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The Valdez Principles: Is What's Good for America Good for General Motors?

Daniel H. Pink

One of our least memorable Presidents put it most memorably: "The business of America," said Calvin Coolidge, "is business." Coolidge and others believed that so long as industry chugged along and government kept its cautious distance, twentieth century America would have more goods, more jobs, and a higher standard of living. The corporate form was one mechanism for this growth. It offered centralized management, the ability to sell stock to raise capital, and limited liability for investors and directors. Today, America sits (albeit shakily) atop the economic world, and corporations account for nearly 90% of the country's business receipts.¹

During this growth period, a central principle of corporate law emerged and proved virtually unassailable: the sole duty of a corporation's officers (subject to certain limited obligations) was to maximize shareholder wealth. When no less a business legend than Henry Ford challenged this doctrine, even he was rebuffed.²

By the late 1960s, corporate officers faced greater constraints. Legislation like the Consumer Product Safety Act,³ the Clean Air Act,⁴ the Occupational Safety and Health Act of 1970,⁵ and the Federal Trade Commission Act⁶ limited the untrammelled pursuit of shareholder profits. At the same time, calls arose for corporations to become more "socially responsible." Discussion began about

1. U.S. BUREAU OF THE CENSUS, U.S. DEP'T OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 532 (1984).

2. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919). Ford wanted to withhold certain special dividends of the Ford Motor Company in order to cut the price of Ford cars to allow more Americans to purchase automobiles. At the time, the company was already selling more cars than it could produce. A group of minority shareholders sued to compel payment of the dividends. The court held that Ford's duty was to these shareholders—not to American car buyers. "A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end." *Id.* at 684.

3. 15 U.S.C. § 2051-2083 (1982 & Supp. V 1987).

4. 42 U.S.C. § 7401-7642 (1982 & Supp. V 1987).

5. 29 U.S.C. § 651-678 (1982 & Supp. V 1987).

6. 15 U.S.C. § 2051-2083 (1982 & Supp. V 1987).

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whether corporations had obligations to their workers, the community, and the environment.⁷ Shareholders waged proxy fights to stop Dow Chemical Company from making napalm,⁸ and sued to inspect corporate records in an effort to halt Honeywell Inc.'s manufacture of anti-personnel fragmentation bombs.⁹ Although the debate was sometimes vitriolic,¹⁰ social responsibility became part of corporate law jurisprudence and standard fare on the menu of most law school corporations courses.

Still, the principle that a corporate officer's overriding duty was to maximize shareholder wealth remained intact. President Coolidge's adage even acquired a modern day counterpart: "What's good for General Motors (and its shareholders) is good for America."

The Rev. Leon Sullivan thought he knew what was good for General Motors. A Baptist minister and community activist in Philadelphia, Sullivan was also a GM board member. In 1971 he publicly dissented from his fellow directors and endorsed a shareholder resolution demanding that the company withdraw from South Africa. The resolution lost resoundingly. A few years later Sullivan changed tactics and gave corporate social responsibility a new cast. He devised a code of conduct for American corporations doing business in South Africa. Soon known as the Sullivan Principles, the code called for integrated workplaces, fair employment practices, and affirmative action. Companies voluntarily signed on, and their compliance was rated by independent auditors. In 1984, with about 125 signatories, Sullivan amplified the code to require companies to take more affirmative steps to end apartheid. By 1987, however, Sullivan decided his efforts to use corporate power to effect social change were futile; he abandoned his Principles and urged U.S. companies to leave South Africa.

Nonetheless, the Sullivan Principles retained some appeal for those concerned with social responsibility. In September 1989, a coalition of environmental groups and social investors used the Sullivan Principles as a model for a new code of corporate *environmental*

7. See, e.g., N. JACOBY, *CORPORATE POWER AND SOCIAL RESPONSIBILITY* (1973); R. NADER, M. GREEN, & J. SELIGMAN, *TAMING THE GIANT CORPORATION* (1976); C. STONE, *WHERE THE LAW ENDS: THE SOCIAL CONTROL OF CORPORATE BEHAVIOR* (1975).

8. Medical Comm. for Human Rights v. SEC, 432 F.2d 659 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972).

9. State *ex. rel.* Pillsbury v. Honeywell, Inc., 191 N.W.2d 406 (Minn. 1971).

10. "Few trends could so thoroughly undermine the very foundations of our free society as the acceptance by corporate officials of a social responsibility other than to make as much money for their stockholders as possible. This is a fundamentally subversive doctrine." M. FRIEDMAN, *CAPITALISM AND FREEDOM* 133 (1962).

conduct. Called the Valdez Principles to memorialize last year's massive Alaskan oil spill,¹¹ the code calls on companies to protect the biosphere, use renewable resources, dispose of waste properly, disclose environmental risks, and submit to an annual environmental audit.¹²

This Current Topic will examine the Valdez Principles. Section I will trace the history and development of their model, the Sullivan Principles. Section II will introduce the Valdez Principles and their specific provisions. Section III will explore the similarities and differences between the two codes in an effort to illuminate the Valdez Principles' prospects. Section IV will assess these prospects and suggest changes and improvements in the code. The Current Topic ultimately will argue that the Valdez Principles are part of a trend toward extra-legal, market-driven enforcement of corporate social responsibility, and that to succeed they must exploit market forces and appeal directly to companies' economic self-interests.

I. *The Sullivan Principles*

Thwarted in his 1971 efforts to persuade fellow board members that General Motors should withdraw from South Africa, the Rev. Sullivan chose a new tack. Sullivan believed that if his and other companies were not going to leave South Africa, they should at least challenge apartheid. In 1977 he drew up his now famous list to serve that end. The original Sullivan Principles were:

- I. Nonsegregation of the races in all eating, comfort, locker room, and work facilities.
- II. Equal and fair employment practices for all employees.
- III. Equal pay for all employees doing equal or comparable work for the same period of time.
- IV. Initiation and development of training programs that will prepare blacks, coloreds and Asians in substantial numbers for supervisory, administrative, clerical, and technical jobs.
- V. Increasing the number of blacks, coloreds and Asians in management and supervisory positions.

11. The *Exxon Valdez* oil tanker ran aground, spilling more than ten million gallons of oil into Alaska's Prince William Sound. The several-month \$1.2 billion clean up effort still left vast amounts of oil in the water. See Shabecoff, *Largest U.S. Tanker Spill Spews 270,000 Barrels of Oil Off Alaska*, N.Y. Times, Mar. 25, 1989, at A1, col. 2.

12. See *infra* text accompanying note 31. See also 16 NEWS FOR INVESTORS 178, 180-181 (1989) (published by the Investor Responsibility Research Center); Feder, *Who Will Subscribe to the Valdez Principles?*, N.Y. Times, Sept. 10, 1989, at F6, col. 1.

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- VI. Improving the quality of employees' lives outside the work environment, including schooling, recreation and health facilities.¹³

Only twelve companies (including General Motors) agreed to the Principles that year, but by 1982 some 147 companies—representing about 80% of U.S.-employed South Africans—had become signatories.¹⁴ That figure fluctuated in subsequent years, but included corporate titans like Exxon, IBM, Citicorp, and Mobil.

Companies that became signatories paid yearly dues of between \$1,000 and \$7,000 to take part in the program. Sullivan administrators periodically sent them detailed questionnaires requesting information about hiring practices, promotion policies, investment in the community, and other matters. These reports were inspected by outside auditors, and then evaluated and rated by Arthur D. Little Inc., a Cambridge, Massachusetts consulting firm. Little gave companies one of three grades: (I) Making good progress; (II) Making progress; (III-A) Needs to become more active/received low point rating; (III-B) Needs to become more active/did not meet basic requirements. While no direct penalty was leveled against companies with low grades, the results were publicized and companies were forced to pay a public relations price.¹⁵

By late 1984, Rev. Sullivan had become dissatisfied with the progress. Although 128 of about 350 American companies operating in South Africa had signed the Sullivan Principles,¹⁶ apartheid had not loosened its grip on the country; crackdowns escalated, and in the U.S. activists, students, and Congressional representatives called for sanctions and divestment. In response, Sullivan amplified the code by adding four, more affirmatively political, provisions to Principle VI. These additions called on companies to engage in a form of corporate civil disobedience, to advance these new Principles even if it meant engaging in conduct illegal under South African law. The provisions, titled "Increased Dimensions of Activities Outside the Workplace," stated:

- Use influence and support the unrestricted rights of black businesses to locate in urban areas of the nation.

13. Weedon, *The Evolution of Sullivan Principle Compliance*, *BUS & SOC'Y REV.*, Spring 1986, at 57.

14. McManus, *Being There*, *FORBES*, Nov. 8, 1982, at 218.

15. For a more detailed explanation of Sullivan procedures, see Weedon, *supra* note 13, at 56.

16. *U.S. Companies Bolster Anti-Apartheid Code*, *N.Y. Times*, Dec. 13, 1984, at D1, col. 1. While this figure does represent more than one-third of American companies, these companies employed only about one percent of the South African labor force.

- Influence other companies in South Africa to follow the standards of equal rights principles.
- Support the freedom of mobility of black workers to seek employment opportunities wherever they exist, and make possible provisions for adequate housing for families of employees within proximity of workers' employment.
- Support the ending of all apartheid laws.¹⁷

As conditions worsened in South Africa and even the expanded Sullivan Principles seemed to have little effect, Sullivan issued an ultimatum. In May 1985 he announced that if in twenty-four months apartheid was not abolished and blacks awarded full social and political rights, he would call for a total economic embargo on South Africa and the withdrawal of all American companies.

Although the Sullivan Principles were not effective in eradicating apartheid, they had another impact in the United States. University endowments and state and city pension funds began using adherence to the Principles as a factor in their investments. Brown and Yale Universities, for instance, both voted to divest themselves of stock in companies whose South African operations did not comply with the Sullivan Principles.¹⁸ Connecticut and Iowa likewise limited investments of their state employee pension funds to companies rated in the top two categories of Sullivan compliance.¹⁹ The city of New York had a similar policy for its massive \$17 billion pension fund.²⁰ By 1987 pension funds of five states, nine cities, and fifty-nine universities used the Sullivan Principles as a benchmark for their investments.²¹ Not to be outdone, President Reagan issued an executive order that included the requirement that American companies in South Africa abide by Sullivan standards.²²

Still, apartheid did not budge, and Sullivan's self-imposed deadline drew closer. In late 1986, fifteen years after Sullivan first made

17. *Id.*

18. *Yale to Divest Some Holdings*, N.Y. Times, Oct. 31, 1986, at B6, col. 1; *Brown University Approves South African Stock Policy*, N.Y. Times, Apr. 15, 1984, Sec. 1, at 37, col. 6.

19. CONN. GEN. STAT. § 3-13f (1985); IOWA CODE ANN. § 12A.1-.5 (West 1989). The Connecticut statute also requires that companies not supply strategic products to the South African government and police, and that they permit employees to organize and strike.

20. Telephone interview with Jon Lukomnik, press secretary for the New York City Comptroller's Office (Dec. 8, 1989).

21. *New Sullivan Principles*, N.Y. Times, June 7, 1987, § 4, at 2, col. 4.

22. Exec. Order No. 12,532, 50 Fed. Reg. 36,861 (1985).

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his appeal to the board, General Motors announced it would withdraw from South Africa; I.B.M. followed suit the next day.²³ Between 1986 and mid-1987, more than 100 other American companies also sold off their South African subsidiaries.²⁴ Finally, on June 4, 1987, Sullivan called a Washington news conference. He declared that the Sullivan Principles had failed to dismantle apartheid, and the only alternative was for companies to cut all commercial links to South Africa. He also called for a U.S. economic embargo of South Africa and for the Reagan Administration to sever diplomatic ties with the nation. At the time of the announcement, 127 companies subscribed to the Sullivan Principles. Although Sullivan said “they kept the Ten Commandments without Moses,” the Sullivan Principles have become far less potent without him.²⁵ Today only about 60 companies subscribe to what is now called the Statement of Principles. Many companies have withdrawn from South Africa, and corporate responsibility in South Africa has received scant media attention.

Nonetheless, the ten-year experiment with the Sullivan Principles did yield some success: it established a new standard for investment decisions by many pension funds, improved the quality of life for many black South Africans working for American companies, brought the issues of South Africa to a wider array of the American population, and added to the voices calling for reform. As for the primary goal, however—dismantling apartheid—the Sullivan Principles were sadly ineffective. As one major newspaper editorialized, “With an ally like constructive engagement, the Sullivan approach stood vulnerable and alone.”²⁶

23. Feder, *I.B.M. is Shedding South Africa Unit; Pressure is Cited*, N.Y. Times, Oct. 22, 1986, at A1, col. 4; *Divestment Ends a 5-Year Struggle*, N.Y. Times, Oct. 21, 1986, at D30, col. 5. I.B.M., like many companies, did not endorse the Sullivan Principles' 1984 amplification. As company chairman John F. Akers put it, “We are not in business to conduct moral activity, we are not in business to conduct socially responsible action. We are in business to conduct business.” *Id.* at 30.

24. Feder, *Apartheid Deadline Troubles Sullivan*, N.Y. Times, June 1, 1987, at D3, col. 1.

25. Smith, *Commandments Without Moses; Abandoning His Principles, Sullivan Wants U.S. Firms to Pull Out*, TIME, June 15, 1987, at 34.

26. *Ending Real Constructive Engagement*, N.Y. Times, June 8, 1987, at A18, col. 1. Constructive engagement, the name of the Reagan Administration's policy towards South Africa, eschewed sanctions and other harsh measures in favor of U.S. participation in the South African economy. See Crocker, *Reagan Administration's African Policy: A Progress Report*, DEP'T ST. BULL., Jan. 1984, at 38. Critics contended not only that the policy was ineffective, but that American participation lent the white minority regime undeserved moral credibility.

II. *The Valdez Principles*

The Sullivan Principles also produced another, longer term, result: they pioneered a new social responsibility strategy. Irish activists, for example, used them as a model for the MacBride Principles, named for Sean MacBride, an Irish human rights activist and Nobel Peace Prize winner. The MacBride Principles attempted to use American companies operating in Northern Ireland to combat discrimination against Catholic workers.²⁷ The MacBride Principles have not achieved the notoriety of the Sullivan Principles, in part because of a potential conflict with British law.²⁸ Although the MacBride Principles still exist, they have no signatories.

More recently the Coalition for Environmentally Responsible Economies (CERES)—a group of socially-responsible investors and national environmental organizations²⁹—proposed another Sullivan-style code of corporate conduct. Called the Valdez Principles, the code focuses on the environment. “Our intent,” the coalition explains, “is to create a voluntary mechanism of corporate self-governance that will maintain business practices consistent with the goals of sustaining our fragile environment for future generations, within a culture that respects all life and honors its independence.”³⁰

The Valdez Principles urge companies to abide by the following code:

1. PROTECTION OF THE BIOSPHERE

We will minimize and strive to eliminate the release of any pollutant that may cause environmental damage to the air, water, or earth or its inhabitants. We will safeguard habitats in rivers, lakes, wetlands,

27. Lohr, *Push on Hiring Bias in Ulster*, N.Y. Times, Sept. 4, 1986, at D1, col. 3. The MacBride Principles call for equal access to regional employment and certain equal opportunity and affirmative action programs for Northern Ireland. Specifically, the Principles call for increasing the representation of underrepresented religious groups in the work force, protection of minority employees, training and recruitment programs for minority employees, banning provocative religious symbols from the workplace, and unbiased layoff, recall, and termination procedures. *Id.*

28. Many American companies did not sign the MacBride Principles because they feared certain affirmative action steps would be construed as “reverse discrimination” under Britain’s Fair Employment Act of 1976. In *New York City Employees’ Retirement System v. American Brands, Inc.*, 634 F. Supp. 1382 (S.D.N.Y. 1986), involving a shareholder’s action against a company, a district court later clarified the issue. The court held that the MacBride Principles did not violate the British statute and therefore that they were appropriate material for a shareholder’s resolution in proxy materials.

29. These groups include the National Audubon Society, the National Wildlife Federation, the Wilderness Society, Calvert Social Investment Fund & Foundation, New York State Controller’s Office, and Working Assets.

30. The Social Investment Forum, C.E.R.E.S. Project, Valdez Principles Statement of Intent (Sept. 7, 1989).

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coastal zones and oceans and will minimize contributing to the greenhouse effect, depletion of the ozone layer, acid rain, or smog.

2. SUSTAINABLE USE OF NATURAL RESOURCES

We will make sustainable use of renewable resources, such as water, soils and forests. We will conserve nonrenewable natural resources through efficient use and careful planning. We will protect wildlife habitat, open spaces and wilderness while preserving biodiversity.

3. REDUCTION AND DISPOSAL OF WASTE

We will minimize the creation of waste, especially hazardous waste, and wherever possible recycle materials. We will dispose of all wastes through safe and responsible methods.

4. WISE USE OF ENERGY

We will make every effort to use environmentally safe and sustainable energy sources to meet our needs. We will invest in improved energy efficiency and conservation in our operations. We will maximize the energy efficiency of products we produce or sell.

5. RISK REDUCTION

We will minimize the environmental, health and safety risks to our employees and the communities in which we operate by employing safe technologies and operating procedures and by being constantly prepared for emergencies.

6. MARKETING OF SAFE PRODUCTS AND SERVICES

We will sell products or services that minimize adverse environmental impacts and that are safe as consumers commonly use them. We will inform consumers of the environmental impacts of our products and services.

7. DAMAGE COMPENSATION

We will take responsibility for any harm we cause to the environment by making every effort to fully restore the environment and to compensate those persons who are adversely affected.

8. DISCLOSURE

We will disclose to our employees and to the public incidents relating to our operations that cause environmental harm or pose safety or health hazards. We will disclose potential environmental, health, or safety hazards posed by our operations, and we will not take any action against employees who report any condition that creates a danger to the environment or poses health and safety hazards.

9. ENVIRONMENTAL DIRECTORS AND MANAGERS

At least one member of the Board of Directors will be a person qualified to represent environmental interests. We will commit management resources to implement these Principles, including the funding of an office of vice president for environmental affairs or an equivalent executive position, reporting directly to the CEO, to monitor and report upon our implementation efforts.

10. ASSESSMENT AND ANNUAL AUDIT

We will conduct and make public an annual self-evaluation of our progress in implementing these Principles and in complying with all applicable laws and regulations throughout our worldwide operations. We will work toward the timely creation of independent environmental audit procedures which we will complete annually and make available to the public.³¹

The Valdez Principles are not fixed; they are a "long term process rather than a static statement."³² Organizers will be working to elaborate and specify the provisions as part of "a long term program to divert capital toward environmental health and away from abusive practices."³³ Their goal is to establish the Valdez Principles as a touchstone for investment decisions by pension funds, individual investors, religious portfolios, and college endowments. In addition, they hope to incorporate the Valdez Principles in shareholder resolutions and consumer actions. Earth Day 1990 organizers also made the Valdez Principles a centerpiece of their efforts.³⁴

III. How the Valdez Principles and the Sullivan Principles Compare

In many respects the Sullivan Principles and the Valdez Principles are similar. Both codes are non-legal and non-governmental. Both seek voluntary compliance from industry. Both involve monitoring, evaluating, and publicizing corporate behavior. Valdez organizers used the Sullivan Principles — the first such corporate code of conduct — as their model. Yet the two codes differ in important ways, and these differences illuminate the strengths and weaknesses, the prospects and possibilities, of the Valdez Principles.

Unlike the Sullivan Principles, for instance, the Valdez Principles are not linked to a single individual. Leon Sullivan was the driving force behind his code, working for a decade to sign up companies, revamp the Principles, and publicize his efforts. As an African-American, a clergyman, a civil rights activist, and a board member of one of America's largest companies, he was uniquely suited to bring

31. The Social Investment Forum, C.E.R.E.S. Project, Valdez Principles [hereinafter Valdez Principles].

32. Valdez Principles Statement of Intent, *supra* note 30.

33. Joan Bavaria, Opening Remarks, News Conference on the Release of the Valdez Principles (Sept. 7, 1989).

34. See Feder, *The Business of Earth Day*, N.Y. Times, Nov. 12, 1989, Sec. 3, at 4, col. 3. Earth Day 1990 celebrates the twentieth anniversary of Earth Day, a 1970 nationwide patchwork of demonstrations and community activities promoting environmentally sound practices.

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corporate pressure to bear on apartheid. Sullivan's individual efforts, along with the focused media and organizational attention they generated, gave the Sullivan Principles an energy they might have otherwise lacked. When Sullivan abandoned the code, however, the Principles that took his name lost their impact. The Valdez Principles, by contrast, have many creators. On the one hand, this could lead to organizational difficulties, conflicting goals, and a diffusion of voices. On the other hand, having many participants allows greater input and, more importantly, ensures that the success of the code does not hinge on any single person or group.

The codes are also distinguished by the location of the affected corporations' business interests. The Sullivan Principles applied to American companies operating overseas. The Valdez Principles concentrate primarily on *domestic* operations. As a result, companies who sign on to the Valdez Principles could receive greater scrutiny from American groups and the American media — scrutiny that could deter them from participating. In a sense, South Africa insulated Sullivan signatories from public attention. Not only was the country half a globe away, but its state-imposed press restrictions were so severe that information barely trickled into the U.S.

Likewise, the climates in which the companies operate, along with the ensuing outside pressures, also differ widely. The social conditions in South Africa were, and remain, brutal and intractable. Consequently, many Americans asserted there was only one appropriate response: complete withdrawal of U.S. companies. With total divestment as the other option, signing the Sullivan Principles was an acceptable alternative for many corporations. Critics contended that companies used the Sullivan Principles as camouflage—as a justification for operating in (and profiting from) a fundamentally corrupt and odious system.³⁵ Finally, Congressional sanctions often loomed in the background for Sullivan companies.³⁶ Since these sanctions threatened to disrupt their ability to do business, many companies signed the Sullivan Principles to quell legislative action.

35. In addition, some companies who were Sullivan signatories also lobbied vigorously against divestment. See Parks, *Push Reforms or Show a Profit?: U.S. Firms in South Africa Under Growing Pressure*, L.A. Times, Aug. 10, 1986, at 1, col. 5. See also *U.S. Firms Asked to Accept Strengthened Code for Doing Business in South Africa*, Christian Science Monitor, Dec. 13, 1984, at 1.

36. See Walsh, *Lugar to Urge New S. Africa Sanctions*, Wash. Post, Jul. 29, 1986, at A1; Moffett, *U.S. Lawmakers Propose Sanctions Against South Africa*, Christian Science Monitor, Mar. 8, 1985, at 1; Omang, *Conferees Approve Economic Sanctions Against South Africa; Action Repudiates White House Policy*, Wash. Post, Aug. 1, 1985, at A1.

By contrast, no such outside pressures exist for the Valdez Principles. While there have been calls—particularly community-based ones—for companies to step up their environmental efforts, nothing analogous to complete withdrawal has been proposed. The absence of this stark alternative removes an incentive for companies to endorse the code. Nor does new legislation give Valdez companies the same impetus it gave their Sullivan predecessors.³⁷ Although increased environmental regulation has been proposed,³⁸ the proposals are not so severe that they automatically would drive companies to sign the Valdez Principles. Indeed, depending on the specific standards established, some Valdez provisions—particularly regarding environmental audits, energy efficiency, and environmental experts on corporate boards—could be even more demanding than legislation.

Outside pressures relate to another key difference between the codes. The Sullivan Principles were designed to use American corporations to change a situation they did not create. The Valdez Principles, by contrast, address conditions these companies had a role in creating.³⁹ In other words, the Valdez Principles—in contrast to the Sullivan Principles—are not a means to some other end. They are a direct effort to solve and avert a particular set of problems. Some corporations might be averse to signing the Valdez Principles if it means tacitly acknowledging that they contributed to the conditions the code seeks to correct.

Perhaps most important, however, are the differences between the actual provisions of the two codes. Specifically, the Valdez Principles are more demanding than the Sullivan code in at least three ways. First, the original six Sullivan Principles⁴⁰ concern integration, fair labor practices, and limited affirmative action—steps companies had already taken in the U.S. The Valdez Principles, however, demand more drastic action: changing board members, disclosing all potential hazards, and submitting to a public audit. Stiffer requirements could make companies averse to signing the environmental code. Second, the Valdez Principles reach much more

37. In contrast to the South African situation, American companies already function within certain legislatively imposed environmental limits. *See supra* note 4 & 5.

38. The Bush Administration, for example, has offered amendments to the Clean Air Act. *See* H.R. 4, 101st Cong., 2d Sess. (1989).

39. For example, manufacturers of chlorofluorocarbons played a role in the deterioration of the biosphere. Some companies have created problems by improperly disposing of toxic waste. And Exxon did, after all, spill thousands of barrels of oil into Prince William Sound.

40. *See supra* text accompanying note 13.

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of an individual corporation's business. Most American companies had only a fraction of their operations in South Africa. Thus, the overall economic costs of complying with the Sullivan Code—especially with the offsetting public relations gains—were small. Nearly all companies, however, interact with the environment, and for many, including most manufacturing companies, that connection is central to their business. As a result, the economic costs of complying with the Valdez Principles will likely be greater. Third, the Valdez Principles would affect *more* corporations. Because only some American companies operated in South Africa, the Sullivan Principles did not affect a substantial portion of the corporate population. The Valdez Principles, however, are so broad they could apply to virtually all domestic corporations.⁴¹

Taken together, these differences do not bode well for the Valdez Principles. The environmental code subjects signers to great scrutiny, but in the absence of outside forces that prompted many Sullivan signatories. In addition, signing the code might be seen as a tacit admission of fault; Sullivan signers appeared more noble, using their influence although they had not created the problem. Most important, the Valdez Principles demand more far reaching efforts than their model. They also affect more corporations and more of each individual corporation's business. As a result, the Valdez Principles appear to face significant obstacles to becoming a force in corporate responsibility. They seem less likely to obtain signatories than the Sullivan Principles, which themselves achieved only mixed results in effecting change.

IV. Conclusions and Recommendations

The prospects for the Valdez Principles, however, are not entirely bleak. What makes them problematic also makes them potentially promising and powerful. The Valdez Principles' success will hinge largely on their organizers' ability to recognize this promise and shape the Principles and their strategies towards this end. In taking these steps they would do well to recall the lessons of Isaiah Berlin, the English social philosopher. One of Berlin's most famous works concerns the fox and the hedgehog. The difference between the two, he said, was that the fox knew many little things, but the

41. Moreover, American companies never accounted for more than a few per cent of South Africa's Gross National Product, and often did not supply critical products. In contrast, the Valdez Principles have the potential to affect a huge portion of the American economy.

hedgehog knew the one big thing.⁴² Although the Valdez organizers must concentrate on details like establishing specific standards, they should not lose sight of an overarching principle.

The hedgehog in this case is the free market. The Valdez Principles will succeed only by harnessing the power of the marketplace and becoming fundamental to the way companies do business. The Valdez Principles, in other words, must affect competitive advantage. They can wield a stick: persuading pension, endowment, and investment funds to sell stock in nonsignatories and direct capital to competitors. Or they can offer a carrot: making adherence to the Principles a way to increase market share. In many industries, a tiny increase in market share can mean millions of dollars. If whether a manufacturer has signed the Valdez Principles becomes relevant—along with factors like price, quality, and packaging—when a consumer makes her decision to purchase, companies will be quick to sign.⁴³ The crucial idea is that the Valdez Principles cannot exist as merely a lofty set of aspirations, but must go directly and forcefully to a corporation's primary interest—the bottom line. Only by tapping into the force of capitalism, and appealing to (or threatening) a corporation's economic self-interest can the Valdez Principles stir the corporate social responsibility they desire.⁴⁴

This strategy is neither cynical nor impure. In fact, it squares well with an emerging trend in social and consumer activism. In the 1960s and 1970s the battle for corporate social responsibility was waged primarily in the courts and the legislatures. The movement scored many victories, and the changes it wrought became institutionalized. Abiding by environmental and product safety regulations became part of the day to day operation of American business. This institutionalization was eventually accompanied by two other factors: complacency brought on by success and a shift in national mood.

The 1980s were a decade of deregulation and distrust of government. At the same time, many public interest groups perceived

42. I. BERLIN, *THE HEDGEHOG AND THE FOX* (1953). The book is an exploration of Tolstoy's view of inexorable historical forces, though its lessons have been applied in many contexts.

43. See S. LYDENBURG, A. MARLIN, & S. STRUB, *RATING AMERICA'S CORPORATE CONSCIENCE* (1986) [hereinafter *RATING AMERICA'S CORPORATE CONSCIENCE*].

44. Professor Engel would take issue with this point. His view is that anything in the long run economic interests of a corporation and its shareholders is not true social responsibility. Engel, *An Approach to Corporate Social Responsibility*, 32 *STAN. L. REV.* 1, 9 (1979). Dean Clark, on the other hand, refers to a watered down version of this viewpoint as "monism." R. CLARK, *CORPORATE LAW* 681 (1986).

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Congress as inefficient and courts as unfriendly. As a result, groups now seek extra-legal means to promote corporate social responsibility. Socially responsible investing, for instance, has boomed. Many mutual funds, along with state, city, and labor pension funds, are designed specifically to screen investments for social as well as economic factors. At least \$4.8 billion of *individual* (not to mention pension fund) assets are now invested on social criteria.⁴⁵ Consumer co-operatives and other group buying efforts have also increased in popularity.⁴⁶ Ralph Nader has asserted that such “banding together” represents the next phase in the consumer movement, one “grounded in philosophy and a mass commitment to working at and perfecting the *consumption function* as a shaper of political economies.”⁴⁷ Another group has published a guide to promote social responsibility in the supermarket.⁴⁸ The guide lists various consumer products and rates their manufacturer on several social criteria, including charitable contributions, women and minority directors, social disclosure, involvement in South Africa, and weapons contracts. The consumer can then select Prego Spaghetti Sauce over Progresso, for example, because Prego’s manufacturer has several women board members and no involvement in South Africa, while Progresso’s builds conventional weapons.⁴⁹ The Valdez Principles are part of this broader trend of using extra-legal means to encourage corporate social responsibility. Yet the Principles will flourish only to the extent organizers recognize what others have already discovered: there is a power to capitalism that can be harnessed to serve socially responsible ends.⁵⁰

The fox to this hedgehog is the set of specific steps the Valdez drafters can implement to make their code work. As for strategy, a wise first step would be to *enlist a few major signatories*. When Leon

45. Bavaria, *Business Clean Up Your Environmental Act!*, Newsday, Sept. 7, 1989, at 37, col. 2.

46. Examples include New York’s Citizens Alliance Fuel Buyers Group, the Buyers Up group buying efforts (in five cities), and Co-Op America, a national organization that encourages consumer co-operatives across the nation. See Wald, *Fuel Oil Co-ops Stirring a Debate*, N.Y. Times, Apr. 16, 1988, at 42, col. 1; Rosenfeld, *Crusading Catalogues Offer Acceptable Goodies for the Guilty*, L.A. Times, Dec. 19, 1986, Part 5, at 2, col. 6.

47. Nader, *The Consumer Movement Looks Ahead*, in RALPH NADER TASK FORCE ON EUROPEAN COOPERATIVES, MAKING CHANGE? LEARNING FROM EUROPE’S CONSUMER COOPERATIVES 254 (1985).

48. RATING AMERICA’S CORPORATE CONSCIENCE, *supra* note 43.

49. *Id.* at 77.

50. CERES co-chair Denis Hayes put it well, if somewhat anti-climactically: “Our goal is to make compliance with the Valdez Principles an inherent part of doing business. Environmental irresponsibility is bad for the planet. It is also bad for business.” Anderson, *Religion in America: Churches Push Environmental Principles on Business*, United Press International, Sept. 29, 1989.

Sullivan announced his Principles in 1977, representatives of Ford, Exxon, Xerox, and I.B.M. joined him on the platform. If Valdez organizers take similar steps, they will acquire increased credibility and begin to employ the Principles as a competitive tool. Corporations, notoriously risk averse, will be more likely to act if other members of their flock have already done so.

Second, organizers should *use the leverage of the pension funds*, a strategy whose power is already evident. In April, 1989, New York City Comptroller Harrison J. Goldin, who oversaw the city's pension fund, said that if Exxon did not take responsibility for its oil spill and expedite clean up efforts, he would cast the fund's six million votes against management at an upcoming Exxon annual meeting. The company acquiesced. Goldin also won the appointment of a marine scientist to Exxon's board,⁵¹ a goal announced in the ninth Valdez Principle.⁵² He and California State Controller Gray Davis have also called on "six major oil and chemical companies to name a director with significant environmental expertise and to establish an internal structure to more closely monitor these issues."⁵³ Although some pension funds are already participating,⁵⁴ adding more will only increase the Principles' potency.

Third, organizers should *use environmental problems and events to challenge companies to participate*. At each oil spill or toxic hazard that makes news, organizers should publicly challenge the involved corporation to sign the Principles. With public attention focused on the company's failure, corporate officers would be hard pressed to refuse to sign a public-spirited pledge.

The Principles themselves also leave room for refinement. Because the code is so broadly worded, the coalition must concentrate on establishing specific standards by which corporations must abide. An appropriate first step is *to set measurable goals, preferably with industry input*. Many of the Principles have no meaning without these specific benchmarks. For example, in the Principle that calls on companies "to minimize and strive to eliminate the release of any pollutant that may cause environmental damage,"⁵⁵ organizers

51. Parker, *Oil Spill Rallies Funds; 3 Seek Support for Environmental Code*, Pensions and Investment Age, Sept. 18, 1989, at 3.

52. See *supra* text accompanying note 31.

53. Statement by California Controller Gray Davis (Sept. 7, 1989). Such monitoring is called for in the tenth Valdez Principle.

54. The pension funds are the New York City Retirement Systems (\$35.5 billion), the California Public Employees Retirement System (\$24.7 billion), and the California Teachers' Retirement System. Parker, *supra* note 51, at 3.

55. Valdez Principle 1, Valdez Principles, *supra* text accompanying note 31.

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should establish a clearly measurable goal—perhaps cutting chlorofluorocarbon (CFC) use in half by 1995.⁵⁶ On Principle 3, reduction and disposal of waste, the standard might be to recycle 50% of recyclable materials in the next two years.⁵⁷ Without these specific, measurable standards the Valdez Principles will have little meaning or impact. Industry input in establishing standards will foster a spirit of cooperation that will encourage future support.

In addition, these *measurable goals should also be attainable*. Corporations will not sign a code whose standards are too stiff. By establishing reasonable benchmarks first, organizers can recruit more companies. Once the companies are on board, organizers can gradually increase the stringency of the standards. Most companies will be reluctant to abandon the code once they have publicly signed. That reluctance will give organizers an opportunity to make the standards gradually more rigorous. In establishing standards Valdez organizers must keep in mind an important caveat: the initial standards must be lenient enough to attract signers, but rigorous enough both to carry out the environmental goals and to be used for competitive advantage.

Finally, the organizers must *set up a simple yet effective administrative structure*. The best method is probably to require some fee for companies to become signatories and then to contract auditing and compliance monitoring to an independent entity.⁵⁸ The goal should be to minimize paperwork and other obstacles while still monitoring, enforcing, and publicizing the Principles.

If organizers can harness the power of free markets, while using tact and precision in crafting the code's standards, the Valdez Principles may be an idea whose time has come. Indeed, the code could turn a modern business aphorism on its head. The Valdez Principles will succeed if their supporters can determine what's good for America, and then persuade General Motors, that it's good for them, too.

56. See e.g., Holusha, *Ozone Issue: Economics of a Ban*, N.Y. Times, Jan. 11, 1990, at D1, col. 3 (reporting that several Western nations are already taking steps to reduce industrial CFC emissions).

57. See Holusha, *McDonald's Acts to Recycle Plastic*, N.Y. Times, Oct. 27, 1989, at D1, col. 1. McDonald's has set a goal of recycling 25% of the one billion pounds of polystyrene used each year in food service packaging by 1995.

58. This was generally the approach used with the Sullivan Principles. Some criticized the Sullivan procedures for being too weighted towards aggregate data, for not allowing anyone but Arthur Little employees to conduct the evaluations, and for having flawed self-reporting and no employee input. Paul, *The Inadequacy of Sullivan Reporting*, 57 Bus. & Soc'y Rev. 61 (1986).

