhausted by the language of their legal standards of conduct. These norms also contain sanctions attached to malfeasance. Moreover, the extent and effectiveness of those sanctions are determined by the institutional machinery provided for their implementation. If one takes all of these factors into account, it becomes clear that each norm implicitly describes some finite expected social cost from some particular form of proscribed conduct. If the corporation's expected return from the proscribed activity exceeds this social cost, then total social welfare will be enhanced by engaging in the activity. Obeying the law under those conditions is surely not a moral duty and might be viewed as socially irresponsible.

The moderate apologist then may easily demonstrate that corporate behavior which seeks directly to promote social welfare by observing canons of common morality cannot be known to be socially responsible. In other words, if the appropriateness of compliance with law involves a complex calculation of explicit and implicit behavioral signals concerning the social value of compliance, then the attempt to make such a calculation in the absence of such signals must move from the difficult to the impossible. From this perspec-

5. See generally C. Stone, Where the Law Ends (1975). This is not to say, however, that conformity to law wholly exhausts the compliance critics’ interest in corporate social responsibility. This position also includes an interest in corporate compliance with notions of common morality, decency or good citizenship that may not be captured by legal rules. Thus, for example, the compliance critic will probably view corporations as having obligations to maintain the social and economic infrastructure of their host communities, or to promote the long-term well being of their work forces, going well beyond the specific requirements of legal rules. See, e.g., Schwartz, Towards New Corporate Goals: Co-existence With Society, 60 Geo. L. J. 57 (1971).
8. See Engel, supra note 3, at 55.
The "radical apologist" goes somewhat further. She will, of course, agree with the basic compliance calculus put forward by the moderate apologist, but not with the social welfare rationale for its use. Instead, the radical apologist will insist that only this calculation is consistent with the survival of the firm. Under competitive conditions, compliance costs in excess of the expected value of the socially imposed sanctions will cause the firm to become unprofitable and, ultimately, to disappear. As then Professor, now Judge, Posner pithily put the point, "a sustained commitment to any goal other than profitability will lead to bankruptcy, unless collusion is permitted." 9

Although the moderate and radical apologists' positions permit the same "profitable nastiness," the compliance critic may be expected to confront their arguments in different ways. She will take the moderate apologist to task for extending economic calculation to an inappropriate domain. The question of corporate social responsibility, the compliance critic will argue, is a question about civic virtue; answers cannot be provided solely by an economic analysis of the incentive structure established by the current state of the positive law and by the institutional limits on its implementation. The compliance critic will join issue with the radical apologist, however, not on the question of the appropriate domain of the economic analysis, but on the question of the appropriate theoretical approach to the analysis of economic activity. Surely, the critic will argue, the radical apologist must abandon the image of optimizing calculations in perfectly competitive markets. Once imperfect markets are acknowledged, we must consider the possibility of a range of discretionary actions, including actions that can be characterized as exercising social responsibility and which do not threaten the viability of the firm. 10

I agree with the overall conclusions of our hypothetical compliance critic. That is to say, I believe both that corporate social responsibility is economically possible and that it is conceptually

10. The degree of managerial discretion available is variously described. Professor Manne, for example, suggests that the limit is set by the costs that would have to be borne by non-altruistic managers in gaining control of the firm and ending profit-eroding CSR. See H. Manne & H. Wallich, The Modern Corporation and Social Responsibility 15-20 (1972).
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intelligible within a framework of economic analysis. But the arguments against the radical and moderate apologists are not so easy as our critic seems to imagine. Nor, as we will see, do they necessarily lead in the directions that the critic seems to contemplate. But first we must undertake a more careful evaluation of radical and moderate economic apologetics.

III. The Market Structure of Corporate Social Responsibility

When the radical apologist invokes the iron discipline of competitive markets as a bar to corporate social responsibility of all types, she paints a picture of market structure that is likely to be dismissed as unrealistic. Yet we must again be wary of proceeding too quickly. It is instructive to consider the means by which the socially responsible firm might be "selected out" in such markets. Those selection mechanisms illuminate the likely distributional effects of CSR (the incidence of what we might call the "corporate social responsibility tax") and the comparative difficulty of inducing voluntarist corporate activity across various sectors of the economy.

Market discipline converges on the firm through at least three markets—product markets, capital markets and labor markets. If we assume that all of these markets are competitive, the individual firm faces precisely the same marginal cost function as its competitors and a highly elastic demand function for its products. When it engages in CSR, it must therefore either raise its prices and face a drastic decline in demand for its products, or it must reduce the returns to capital or labor. Reductions in the returns to either will, over time, cause the firm to fail to attract the necessary financing and talent to survive in the marketplace. This is the logic of the neoclassical model of competitive markets.

We know, of course, that real world situations are different. Yet the ideal form is a useful heuristic. It tells us first that a firm must have some market power to engage in CSR. Firms operating in highly competitive markets will not be able to engage in much CSR and still prosper. To urge corporate social responsibility is, therefore, to urge either that it should be the model for those firms that have the power to engage in CSR ("selective CSR") or to urge that some program of structural reform be instituted to render markets selectively non-competitive when CSR activity is desired ("global CSR"). Because selective CSR is probably much easier to orchestrate than global CSR, we should, if we are to be reasonable and fair, expect more CSR from the stable monopoly than from the firm.
in a highly competitive field. Casual comparison of the philanthropic activities of quasi-monopolies (e.g., AT&T or IBM) and of discount consumer goods stores (e.g., the late lamented W. T. Grant Co. or Woolco) suggests that in practice we do tend to get more CSR from the former than the latter. Attention to economic context thus reveals that demands for corporate social responsibility should probably be disaggregated to acknowledge differing market structures.

The further lessons to be drawn from refuting the radical apologist are even more interesting. If market power is a necessary condition for CSR, and the firm's demand and cost functions are determined by the operation of three different markets, then in principle its market power might be the result of a favorable position in any one or any combination of those markets. Moreover, the costs of CSR must fall upon markets in which the firm has market power in order to avoid the perfect competition result—the disappearance of the firm. This analysis of the incidence of CSR costs, however, is correct only under certain conditions. 11

Thus, to understand the effects of market discipline on CSR and to analyze CSR's distributional effect we must distinguish several situations. In what I will call "the standard case" of CSR—for example, a firm with some market power in product markets which decides to make a gift of corporate real property to the local community or to make a one-time purchase of capital equipment in order to comply fully with only partially enforceable health or safety regulations—the CSR costs (loss of net profits) will fall wholly upon existing shareholders. Presumably the price of the firm's products has already been set to maximize profits. An attempt to raise the price of the firm's products to recapture CSR costs will, therefore, only reduce profits. A similar analysis applies to the case of a firm engaging in the same type of CSR whose market power is in the labor market. Further reductions in wages will reduce productivity and thereby reduce profits.

The loss of net profits need not be "taxed" to existing equity holders in the standard case. If they purchased their shares with rational expectations concerning CSR conducted by the firm, then the price they paid reflected the expected loss. In that case the loss is borne by prior shareholders, perhaps the founders of the enter-

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prise. Nevertheless, the incidence of the costs of CSR will be on equity shareholders rather than on workers or consumers.

This incidence analysis of the standard case raises a question of potential concern: Are we disturbed by the possibility that firm managers may be able through CSR to further such causes as the arts, environmental protection or local recreation opportunity while charging the costs to the firm’s equity holders? To answer “yes,” we must assume two things, at a minimum. First, we must assume that agency costs are positive—that is, that managers will not spend firm profits on CSR in precisely the way equity holders would have spent them.12 Second, we must assume that the costs of replacing management by proxy contests or takeovers are sufficient to render the situation non-self-correcting.

I suspect that our concern about managerial discretion in CSR expenditures may increase as both the divergence between managerial and shareholder tastes and the transaction costs of policing managerial behavior increase. This concern may involve simple distaste at the prospect of X spending what is ostensibly Y’s money. It may also reflect a concern about appropriate incentives. Assuming that both management and equity holders are generally motivated towards increasing social welfare by engaging in altruistic activity, we should still prefer that decisions about what promotes social welfare be disciplined by the decision-makers’ bearing the costs of the decisions.13

Notwithstanding concern about agency costs, economies of scale in CSR might cause us to distinguish between types of CSR when making proposals to curb managerial discretion. Where responsible behavior could be engaged in as easily by agents and equity holders as by the firm (gifts to charity, for example) we might want to restrain, or at least be cautious about advocating, managerially directed firm behavior of that sort. On the other hand, there are clearly other types of responsible behavior (pollution control, workplace safety, or the like) which would be very difficult to promote by “cashing out” the costs through managers’ salaries or returns to eq-

12. For a general formulation of the theory of the firm as a response to agency costs, see Fama, Agency Problems and the Theory of the Firm, 88 J. Pol. Econ. 288 (1980).
13. These reflections suggest several implications that will not, for present purposes, be carried any further. First, the closely held firm, where equity holders control decision-making, poses no problems for CSR that distinguish it from individual social responsibility. Second, what we have called the “standard case” relies on some imperfections in capital markets as well as in product markets.
uity holders. Here we may be prepared to advocate firm action de-
spite the presence of non-trivial agency costs.

As the utilization of the standard case terminology suggests, there
are also non-standard cases—that is, situations where the CSR tax
will fall on consumers or workers. A straightforward example of a
CSR tax on consumers might be a regulated monopoly such as a
public utility. If we assume that rate regulation is somewhat effec-
tive so that the monopoly price is not being charged, and that the
regulators are prepared to treat many activities of the CSR type as a
cost of doing business (voluntary full compliance with health, safety
and other regulations, for example), then consumers will bear the
costs of CSR. Rising CSR costs will generate a demand for in-
creased rates to maintain the firm’s return on investment. With
some lag time, the regulator will grant those increases, thus passing
along the increased CSR costs to the ratepayers.

Similarly, labor will pay CSR costs where the behavior involved
acts like a payroll tax (for example, the provision of personal safety
equipment) or where production declines, thereby reducing the de-
mand for labor (for example, a reduction in highway truck speeds
on routes where rail lines are close competitors). More accurately,
labor will bear these CSR costs where the firm has some monopsony
power with respect to labor and faces relatively competitive markets
for products and capital. Indeed, the non-standard cases suggest
that the incidence of the CSR tax will vary with both the type of CSR
engaged in and with its market and institutional context.

What implications should we draw from the preceding analysis?
The most basic point is obvious and important: Relaxing the per-
fected competition assumption refutes the radical apologists’ notion
that no CSR is possible, but it simultaneously challenges the notion
that all CSR is desirable. If we are concerned at all about the distri-
butional effects of CSR, we must be cautious. General support of all
varieties of CSR in all contexts, letting the costs fall on investors,
consumers or employees as they might, would only by chance satisfy
my definition of a fair tax (a proportional tax on equal incomes or a
graduated tax on unequal incomes). For this result to occur, we
would at least have to assume that capital holdings were widely dis-
tributed, and that CSR includes a broad range of activities produc-
ing either pure public goods or benefits available on an equal basis
to virtually everyone. To state the proposition in this way is to sug-
gest that the necessary conditions for distributional fairness in the
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incidence of global CSR costs are, like the conditions for perfect competition, unlikely to exist.

Particular cases may suggest a wide range of unfair outcomes. Imagine a regulated utility whose stock is held by middle to upper income investors, which is also a major employer in local labor markets and which is allowed high returns on a product marketed predominantly to lower and lower-middle income consumers. (A telephone operating company may be a good example, especially if one thinks about "pay" or coin-operated telephone charges.) Now imagine that this firm's idea of socially responsible conduct is to support entertainment on the stage and on public television that is viewed almost exclusively by upper-income persons. The distributional effects in this example seem perverse indeed.

Note, however, that this and other examples are not arguments against CSR. We might be just as concerned with the distribution effected by the market and institutional processes described in our hypothetical if the firm engaged in no voluntarist activities. These arguments do, however, set an agenda for serious inquiry into the types of CSR that we might feel comfortable advocating under differing market and institutional conditions. That agenda should include questions both about the current structure of CSR (e.g., Who pays? Who benefits? What alternative distributional arrangements tend to augment or offset the existing CSR incidence pattern?) and about the distributional implications of various strategies for redesigning the decision structures of particular corporations (e.g., Whose interest will outside directors promote? What would it mean to attend to or represent consumer interests in corporate voluntarism? How much CSR should reflect local employee versus consumer or management preferences?). This is clearly an agenda of very tough questions. 14

IV. The Search for Social Welfare

It is at this point in the discussion that the moderate apologist enters the fray. For it is precisely the messiness of CSR decision-making that gives the moderate apologists' arguments their persuasive force. Why should we imagine that private firms are capable of

14. Because the incidence questions involve general equilibrium analysis (see, e.g., Graetz, Assessing the Distributional Effects of Income Tax Revision: Some Lessons From Incidence Analysis, 4 J. LEGAL STUD. 351 (1975)) and the design issues confront a host of organizational imponderables (see, e.g., J. GALBRAITH, DESIGNING COMPLEX ORGANIZATIONS (1973)), answers to our inquiries are likely to be both messy and disputable.
discerning appropriate social goals beyond those society has given them incentives to pursue?

The moderate apologists' argument is, you will remember, basically a claim that corporations should respond precisely to the incentive system that the law, in action, provides as a behavioral guide. The only exceptions recognized to this profit-maximizing calculation might be (1) disclosure of non-complying conduct so that society's decisions concerning legal norms and the resources devoted to their enforcement can be based on a correct understanding of the level of non-compliance\textsuperscript{15} and (2) an occasional voluntarist action in the face of social emergencies that cannot have been captured in legal norms, provided that the proposed actions have very clear and lop-sided benefit-cost ratios.\textsuperscript{16} Of course, these are only possible exceptions. After all, legal reporting requirements might deal with disclosure problems, and the social failure to provide for emergencies may be a social recognition that providing against some low probability events is simply not worth the cost. Thus, the committed moderate apologist might insist that corporations observed to be incurring compliance costs in excess of the nominal value of legal sanctions discounted by the probability of their assessment, or providing non-compelled disclosure of their illegal behavior, or engaging in other "good Samaritan" acts, while not necessarily blameworthy, could not claim with certainty that they were fulfilling a socially prescribed responsibility.

As noted earlier, it is tempting to confront this argument with the claim that the moderate apologist has inappropriately transferred the economic vision of rational action in markets to the domain of moral behavior in society. Like a naive physicist searching for subatomic particles with a magnifying glass, the moderate apologist is led to deny the existence of modes of thought and behavior that the methodology of economic analysis obscures from view. In some sense it may be inconsistent for society to provide a structure of legal rules and institutions that limits both sanctions and implementation resources, and at the same time to affirm the notion that no criminal or tortious conduct is socially approved. Yet this is surely what society does.\textsuperscript{17} If economic analysis cannot explain the apparent contradiction, this merely demonstrates a limitation of economic

\textsuperscript{15} Engel, supra note 3, at 70-84.
\textsuperscript{16} Id. at 59-69.
\textsuperscript{17} Cf. G. CALABRESI & P. BOBBIT, TRAGIC CHOICES 51-79 (1979).
analysis, not the absence of a domain of moral social action beyond
the existing structure of legal incentives.

This answer is tempting because it is succinct and plausible. Many will find it convincing. Yet I am troubled by the sorts of responses that the moderate apologist might offer. Those responses are of at least three types. First, it is simply not the case that society wants to prevent the occurrence of all of the conduct covered by any civil and criminal liability rule. A moment’s reflection will tell us that we do not want corporations to establish the enormously, perhaps infinitely, costly and complex monitoring systems that would be required to insure that none of their employees ever fails to make an accurate measurement of the quality of the firm’s effluent. And if that is the case, then we as a society do not want perfect compliance with environmental regulations or other legal rules. The question then becomes: “How much compliance do we want?” The best candidate for a socially accepted standard, the moderate apologist would argue, is how costly we in fact make the failure to provide accurate monitoring of environmental quality. Indeed, there is no other obvious candidate once perfect compliance is appropriately put to one side.

Second, really a generalization of the first, there is no reason to believe that talk about what behavior is socially acceptable reflects real preferences. People constantly behave differently than they talk. If one wants to know what they really prefer, one should observe their behavior. The social behavior that moderate apologists observe is precisely the set of limited penalties and institutional constraints on enforcement that yields a finite social disvalue for breaches of legal rules. True, people sometimes behave collectively as if life were infinitely precious and the level of social expense necessary for its protection were no object. But these cases are rare. While they affirm the sanctity of human life, they also highlight the fact that as a society we do not always act as if life were infinitely precious.18 Such cases surely cannot be extended to the run-of-the-mill legal rule nor can they be generalized to provide a standard of socially responsible behavior, even for all those situations when human life is potentially at stake.

Finally, it is not clear how far one can apply explicitly non-economic, moral considerations to corporations and their behavior. Corporations are economic entities. Moreover, they are legal fictions. As the prior discussion of labor, capital and product markets

18. See id. at 39.
suggests, the firm is simply a nexus of converging contracts between and among workers, investors and consumers. If the theory of corporate social responsibility is a theory about moral action, to what or to whom is the capacity for moral action being ascribed?

As is plain from the nature of these arguments, the debate between the compliance critic and the moderate apologist is just warming up. It threatens to move quickly into metaphysical realms (What counts as an observation of human behavior for purposes of social science? What are the necessary conditions for moral ascription or moral agency?) in the search for some common starting point from which fruitful discussion might proceed. As interesting (or tedious) as those issues might be, I prefer to imagine the compliance critic switching at this juncture to a more immediate common ground with the moderate apologist. For the compliance critic may certainly suggest that economic analysis, while useful and appropriate, fails to lead in the direction that the moderate apologist has suggested.

A. The Economics of Self-Control

The basic problem with the apologist's prior arguments is that they are not very attentive to the question of how society might determine the level at which to set either legal penalties or budgets for enforcement. From an economic perspective, those levels would presumably be set to maximize the value of "good" behavior less error costs and administrative costs. Given that these latter two costs are surely positive, there is some area of bad (good) action society would prefer to eliminate (promote) but cannot, at least not while preserving welfare levels, unless those costs can be reduced. The search for institutional forms that promote self-application of legal norms, that is, the attempt to increase the compliance component of corporate social responsibility, may be viewed as a search for exactly such techniques of cost reduction. CSR is, in this view, part of the ongoing process of constructing a more efficient legal system.

Indeed, a campaign to induce compliance through various structural reforms (outside or public directors, CSR audits, and the like) may have significant efficiency payoffs. Many of the offenses that concern compliance theorists (fraud, bribery or price-fixing, for example) are criminal offenses requiring proof of various degrees of intent. In these circumstances, enforcement errors are most likely and most costly. Therefore, we provide an extremely expensive ad-

19. See generally Fama, supra note 12.
ministrative machinery, the criminal justice system, to guard against incurring those even more expensive error costs. Self-application of these sorts of criminal and even non-criminal norms would avoid implementation errors without incurring the vast expense of litigation. Indeed, it may be the case that we will be able to preserve the fairness values that the criminal trial affirms only if self-application is the norm. In short, where altruistic self-application is more efficient than modifying the expected value of sanctions, there is a straightforward efficiency argument for seeking to increase voluntary compliance (CSR).

The apologist may object that structural reform in the decision-making apparatus of firms, indeed any increased attention to compliance questions, is itself costly. But this objection, abstractly considered, is not very telling. Compliance critics are quite prepared to debate the issue of the comparative efficacy, and perhaps even the comparative efficiency, of various means for increasing CSR. Moreover, for all we know, those techniques may be sufficiently inexpensive so that compliance very close to perfection would unambiguously increase net social welfare in at least some cases.

Whether that is true will, of course, depend on a wide range of contingencies, including the type of norm involved, firm size, market conditions, available organization strategies and perhaps a host of other factors. Nevertheless, the central point remains. There is here defined an economic context, an analytic framework, within which the compliance critic's means-oriented institutional analysis of CSR makes perfect economic sense. From this more fully developed economic perspective, corporate social responsibility is neither as imponderable nor as irrelevant as the moderate apologist suggested it might be.

Yet even if forced to admit that there is potentially a substantial arena for voluntary compliance with legal norms, the moderate apologist may yet object that it is highly unlikely that firms will correctly discern the course of action that will maximize social welfare in the absence of a governing legal norm. Surely here, “maximize profits” is the program society must be presumed to wish the corporation to pursue. This is indeed a substantial objection to generalized calls for corporate social responsibility that go beyond full compliance with the law. But it is not necessarily a determinative objection. One way to get around it is to alter our view of the social meaning of legal norms.
B. The World of Social Choice

Suppose one imagines politics, not as a black box producing social welfare directives, but as an arena in which self-interested actors seek to further their own ends. The suggestion, in short, is to move from the political economy of Kaldor, Hicks and Pigou to the political economy of Arrow and Stigler and Condorcet. In that latter intellectual world, we would have to view legal rules quite differently than we have viewed them to this point. Whether we then view legal norms as agenda artifacts or as pay-offs to powerful special interests, such rules of conduct would only by chance represent any social consensus. In this world, the probability that any particular legal norm adopted by political institutions will enhance social welfare is greatly diminished.

Movement from the world of social welfare to the world of social choice is indeed a shift in perspective of Copernican proportions. We cannot here begin to discuss the plausibility of viewing politics in this way or trace the many implications of the social choice perspective for the topic of corporate social responsibility. Yet one implication demands at least superficial attention: The public welfare world has been the common habitat of both voluntarist apologists and compliance critics. If we acknowledge this, then there would seem to be an opportunity for reciprocal petard-hoisting.

For example, if laws are viewed merely as the outcome of self-interested, competitive struggle within political institutions, then the apologist’s objection that firms cannot discern social welfare outside the structure of existing legal rules loses much of its force. Firms should be no worse at pursuing social welfare unaided than when confined by a set of legal norms whose social welfare purposes and consequences are unknown. The radical indeterminacy of the social welfare consequences of collective choices relieves the private firm of its comparative incompetence to define as well as pursue social aims.

So far so good for the compliance critic. But if social welfare as the basis for legal norms vanishes for the apologist, it vanishes for the critic as well. For the compliance critic, this movement is even more devastating. In a social choice world, compliance with pre-established social norms could not be viewed coherently as a defining characteristic of corporate social responsibility. The paradigmatic case of socially responsible corporate behavior might more

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plausibly be conceptualized as creative action leading toward independent or communal moral definition. Moreover, if this is the nature of corporate social responsibility, then there is no reason to believe that the compliance-oriented institutional means of enhancing CSR which populate the compliance critics’ reform proposals would even be relevant, much less functional, to the tasks that lie ahead.

V. Conclusion

The preceding exploration of the attitudes of “compliance critics” and “voluntarist apologists” towards corporate social responsibility shows that, at least from one perspective, the controversy over the appropriate place for CSR in corporate decision-making is more than just a “semantic quibble.” While compliance critics can show that CSR is economically possible and justifiable, their antagonists can also demonstrate that CSR is not socially beneficial under all conditions or in every situation. Thus, economic context must be explored in considerable detail in every case in order to develop an appropriate framework for means-oriented institutional analysis of CSR. Socially responsible argument for corporate social responsibility is hard work.

If one moves to the world of social choice, however, the importance of the means-oriented CSR debate diminishes. Yet, far from reducing the broader controversy over CSR to a mere quibble, this move transforms the intellectual task from the merely difficult to the almost unimaginable. For the social choice perspective may require radically novel economic and political frameworks within which to judge corporate social responsibility.