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The Hollowing Out of Corporate Social Responsibility: Abandoning a Tradition in an Age of Declining Hegemony

Richard Marens*

I. INTRODUCTION

Examining the post-World War II history of the academic study of corporate social responsibility (CSR) in the United States reveals a paradox at the core of the field. After three decades of skepticism, even distrust, of the motives and preferences of top management,¹ scholars abandoned their skepticism during the 1980s in order to rely on these same managers to honor social contracts and respond to the interests of stakeholders.² In response to the growing influence of the agency or stockholder theory of the firm, a new generation of business ethics (and some of the older ones) increasingly sought to ally themselves with beleaguered corporate executives by advocating a return to the kind of executive autonomy in the service of “doing good,” a concept first popularized a half-century ago by Berle and Means.³

This was not the only possible way that scholars of CSR might have responded to increased pressure from shareholders and their academic allies. These scholars, working in the overlapping fields of business, society, and business ethics, might have argued that the fiduciary duties owed shareholders, so relied upon by agency theorists, were actually intended to protect shareholders of privately-held firms from managerial self-dealing, not the holders of publicly traded shares from the social concerns of management.⁴ Alternatively, they could have reminded financial markets that incorporation and limited liability were originally justified as a way to benefit society as a whole, and not only investors.⁵ Finally, they might have advocated new positive law to empower stakeholders or

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1. See HOWARD R. BOWEN, *SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN* (1953) [hereinafter BOWEN, *SOCIAL RESPONSIBILITIES*]; NEIL W. CHAMBERLAIN, *THE LIMITS OF CORPORATE RESPONSIBILITY* (1973) [hereinafter CHAMBERLAIN, *LIMITS*]; WILLIAM G. ROY, *SOCIALIZING CAPITAL: THE RISE OF THE LARGE INDUSTRIAL CORPORATION IN AMERICA* (1997); T.M. Jones, *Corporate Social Responsibility Reconsidered, Redefined*, CAL. MGMT. REV., Spring 1980, at 59; Carl Kaysen, *The Social Significance of the Modern Corporation*, 47 AM. ECON. REV. 311 (1957).

2. See THOMAS DONALDSON, *CORPORATIONS AND MORALITY* (1982); R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* (1984).

3. ADOLF A. BERLE & GARDINER C. MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (rev. ed. 1968) (1933).

4. Richard Marens & Andrew Wicks, *Getting Real: Stakeholder Theory, Managerial Practice, and the General Irrelevance of Fiduciary Duties Owed to Shareholders*, 9 BUS. ETHICS Q. 273 (1999).

5. EDWIN MERRICK DODD, *AMERICAN BUSINESS CORPORATIONS UNTIL 1860* (1954); ROY, *supra* note 1.

to protect implied contracts, while examining examples from other nations such as the German system of co-determination.

Ultimately, however, they did virtually none of these things. Instead they formulated constructs of CSR that rely almost exclusively on appeals to the voluntary adoption of ethical standards and enlightened self-interest by top management. In doing so, they abandoned the realism of Howard Bowen, generally acknowledged as initiating the academic study of CSR,⁶ who warned that “[t]he businessman’s viewpoint is that management should function as a trustee mediating among the several interest groups, but that the power of decision-making should rest exclusively with management. . . . It is regarded as just another application of the familiar but discredited doctrine of benevolent use of power.”⁷

While Freeman’s *Strategic Management: A Stakeholder Approach*⁸ and Donaldson’s *Corporations and Morality*⁹ are intelligently written and accessible books, even the most careful reading does not suggest exactly why these two works proved to be so influential with regard to the study of CSR.¹⁰ To understand why these two works were able to revolutionize the field requires a deeper explanation. The world systems theory of Giovanni Arrighi, writing both alone¹¹ and in collaboration with Beverly Silver,¹² provides one. According to Arrighi, the American economy followed a trajectory during the course of the twentieth century very similar to those traveled by earlier hegemonic centers of world capitalism over the past half-millennium.¹³ For most of the twentieth century, the United States dominated global manufacturing for a variety of reasons; thus, it followed that views of corporate responsibility would relate to enhancing efficiency in the workplace and fairness in the distribution of these gains. However, as is typical of hegemonic societies experiencing relative industrial decline, over the last generation, the United States has faced both increasing foreign competition and intensified pressure from domestic financial interests, making it difficult to argue that business leaders ought to accept, let alone appreciate, policies imposed on them requiring a more equitable sharing of an economic “pie” after this “pie” had apparently stopped growing. Under these new circumstances, the set of social responsibilities that a realist could expect

6. A.B. Carroll, *Corporate Social Responsibility*, 38 *BUS. & SOC’Y* 268 (1999); Duane Windsor, *The Future of Corporate Social Responsibility*, 9 *J. ORG. ANALYSIS* 225 (2001).

7. BOWEN, *SOCIAL RESPONSIBILITIES*, *supra* note 1, at 42.

8. FREEMAN, *supra* note 2.

9. DONALDSON, *supra* note 2.

10. See Carroll, *supra* note 6; Virginia W. Gerde & Richard E. Wokutch, *25 Years and Going Strong*, 37 *BUS. & SOC’Y* 414 (1998); Windsor, *supra* note 6.

11. GIOVANNI ARRIGHI, *THE LONG TWENTIETH CENTURY: MONEY, POWER, AND THE ORIGINS OF OUR TIMES* (1994).

12. GIOVANNI ARRIGHI & BEVERLY J. SILVER, *CHAOS AND GOVERNANCE IN THE MODERN WORLD SYSTEM* (1999).

13. See ARRIGHI, *supra* note 11; ARRIGHI & SILVER, *supra* note 12.

corporate leaders to accept, let alone embrace, would logically change along with them.

This article will explain the transformation of CSR in five parts. The first explains Arrighi's theory and its general relevance to the United States in the twenty-first century. The second gives a historical account of the beginnings of CSR in its efforts to grapple with the "labor question" in a way that would be both productive and fair. The third explains how a post-World War II generation of scholars perceived a program of labor-management cooperation as the kernel of a broader theory of social responsibility. The fourth explains how these scholars built CSR upon this kernel. The fifth discusses the transformation of CSR as American industrial hegemony began to decline in the late 1970s. This article will conclude by briefly discussing the limits of contemporary CSR and the prospects for future transformation.

II. ARRIGHI'S LONG WAVES OF GLOBAL CAPITALISM

Arrighi's theory builds upon Fernand Braudel's historical study of the development of global capitalism.¹⁴ Braudel himself was inspired by an almost tossed-off insight of Karl Marx's that centers of global capitalism tend to finance their successors.¹⁵ In this manner, the leading Italian city states financed the rise of the Netherlands, which in turn financed England, which itself was financially backing the economic development of the United States during Marx's own lifetime. Arrighi theorized from this insight that each of these successively larger and more technologically advanced states or proto-states (Genoa and Venice managed the wealth of Spain) initiated and led a century-long wave of capitalist development by dominating the production and marketing of the most crucial goods in international trade of the particular era. Moreover, the leading society of each wave leverages its overwhelming financial and industrial power to become hegemonic in the military, cultural, and ideological spheres as well, thus building dominance not only on the power of coercion, but also earning a degree of cooperation and emulation among sections of the dominated.¹⁶ As each hegemonic era proceeds, however, the core state inevitably finds that its competitive advantages in producing and marketing key commodities is eroded by both increasing costs in the core (labor, land, regulations, taxes) and rising competition from other regions, some of which learned to draw upon their own cultural legacies for competitive advantages.

As costs in the core increasingly make domestic production less competitive in world markets, the ruling class of the hegemonic economy employs three

14. 3 FERNAND BRAUDEL, *THE PERSPECTIVE OF THE WORLD: CIVILIZATION AND CAPITALISM 15TH-18TH CENTURY* (Sian Reynolds trans., 1984).

15. 1 KARL MARX, *CAPITAL: A CRITIQUE OF POLITICAL ECONOMY* (Frederick Engels ed. & Samuel Moore & Edward Aveling trans., Charles H. Kerr & Co. 1906) (1867).

16. See generally ANTONIO GRAMSCI, *SELECTIONS FROM CULTURAL WRITINGS* (1985).

strategies. First, the ruling class attempts to push down some of these costs, labor and taxes in particular; and second, the class turns increasingly to financial rent-seeking, an essentially zero-sum process that aims to exploit the stored wealth accumulated by previous decades of commercial hegemony. This shift in emphasis, however, does not lead to the collapse of capitalism, as Marx predicted, but rather to a third strategy. The third strategy consists of the financing of a new wave of accumulation in some other geographic region as the mature hegemon's ruling class, looking for investment opportunities, provides the seed money for its eventual successor. To the hegemon's ruling class, such investments might appear to leave them in the driver's seat indefinitely, albeit under altered conditions. Eventually, however, one region favored by new investment develops the necessary resources and self-confidence to establish its own leadership in the production of key commodities, and this region moves up the value chain to the point where it is no longer dependent for further financing or management of economic development from its original patrons.

It is difficult not to see these dynamics of a declining hegemon at work in contemporary America. Over the last generation, the country has experienced both a squeeze on wages and a shift in the tax burden, as well as a seemingly endless series of financial innovations that have repeatedly led to both scandals and the shifting of risk from one group to another. Wages and benefits have stagnated or even declined for most American workers since the mid-1970s,¹⁷ while corporate executives, large investors, and those strategically-positioned within the financial and accounting industries have vied with one another to find new ways to redistribute the wealth accumulated in pensions, portfolios, and even the Social Security Trust Fund.¹⁸

According to Arrighi and Silver, we are also witnessing the start of yet another hegemonic rise, as the United States invests in the Far East through trade deficits, direct investment, and, indirectly, military spending.¹⁹ While some of the investment in East Asia, especially China, has been made through ostensibly American multinational corporations, Chinese dependence on American expertise should also diminish in time, much as the United States needed increasingly less assistance from either those London financiers or Manchester

17. See generally LAWRENCE MISHEL, JARED BERNSTEIN & SYLVIA ALLEGRETTO, *THE STATE OF WORKING AMERICA 2004/2005* (2005); *ECONOMIC REPORT OF THE PRESIDENT* (2007), http://www.gpoaccess.gov/eop/2007/2007_erp.pdf (on file with the *McGeorge Law Review*); U.S. BUREAU OF THE CENSUS, *HISTORICAL STATISTICS OF THE UNITED STATES: FROM COLONIAL TIMES TO 1970* (1989); Thomas Piketty & Emmanuel Saez, *Income Equality in the United States, 1913-2002* (2004), <http://elsa.berkeley.edu/~saez/piketty-saezOUP04US.pdf> (on file with the *McGeorge Law Review*).

18. See generally FRANK PARTNOY, *INFECTIOUS GREED: HOW DECEIT AND RISK CORRUPTED THE FINANCIAL MARKETS* (2003). This trend is exemplified almost to the point of caricature by a report in the *New York Times* of a Harvard Medical School Graduate who joined a Wall Street firm as an analyst of the pharmaceutical industry because he felt he could not make a sufficiently high income pursuing his dream of finding a cure for cancer. Louis Uchitelle, *Very Rich Are Leaving the Merely Rich Behind*, N.Y. TIMES, Nov. 27, 2006, at A1.

19. See generally ARRIGHI & SILVER, *supra* note 12.

engineers who contributed so much to American industrialization and railroad construction. In a number of industries, including some relatively high-tech ones, Chinese firms have emerged to compete with their American counterparts in the domestic Chinese market, and there is no reason to assume that these firms will not learn to compete globally.²⁰ China appears to be learning to couple the nation's enormous cost advantages in labor with a relatively well-disciplined and educated workforce, coordinated by a government willing to provide levels of infrastructural investments necessary for a modern economy. Moreover, if the value-chain network has indeed superseded the autarkic corporation characteristic of the age of American hegemony as the favored engine of production, then China's own historical legacy with commercial networking may provide it with an enormous advantage.²¹ If this is indeed an accurate description of a structural process, one would expect to see manifestations in a number of areas, including the legitimized expectations for CSR.

III. LABOR-MANAGEMENT COOPERATION AS A SOCIAL RESPONSIBILITY

Just as the American wave of capitalist hegemony can be divided into an industrial and a financial phase, so can the evolution of CSR. During the industrial phase, discussions of business responsibilities quite logically focused on the social problems associated with industrialization, most noticeably the conflict between management and labor, organized or not, over the new ways of organizing and compensating work. Accounts of the history of the study of CSR generally acknowledge Howard Bowen's *Social Responsibilities of the Businessman* to be the field's seminal text.²² Ideas, however, rarely have a clearcut starting point, and Bowen himself acknowledged that "[t]he idea that there should be broader participation in business decisions—that businessmen should share their powers with other groups—has been frequently expressed over the past fifty years."²³ Along with such familiar names as Keynes, Drucker, and James F. Lincoln, his footnote cited in support of this proposition: Ordway Tead, Henry Metcalf, and Morris L. Cooke, civic reformers and pro-labor Taylorists; J. M. Clark and Sumner H. Slichter, two famous economists who shared an interest in labor unions; Philip Murray, Clinton S. Golden, and Harold J. Ruttenberg, three former officials of the United Steel Workers; and Neil Chamberlain, a then rising star in the field of industrial relations.²⁴

20. John Shinal, *China Hatches New Firms: Once Just a Market to Tap, It's Started to Field Its Own Talent*, S.F. CHRON., Sept. 26, 2004, at J1.

21. ARRIGHI & SILVER, *supra* note 12.

22. See MORRELL HEALD, *THE SOCIAL RESPONSIBILITIES OF BUSINESS: COMPANY AND COMMUNITY, 1900-1960* (Transaction Publishers 2005) (1970); Carroll, *supra* note 6; Windsor, *supra* note 6.

23. BOWEN, *SOCIAL RESPONSIBILITIES*, *supra* note 1, at 177.

24. *Id.* at 177 n.2.

What this list reflects, in part, is the importance of the “labor question” in generating the field of CSR. Not surprisingly, in light of American history over the first half of the twentieth century, the relationship between employees and management became the first arena in which scholars made a concerted effort to analyze the relationship between business and the wider society. By the end of World War I, the United States had already experienced “the bloodiest and most violent labor history of any industrial nation in the world.”²⁵ Given this high level of conflict, the rise of social democracy and Communism raised the realistic possibility that American workers might eventually turn to more deeply anti-business strategies, perhaps revolutionary ones. Even while negotiating in Versailles, Woodrow Wilson took the time to urge Congress that

[t]he Question that stands at the front of all others amidst the present great awakening is the question of labor[:] how men and women who do the daily labor of the world to obtain progressive improvement in the conditions of their labor, to be made happier, and to be served better by the communities and industries which their labor sustains and advances.²⁶

That the labor question had become so prominent was not surprising given the circumstances of American economic growth. By the beginning of the twentieth century, the United States had emerged as the leading industrial power in the world, and there was no precedent in history for managing this kind of growth on the scale and technological sophistication with which it occurred. Public intellectuals not only wrestled with questions of promoting efficiency, sharing gains, and avoiding conflict, but also sought to find ways to balance the somewhat anarchic processes of investment, production, and consumption in order to avoid the kind of macroeconomic crisis that the nation had experienced in the 1890s—a crisis that led to stock market panics, bloody strikes, and marching armies of the unemployed. At the same time, the exigencies of preparation for World War I offered a glimpse of the potential of labor-management cooperation in ameliorating conflict and increasing productivity, as the federal government brokered relative peace between industry and some of the less militant unions. Not only were many technocrats, including some involved in the scientific management movement, encouraged by positive outcomes from this

25. Philip Taft & Philip Ross, *American Labor Violence: Its Causes, Character, and Outcome*, in 1 HUGH DAVIS GRAHAM & TED ROBERT GURR, *VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES* 221 (1969).

26. NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 4 (2002) (quoting President Woodrow Wilson).

cooperation,²⁷ but also reformers saw improving worker morale and the sharing of gains as worthwhile ends in themselves.²⁸

After World War I and the passing of Frederick Taylor, who was himself ambivalent with regard to labor unions, some of his successors sought and found an audience for their ideas among important labor leaders. Scientific Management consultants such as Cooke and Tead did not entirely buy into the perspective of organized labor, but they were sufficiently familiar with conditions in factories to understand that union activism was a response to genuine grievances. Their consulting experience also led them to understand that when grievances were addressed, workers became more open to contributing knowledge and effort.²⁹ To Cooke, speaking to the Taylor Society in 1928, the organization of workers for self-protection was a “deep social need” necessary to create a balance of power, and it was the job of consulting engineers to “forward[] such movements” and work toward the elimination of such abuses as “yellow dog contracts” and preemptory pay cuts.³⁰ In effect, they anticipated the formal “game theoretic” analysis of trust, which finds that a prerequisite of a cooperative workplace is sufficient countervailing power for each side to prevent or punish betrayals,³¹ a position for which there is at least some empirical support.³²

As a result, Cooke caught the attention of the American Federation of Labor (AFL) leader Samuel Gompers when, after the war, labor was surprised by the renewal of opposition from the same corporate executives with whom they had cooperated during the war. Taking the advice of Cooke, Gompers took myriad opportunities to try to change labor’s image, asserting that unions wanted to “give” as well as “get,” and the AFL even formally embraced the goal of the Taylor Society to connect wage gains to productivity improvements.³³ Cooke actually developed a closer personal bond with the younger, intellectual labor leader Sidney Hillman of the Amalgamated Clothing Workers, who appreciated a

27. KENNETH E. TROMBLEY, *LIFE AND TIMES OF A HAPPY LIBERAL: A BIOGRAPHY OF MORRIS LLEWELLYN COOKE* (1954); Sanford M. Jacoby, *Union-Management Cooperation in the United States: Lessons from the 1920s*, 37 *INDUS. & LAB. REL. REV.* 18 (1983).

28. ORDDAY TEAD & HENRY C. METCALF, *PERSONNEL ADMINISTRATION: ITS PRINCIPLES AND PRACTICE* (3d ed. 1933); SUMNER H. SLICHTER, *THE CHALLENGE OF INDUSTRIAL RELATIONS: TRADE UNIONS, MANAGEMENT, AND THE PUBLIC INTEREST* 170-71 (1947).

29. See generally MILTON J. NADWORNY, *SCIENTIFIC MANAGEMENT AND THE UNIONS, 1900-1932: A HISTORICAL ANALYSIS* (1955).

30. STEVEN FRASER, *LABOR WILL RULE: SIDNEY HILLMAN AND THE RISE OF AMERICAN LABOR* 269 (1991).

31. See MARK IRVING LICHBACH, *THE COOPERATOR’S DILEMMA* (1996); GARY J. MILLER, *MANAGERIAL DILEMMAS: THE POLITICAL ECONOMY OF HIERARCHY* (1992); David I. Levine & Laura D’Andrea Tyson, *Participation, Productivity, and the Firm’s Environment*, in *PAYING FOR PRODUCTIVITY* 183 (Alan Blinder ed., 1990).

32. Joel Cutcher-Gershenfeld, *The Impact on Economic Performance of a Transformation in Workplace Relations*, 44 *INDUS. & LAB. REL. REV.* 241 (1991); Sandra E. Black & Lisa M. Lynch, *How to Compete: The Impact of Workplace Practices and Information Technology on Productivity*, 83 *REV. ECON. & STAT.* 434 (2001).

33. Jacoby, *supra* note 27.

study by Cooke that put most of the blame on management for the clothing industry's inefficiencies and who often sought Cooke's opinion on technical questions regarding production.³⁴ Hillman's union frequently offered to collaborate with friendly employers in competing against anti-union employers, even occasionally offering to lend money to some of these allied shops.³⁵

Ordway Tead, another pro-labor Taylorist, exercised his influence as an author, editor, and publisher. Tead became one of the first theorists of personnel administration, and Bowen, who cited four of Tead's books, called him "the most consistent advocate of a broader base for the determination of business policy."³⁶ Furthermore, as an editor at Harper Brothers, Tead published many of the era's significant volumes on labor relations and CSR, including Bowen,³⁷ Golden and Ruttenberg,³⁸ Chamberlain,³⁹ and Trombley's biography of Cooke.⁴⁰ Tead not only echoed Cooke's appreciation of a fair and cooperatively-run workplace for improving productivity, he frequently asserted the ethical and psychological imperative of an independent power base for employees. On this issue he was influenced by John Stuart Mill, the leading ethicist and economist of England's rise to industrial prominence. *Personal Administration*, written by Tead and his colleague Henry Metcalf, quotes John Stuart Mill's dictum that "[h]uman beings are only secure from evil at the hands of others, in proportion as they have the power of being . . . self-protecting."⁴¹ From this principle, the authors concluded that a truly cooperative attitude would only arise "when there is confidence on all sides that basic rights and interests are adequately secure so that attention can be turned safely to corporate aims of a constructive and productive character."⁴²

While Tead and Metcalf's book focused primarily on the details of personnel management, their text ended with a reminder to the reader that

[i]nstitutions exist not for their own sake or for the benefit of some small group which momentarily controls them. They exist to minister to the life of an entire community. And they are made subservient to public and inclusive ends only as they are controlled under democratic methods and for democratic ends.⁴³

34. TROMBLEY, *supra* note 27.

35. FRASER, *supra* note 30.

36. BOWEN, *SOCIAL RESPONSIBILITIES*, *supra* note 1, at 177 n.2.

37. *Id.*

38. CLINTON S. GOLDEN & HAROLD J. RUTTENBERG, *THE DYNAMICS OF INDUSTRIAL DEMOCRACY* (1942).

39. NEIL W. CHAMBERLAIN, *THE UNION CHALLENGE TO MANAGEMENT CONTROL* (1948) [hereinafter CHAMBERLAIN, *UNION CHALLENGE*].

40. TROMBLEY, *supra* note 27.

41. TEAD & METCALF, *supra* note 28, at 444.

42. *Id.* at 444.

43. *Id.* at 501 (emphasis omitted).

This vision for the good of society, along with Tead and Metcalf's understanding of the necessary conjuncture of strength and cooperation, anticipated the philosophy behind efforts to define CSR two decades later, after a depression and another world war.

Although this pro-union tendency within Taylorism emerged during the First World War, it proved to have relatively little influence on either business management or public policy before the late-1930s. One individual who paid attention to arguments for labor-management cooperation during these two decades was a newly prominent labor leader, Clinton Golden. Golden spent the 1920s working as an organizer for Sidney Hillman and was a personal friend of Cooke, whom he later eulogized as being "among the first . . . to be concerned about the impact of these newer [production] methods on people—workers—and their welfare. He understood that labor organizations initially emerge in a free society as [a] defense against exploitation in one form or another."⁴⁴ After Golden moved to the new United Steelworkers Union during the 1930s, he attempted to put Cooke's ideas into practice.⁴⁵

Golden, who *The Saturday Evening Post* tagged as "labor's ambassador to business" for his ability to work with executives in labor-relations seminars, also patronized union staffers who shared his enthusiasm for labor-management cooperation.⁴⁶ These included Joseph Scanlon, architect of the gain-sharing plan that still bears his name, and Harold Rutenberg, possibly the only American union official who would eventually become a corporate executive. Golden also persuaded Cooke to write a pamphlet on improving productivity, intended for distribution to both management and union locals.⁴⁷ Most importantly for the development of CSR, Golden and Rutenberg co-authored the widely-read *Dynamics of Industrial Democracy*.⁴⁸ The book's original working title, *Paths to Industrial Peace*, more explicitly reflects the book's central argument that unions and management need to build peace upon mutual respect for each other's rights in order to maximize both efficiency and fairness.⁴⁹ Left-leaning labor leaders criticized Golden for his betrayal of the class struggle, and the more pragmatic "bread-and-butter" wing of American labor sometimes regarded Golden's appeals to enlightened managerial self-interest as naïve.⁵⁰ The academic world, however, lionized him, and he was offered teaching posts at Harvard and MIT after leaving union work.⁵¹

44. TROMBLEY, *supra* note 27, at 254.

45. John Hoerr, Comment, in *FORGING A UNION OF STEEL: PHILIP MURRAY, SWOC, AND THE UNITED STEELWORKERS* 120-21 (Paul F. Clark, Peter Gottlieb & Donald Kennedy eds., 1987).

46. THOMAS R. BROOKS, *CLINT: A BIOGRAPHY OF A LABOR INTELLECTUAL CLINTON S. GOLDEN* 194 (1978).

47. *Id.* at 197; Hoerr, *supra* note 45, at 121.

48. GOLDEN & RUTTENBERG, *supra* note 38.

49. BROOKS, *supra* note 46, at 197; Hoerr, *supra* note 45, at 122.

50. BROOKS, *supra* note 46, at 198.

51. *Id.* at 247.

The early scholars of CSR extensively cited *Dynamics of Industrial Democracy*,⁵² but it was Chamberlain's *The Union Challenge to Management Control* that first argued explicitly for a broader ethical and social role for labor-management cooperation.⁵³ For Chamberlain, the question of what role unions could or should play in the management of businesses was "highly charged with an ethical content. Judgments are required as to the moral validity of legal relationships, the justification for economic powers and distributive shares . . . [and] . . . the philosophical foundations for political arrangements."⁵⁴ Chamberlain not only elaborated on the now familiar claim that cooperation would promote fairness for labor and profitability for business, but he also argued that such cooperation provided a model for the larger American society by showing the way toward enhancing justice, democracy, and prosperity, an assertion that would lay the foundation for much of the early CSR literature.⁵⁵

IV. FROM COOPERATION TO CORPORATE SOCIAL RESPONSIBILITY

That the literature on labor-management cooperation would influence the cohort of scholars who would build the concept of CSR is understandable given their shared background. These individuals were almost all trained in economics, often labor economics, at a time when at least a substantial portion of the field's mainstream, and by no means some small leftist clique, was more sympathetic to the goals of organized labor than it is today. John Maurice Clark, the President of the American Economic Association (AEA) in 1936 and the son of the even more famous economist J.B. Clark,⁵⁶ exemplified this perspective, claiming that "[h]igh wages are good for business; probably higher wages than business as a whole would pay without some pressure of the sort unions exert. Therefore unions have almost certainly been good for business."⁵⁷ His student Sumner Slichter, a one-time AEA president, while often critical of some aspects of unionism, echoed the arguments of Cooke and Tead: unions were capable of improving shop-floor communications and forcing management to make more thoughtful decisions.⁵⁸

Perhaps more important than their academic backgrounds were the cataclysmic events that they all lived through: the Great Depression and the economic

52. See, e.g., BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 178 n.2; CHAMBERLAIN, LIMITS, *supra* note 1, at 5-10; ERNEST DALE, GREATER PRODUCTIVITY THROUGH LABOUR-MANAGEMENT COOPERATION 186 (1949) [hereinafter DALE, GREATER PRODUCTIVITY]; DOUGLAS MCGREGOR, LEADERSHIP AND MOTIVATION 61 n.26, 83 n.1, 94 n.10, 103 n.15 (1967) [hereinafter SELEKMAN, LABOR RELATIONS]; BENJAMIN M. SELEKMAN, LABOR RELATIONS AND HUMAN RELATIONS 76 n.1, 208 n.24 (1947).

53. CHAMBERLAIN, LIMITS, *supra* note 1, at 8-9.

54. *Id.* at 8.

55. See generally CHAMBERLAIN, LIMITS, *supra* note 1.

56. JOHN MAURICE CLARK, ALTERNATIVE TO SERFDOM 85 n.13 (1948).

57. *Id.* at 87.

58. SLICHTER, *supra* note 28.

growth that followed it; laissez-faire government policies in the 1920s and the New Deal of the 1930s; World War II and the Cold War; the labor struggles of the thirties; and the limited labor-management détente of the forties and fifties. Moreover, they were often active participants in the events of the time, not only working as academics at elite universities but also serving in policy-making positions in both government and foundations. As a result, they shared similar views on the question of the social responsibilities of business, and these views reflected their own experiences dealing with interactions between business, government, labor unions, and other major institutions.

If the impact of Bowen's book *The Social Responsibilities of the Businessman* led to Bowen's recognition as the most influential of the CSR scholars of the 1950s, he was scarcely dealing with these issues in an intellectual vacuum. After Bowen's book appeared, Benjamin Selekman, a generation older than Bowen and already well-known in the field of industrial relations, published *Power and Morality in a Business Society*, co-written with his wife Sylvia,⁵⁹ and then *Moral Philosophy for Management*.⁶⁰ Others who contributed to the discussion in important journals during this period include: Selekman's Harvard Business School colleague Theodore Levitt, who debated Selekman in the pages of *Harvard Business Review*;⁶¹ as well as Wharton's Ernest Dale, author of "Management Must Be Made Accountable";⁶² Harvard economist Carl Kaysen, whose "Social Significance of the Modern Corporation" appeared in the *American Economic Review*;⁶³ and Neil Chamberlain of Columbia, who moved away from straight industrial relations to write and research broader issues of corporate responsibility.⁶⁴ Many other important academics associated with other specialties contributed to this literature, most famously John Kenneth Galbraith,⁶⁵ John Dunlop,⁶⁶ a future Secretary of Labor; and Douglas McGregor, a fan of Joseph Scanlon's plan.⁶⁷ Ultimately, however, the exact number of individuals who ought to be retroactively labeled as CSR scholars is not important. What is significant is that a number of important, well-connected academics found the subject worth discussing during the first two post-war decades.

While successful as scholars, a number of these individuals (and not just Galbraith and Dunlop) built impressive records of public service. Bowen worked

59. SYLVIA KOPALD SELEKMAN & BENJAMIN M. SELEKMAN, *POWER AND MORALITY IN A BUSINESS SOCIETY* (1956).

60. BENJAMIN SELEKMAN, *MORAL PHILOSOPHY FOR MANAGEMENT* (1959) [hereinafter SELEKMAN, *MORAL PHILOSOPHY*].

61. Theodore Levitt, *The Dangers of Social Responsibility*, HARV. BUS. REV., Sept.-Oct. 1958, at 41.

62. Ernest Dale, *Management Must Be Made Accountable*, HARV. BUS. REV., Mar.-Apr. 1960, at 49.

63. See generally Kaysen, *supra* note 1.

64. See generally CHAMBERLAIN, *LIMITS*, *supra* note 1.

65. See generally JOHN KENNETH GALBRAITH, *AMERICAN CAPITALISM: THE CONCEPT OF COUNTERVAILING POWER* (1952) [GALBRAITH, *AMERICAN CAPITALISM*].

66. JOHN THOMAS DUNLOP, *BUSINESS AND PUBLIC POLICY* (1980).

67. See generally MCGREGOR, *supra* note 52.

for both houses of Congress as a staff economist.⁶⁸ Kaysen served in the Kennedy administration, and James Kuhn, a collaborator of Chamberlain's at Columbia, worked for Lyndon Johnson. Dale and Levitt were both management consultants and corporate directors.⁶⁹ Selekman worked as a labor arbitrator, and Chamberlain directed the Office for Economic Development at the Ford Foundation.⁷⁰ The devastation of the 1930s and 1940s—Dale had the added burden of being a refugee from Nazi Germany—may help explain their concern for the welfare of workers within a capitalist system: Selekman, Dale, and Chamberlain, along with Dunlop and Kuhn, all conducted narrower industrial relations research before writing on broader social issues.⁷¹ Selekman acknowledged the labor strife he witnessed as a child, and his own research on the Ludlow massacre as a graduate student changed his thinking.⁷² Similarly, Bowen credited an uncle who was an itinerant laborer and an International Workers of the World (IWW) activist as one of the greatest influences on his own life.⁷³ Chamberlain's first adult job was as a labor journalist.⁷⁴ Galbraith helped found Americans for Democratic Action, along with labor leaders including David Dubinsky and Walter Reuther.⁷⁵ As a group, the early scholars of CSR were individuals who were not only quite familiar with the "labor question" in American life but could also see its connection and parallels with the many cataclysmic events and political conflicts of their era.

V. CORPORATE SOCIAL RESPONSIBILITY: THE FIRST CUT

Given the similarities in training and life experience, it is not surprising that their views of the responsibilities of business would converge as well. Even Levitt, who had more extensive business experience and was skeptical of CSR, shared many of his colleagues' assumptions regarding the proper role of business and business leaders within American society.⁷⁶ This intellectual cohort applied their shared experiences to grapple with the question of the appropriate

68. See generally HOWARD R. BOWEN, *ACADEMIC RECOLLECTIONS* (1988) [hereinafter BOWEN, *ACADEMIC REFLECTIONS*].

69. *Ernest Dale, Writer on Management*, 79, N.Y. TIMES, Sept. 8, 1996, available at <http://query.nytimes.com/gst/fullpage.html?res=9900E0D6153BF93BA3575AC0A960958260>; *Theodore Levitt, Harvard Professor, Business Editor*, 81, BOSTON HERALD, July 5, 2006, available at http://www.redorbit.com/news/education/560703/obituary_theodore_levitt_harvard_professor_business_editor_81/index.html.

70. See NEIL W. CHAMBERLAIN, *SOURCEBOOK ON LABOR* (1958).

71. See generally SELEKMAN, *LABOR RELATIONS*, *supra* note 52; DALE, *GREATER PRODUCTIVITY*, *supra* note 52; CHAMBERLAIN, *UNION CHALLENGE*, *supra* note 39; JOHN DUNLOP, *COLLECTIVE BARGAINING: PRINCIPLES AND CASES* (1949); JAMES W. KUHN, *BARGAINING IN GRIEVANCE SETTLEMENT: THE POWER OF INDUSTRIAL WORK GROUPS* (1961).

72. SELEKMAN & SELEKMAN, *supra* note 59, at 5-6.

73. BOWEN, *ACADEMIC REFLECTIONS*, *supra* note 68, at 234.

74. See generally CHAMBERLAIN, *UNION CHALLENGE*, *supra* note 39.

75. STEVEN M. GILLON, *POLITICS AND VISION: THE ADA AND AMERICAN LIBERALISM* (1987).

76. See generally Levitt, *supra* note 61.

responsibilities that would attach to businesses operating within the world that emerged after the Second World War. A product of the New Deal and World War II, the new American system was hardly socialist, but it no longer realistically fit the “free market” assumptions that had apparently failed the country between 1929 and 1932—assumptions that a cadre of depression-era Ph.Ds exposed to Keynes would naturally question. As Bowen put it,

with the ascendancy of laissez faire, the moral basis of economic life has tended to become obscured The prevalence of the laissez-faire doctrine . . . has created in some quarters the illusion that any revival of social controls is unnecessary and moral principles may have only limited application in economic life. This illusion persists even though we are drifting away from laissez faire in practice.⁷⁷

Bowen and Selekmán strongly endorsed the proposition that it was a central moral responsibility of business leaders to recognize the right of unions to organize and bargain collectively.⁷⁸ Both Selekmán, as a Harvard colleague of Galbraith’s, and Bowen, a personal friend of the famous economist,⁷⁹ were likely familiar with Galbraith’s theory of countervailing power, for which collective bargaining provided an exemplar.⁸⁰ Perhaps influenced by Galbraith, both argued that a business-oriented American society could generate economic fairness, not through massive state intervention or the unrestricted operation of markets, but through the interaction of organized interest groups that included schools, churches, non-profits, and agriculture, as well as businesses and unions.⁸¹ Galbraith and Bowen also urged these various groups to respect government’s ability to operate independently on behalf of the general public in its role as a referee between these institutions.⁸²

For these early advocates of CSR, an essential component of this overall public good was a broadly shared prosperity. Bowen, for example, wanted to ensure that “the distribution of property and power [was] diffused widely” by limiting large incomes “to what is justified by . . . need, incentive, and capital formation” and by setting prices, wages, and profits “with considerations of justice paramount.”⁸³ Kaysen echoed this view, declaring that economic justice required individual firms to share success with “the ‘members’ of the institution at all levels of the . . . hierarchy”⁸⁴ by providing employees with “high wages,

77. BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 13.

78. *Id.* See generally SELEKMAN, MORAL PHILOSOPHY, *supra* note 60.

79. JOHN KENNETH GALBRAITH, A LIFE IN OUR TIMES: MEMOIRS (Ballantine Books 1982) (1981).

80. GALBRAITH, AMERICAN CAPITALISM, *supra* note 65.

81. BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 174-76.

82. *Id.*; SELEKMAN, MORAL PHILOSOPHY, *supra* note 60.

83. BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 41.

84. Kaysen, *supra* note 1, at 314.

pensions and insurance systems, medical care programs, stable employment, [and] agreeable working conditions.”⁸⁵

Notably, these thinkers rarely discussed the Cold War in any detail in their writings, possibly out of concern for provoking additional controversy. Bowen himself learned something about the dangers of giving the appearance of being “soft” on Communism when, as a Dean at the University of Illinois, his attempts to reform the College of Business prompted opponents to enlist local vigilantes to red-bait his Keynesian economic views, ultimately driving him out of his job.⁸⁶ Selekmán even went so far as to criticize General Motors for lack of patriotism, when, at one time, it opportunistically bargained with the communist-influenced but relatively weak United Electrical Workers instead of the United Auto Workers—a union whose willingness to tie wage gains to productivity gains in the so-called “Treaty of Detroit” may have been the most successful and influential example of labor-management cooperation during the American era of industrial hegemony.⁸⁷

When these thinkers did discuss Communism, they either posited it as a kind of “bad cop” intended to frighten business leaders into taking their social responsibilities seriously, or they argued more positively that treating people well and respecting the rights of others was the American, not the Communist, way. The somewhat conservative economist Sumner Slichter actually set the model for this latter argument, at a time when many American unions were purging leftists from their leadership. He wrote that “trade unions are an important ally of the West. In the first place, they are an effective champion of the idea of the dignity of the individual. They have introduced the equivalent of civil rights into industry and have given workers protection against arbitrary treatment by managers.”⁸⁸

Bowen played the “bad cop” card, warning that “it is becoming increasingly obvious that a freedom of choice and delegation of power such as businessmen exercise would hardly be permitted to continue without some assumption of social responsibility.”⁸⁹ Selekmán suggested a similar if more melodramatic scenario, claiming that it would be “one of the tragic ironies of history, if management itself . . . actually perpetrated that divisiveness which Karl Marx predicted would soon incite the proletariat to overthrow their ‘capitalist masters.’”⁹⁰ In his famous exchange with Selekmán, even Levitt, the CSR skeptic, conceded that “[f]ew people will man the barricades against capitalism if

85. *Id.* at 313.

86. Winton U. Solberg & Robert W. Tomilson, *Academic McCarthyism and Keynesian Economics: The Bowen Controversy at the University of Illinois*, 29 HIST. POL. ECON. 55 (1997).

87. SELEKMAN, MORAL PHILOSOPHY, *supra* note 60.

88. SLICHTER, *supra* note 28, at 262.

89. BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 4-5.

90. Benjamin M. Selekmán, *Is Management Creating a Class Society?*, HARV. BUS. REV., Jan.-Feb. 1958, at 37, 37.

it is a good provider, minds its own business, and supports government in the things which are properly government's."⁹¹

Good Keynesians all, and quite dedicated to saving capitalism from capitalists, these scholars were all children of a depression that followed a decade of few political constraints on the behavior of business. As a result, they all defended the importance of government to stand independent of undue influence from business interests and to be allowed, what Poulantzas has termed, the "relative autonomy" to manage economic relationships in the interest of preserving stability and promoting prosperity.⁹² A generation after his seminal book first appeared, Bowen acknowledged that businessmen exercising "undue power and influence" with respect to "federal, state, and local government" was a substantive area "of widespread . . . interest."⁹³ Selekman strongly doubted that "voluntary sacrifice together" could serve as a practical alternative to government regulation⁹⁴ and urged business leaders to "admit frankly that government inevitably has to intervene in a thousand and one ways in this complicated world."⁹⁵ He accepted that organizations, such as the Chamber of Commerce and the National Association of Manufacturers, had a legitimate right to advocate for their members' interests, but he also argued that business leaders needed to extend a similar level of tolerance toward the lobbying efforts of groups that they disagreed with, such as the AFL-CIO.⁹⁶

Certainly, as the quote from Bowen in the second paragraph suggests, these scholars did not trust business executives to replace government oversight with their own judgment as to how to promote the greater good. With the exception of Levitt, who regarded the idea as unrealistic, they all urged business leaders to assume voluntarily a degree of social responsibility, yet they were aware from their studies and personal experiences that it would be a mistake to leave it entirely to the discretion of executives to decide what constituted responsible behavior. Selekman, experienced with business leaders, knew appealing to executives' sense of responsibility would flatter them but warned that "[i]t is much easier to dispense justice, to be benevolent, than it is to share power—especially with those who have the means to compel such sharing."⁹⁷ Levitt argued that business leaders needed to recognize the benefits of respecting the power and autonomy of other groups by calling for "a pluralistic society—where there is division, not centralization, of power; variety, not unanimity, of opinion;

91. Levitt, *supra* note 61, at 49-50.

92. NICOS AR POULANTZAS, *POLITICAL POWER AND SOCIAL CLASSES* 253 (1973).

93. Howard R. Bowen, *Social Responsibilities of the Businessman: Twenty Years Later*, in *RATIONALITY, LEGITIMACY, RESPONSIBILITY: SEARCH FOR NEW DIRECTIONS IN BUSINESS AND SOCIETY* 116, 118-19 (Edwin M. Epstein & Dow Votaw eds., 1978).

94. SELEKMAN, *MORAL PHILOSOPHY*, *supra* note 60, at 37.

95. *Id.* at 41.

96. *Id.* at 110.

97. HEALD, *supra* note 22, at 286 (quoting Benjamin M. Selekman).

and separation, not unification, of workaday economic, political, social, and spiritual functions.’⁹⁸

Kaysen expressed similar sentiments in somewhat more critical terms:

But what management takes into account is what management decides to take into account, and however responsible management policy is, . . . it is responsible only in terms of the goals, values, and knowledge of management. No direct responsibility, made effective by formal and functioning machinery of control, exists. No matter how responsible managers strive to be, they remain in the fundamental sense irresponsible oligarchs in the context of the modern corporate system.⁹⁹

Finally, Dale ended the decade of the 1950s by asserting that it was in the self-interest of business leaders to respect democratic interventions:

Is it desirable . . . that managers be given the broad social responsibility for allocating resources among the various interest groups? . . . If managers really begin to function in this way, all the various parties at interest, and the general public, may well begin to ask for a voice in selecting them. It is contrary to all democratic tradition for constituents to have no say in the selection of their representatives and no way of calling them to account.¹⁰⁰

VI. CSR IN THE AGE OF HEGEMONIC DECLINE

The academic pioneers of CSR were respected public intellectuals, were published in prestigious places, and had successful academic careers. However, their work was neither widely embraced as a new gospel nor broadly condemned as heresy by business leaders or fellow academics. Bowen undertook to write *Social Responsibilities of the Businessman* as a study commissioned by the organizational precursor of the National Council of Churches, and it earned a number of reviews from library journals and serious magazines. Far from being seen as an attack on business, an executive from General Mills actually gave the book a far more positive endorsement in *Management Review*¹⁰¹ than it earned from an anonymous reviewer in left-leaning *The Nation Magazine*.¹⁰² However, for Bowen and most of his cohort, Chamberlain providing the major exception, the study of the social responsibilities of business did not become a central

98. Levitt, *supra* note 61, at 44.

99. Kaysen, *supra* note 1, at 316.

100. Dale, *supra* note 62, at 54-55.

101. Harry A. Bullis, *Book Review of Social Responsibilities of the Businessman*, 42 MGMT. REV. 554, 554-55 (1953).

102. *Book Review: Social Responsibilities of the Businessman*, NATION MAG., June 20, 1953, at 529.

component of their careers, and ultimately the work they initiated did not immediately coalesce into a robust academic discipline.

A number of other academics continued to study CSR-related topics through the 1960s and 1970s under the rubric of “business and society.” However, this nascent field did not grow very rapidly in terms of course creation, departments, and graduate programs, despite a variety of surveys and studies that identified a need in business programs for such work and the appearance of the first specialized journals.¹⁰³ The possible explanations for the sluggish pace of acceptance range from the lesser stature of the next generation of CSR academics to the indifference of business students. Furthermore, the subject matter itself was never free of suspicion, and it was inherently “anti-business,” even though it never argued for any radical reforms and generally claimed to strengthen both the legitimacy and efficiency of American business.¹⁰⁴

A. *Falling Out of Favor*

If the average executive had not relinquished suspicions of CSR during the post-war generation, the so-called “golden age” of American capitalism, such suspicions were only amplified during the late 1970s. During the late 1970s, American executives became more politically and ideologically active in response to increased regulatory demands, heightened international competition, and inflationary pressures that were blamed on government policies.¹⁰⁵ Furthermore, a slowdown in productivity growth made it increasingly difficult to paper-over inherent conflict regarding the economic fruits of a system with ever increasing wealth.¹⁰⁶ As American industrial hegemony buckled under the combined pressure of foreign competition and domestic demands, the very policies that the original cohort of business ethicists had advocated for with regard to government, unions, and the egalitarian distribution of wealth were precisely the kinds of arrangements that American executives were increasingly organizing to counter, or even rollback.¹⁰⁷ Their efforts did not stop with pressuring the political system. Executives also turned their attention to the American intellectual community.¹⁰⁸

103. Earl F. Cheit, *Coming of Middle Age in Business and Society*, CAL. MGMT. REV., Winter 1991, at 71.

104. *See id.*; *see also* William C. Frederick, *Conceptual Foundations of Business: A Book That Made a Difference*, in EDUCATION, LEADERSHIP AND BUSINESS ETHICS: ESSAYS ON THE WORK OF CLARENCE WALTON 61 (Ronald F. Duska ed., 1998) (explaining the perception of CSR).

105. DAN CLAWSON, ALAN NEUSTADTL & MARK WELLER, DOLLARS AND VOTES: HOW BUSINESS CAMPAIGN CONTRIBUTIONS SUBVERT DEMOCRACY 146-54 (1998).

106. *See generally* ARRIGHI, *supra* note 11; ROBERT BRENNER, THE BOOM AND THE BUBBLE: THE US IN THE WORLD ECONOMY (2002).

107. *See generally* CLAWSON ET AL., *supra* note 105; THOMAS FERGUSON, GOLDEN RULE: THE INVESTMENT THEORY OF PARTY COMPETITION AND THE LOGIC OF MONEY-DRIVEN POLITICAL SYSTEMS (1995); D. Quinn Mills, *Flawed Victory in Labor Law Reform*, HARV. BUS. REV., May-June 1979, at 92.

108. *See generally* DAVID CALLAHAN, \$1 BILLION FOR IDEAS: CONSERVATIVE THINK TANKS IN THE

The “Powell Memorandum” is often regarded as the first significant step in the process. Written by soon-to-be Supreme Court Justice Lewis Powell in 1971 and widely distributed by the U.S. Chamber of Commerce, the memorandum warned of a mounting and coalescing anti-business campaign, promoted by large segments of the political, media, and educational establishments, mounted not by “out-front” radicals but by “the ambivalent liberal critic.”¹⁰⁹ Lewis expressed that “[a]lthough New Leftist spokesmen are succeeding in radicalizing thousands of the young, the greater cause for concern is the hostility of respectable liberals and social reformers. It is the sum total of their views and influence which could indeed fatally weaken or destroy the system.”¹¹⁰ CEOs Justin Dart and Donald Kendall followed Powell with their own letters of alarm regarding a proposed overly interventionist government, culminating in a successful campaign led by the Business Roundtable to block the passage of legal changes in labor law and consumer protection in 1978.¹¹¹

Moreover, executives began to take a closer look at the ideas whose promulgation they were subsidizing. In perhaps the most publicized example of revisionism, The Committee for Economic Development (CED), a mildly Keynesian think-tank established in 1942, which had taken positions that were largely in accordance with the pluralistic principles of the early CSR scholars,¹¹² was literally “purged” during the middle 1970s. The CED was founded by business leaders who had experience with public service, a group Bowen identified as understanding the obligation for “public policies which will make the economic system work better from the point of view of all classes—not merely from the point of view of business.”¹¹³ However, only a generation later, it was hard to find executives willing to support this class-collaborationist perspective with cash, and so the personnel and output of the CED shifted accordingly. In its 1979 publication “Redefining Government’s Role in the Market System,” the organization advocated lower taxes and reduced regulation.¹¹⁴ As one of the Committee’s administrators explained it, “[i]n the early [post-World War II] days the trustees were men who saw a need for some

1990s (1999); Val Burris, *Elite Policy-Planning Networks in the United States*, in 4 RESEARCH IN POLITICS AND SOCIETY (Gwen Moore & J. Allen Whitt eds., 1992), available at <http://darkwing.uoregon.edu/~vburris/policy.pdf>.

109. Memorandum from Lewis F. Powell, Jr., to Eugene B. Snyder, Jr., Chairman, Educ. Comm’n, U.S. Chamber of Commerce (Aug 23, 1971), http://reclaimdemocracy.org/corporate_accountability/powell_memo_lewis.html (on file with the *McGeorge Law Review*).

110. *Id.*

111. See generally CLAWSON ET AL., *supra* note 105; Mills, *supra* note 107.

112. KARL SCHRIFTGIESSER, BUSINESS COMES OF AGE: THE STORY OF THE COMMITTEE FOR ECONOMIC DEVELOPMENT AND ITS IMPACT UPON THE ECONOMIC POLICIES OF THE UNITED STATES, 1942-1960 (1960).

113. BOWEN, SOCIAL RESPONSIBILITIES, *supra* note 1, at 64.

114. See generally William C. Frederick, *Free Markets Versus Social Responsibility: Decision Time at the CED*, 23 CAL. MGMT. REV. 20, 21 (1981).

more government intervention. Now some of the trustees believe the intervention has gone far enough.”¹¹⁵

Business executives—patrons of American business schools and employers of their graduates—were also taking a closer look at what universities were teaching, especially in business schools. In an article candidly titled “Corporate Support of Education: Some Strings Attached,” a CEO of a major defense contractor, Robert H. Malott, argued that “corporate support should be channeled to those [academics] who speak out for limited government and those who stress the importance of individual liberties.”¹¹⁶ Malott also called for restoring a “balance” away from what he implied was an anti-business academic bias, which he exemplified by arguing that professors needed to teach Milton Friedman along with John Kenneth Galbraith.¹¹⁷ What Malott regarded as bias, however, reveals the change regarding what executives found intellectually tolerable since Bowen’s day. Friedman was already included in all standard economics texts, and Galbraith, while a skeptic, was never viewed, even by himself, as an ideological opponent of the capitalist system.¹¹⁸ For Malott though, the pluralism and mild government interventions once advocated by the pioneers of CSR had become almost indistinguishable from an inherently hostile attitude toward business.¹¹⁹

The result of this mobilization of business executives was their successful imposition of a bipartisan constraint on what government office-holders were either willing or able to promote as policies vis-à-vis business.¹²⁰ President Ronald Reagan’s declaration in his 1981 Inaugural Address, that “[i]n this present crisis, government is not the solution to our problem; government is the problem,” is well known.¹²¹ Less frequently remembered is how President Bill Clinton partially echoed these sentiments fifteen years later by declaring at his 1996 State of the Union Address that “[t]he era of big government is over.”¹²²

Many observers, particularly libertarians, have pointed out the logical inconsistency of corporate executives arguing for limited government while simultaneously lobbying for expensive new weapon systems or bargaining with

115. L.H. Clark, *Rehabilitation Project: Once-Mighty CED Panel of Executives Seeks a Revival, Offers Advice to Carter*, WALL ST. J., Dec. 17, 1976, at 38.

116. Robert H. Malott, *Corporate Support of Education: Some Strings Attached*, HARV. BUS. REV., July-Aug., 1978, at 133, 134.

117. *See id.* at 135.

118. *See* PAUL M. SWEETZ, *THE PRESENT AS HISTORY: ESSAYS AND REVIEWS ON CAPITALISM AND SOCIALISM* (1953).

119. *See* Malott, *supra* note 116, at 133 (“We are too often witness to corporations providing support to groups that are hostile to the competitive enterprise system.”).

120. *See generally* CALLAHAN, *supra* note 108; CLAWSON ET AL., *supra* note 105; Burris, *supra* note 108, at 111.

121. Ronald Reagan, President of the United States, First Inaugural Address of Ronald Reagan (Jan. 20, 1981), <http://www.reaganlibrary.com/reagan/speeches/first.asp> (on file with the *McGeorge Law Review*).

122. William Jefferson Clinton, President of the United States, State of the Union Address (Jan. 23, 1996), <http://clinton2.nara.gov/WH/New/other/sotu.html> (on file with the *McGeorge Law Review*).

state governments for industrial development subsidies.¹²³ Perhaps, though, this very inconsistency was what generated such a defensively doctrinaire reaction on the part of many business leaders, which left little room to consider such nuances in the relationship between business and government. Since before World War II, military spending has provided research funding and an initial market for aerospace, electronics computers, automated equipment, and any number of less dramatic but profitable innovations. The hope that increasing military spending could do it again was not inherently unrealistic, even if it required inconsistency with free market principles, as the author of *Some Strings Attached* argued.¹²⁴

A second trend made the traditional approach to business and society even less tenable. A large portion of business executives mobilized to resist perceived attacks from what they regarded as the “left,” but not long after, they faced a new challenge from another direction that only reinforced this hostility. A new line of criticism began emanating from economics and finance departments that argued that corporate managers were paying *too* much attention to the interest of non-shareholder groups, or worse, were pretending to do so as an excuse for self-dealing and thus avoiding their supposedly fundamental duty to promote profitability and shareholder values.¹²⁵ Furthermore, corporate executives working in formerly oligopolistic industries, which faced heightened competition and renewed shareholder pressure, were understandably less interested in keeping “the big picture” of society’s interests in mind as they fought for their professional survival. Under siege by the financial community and their academic allies for allegedly being too deferential to other groups, executives were not likely to be sympathetic to the view promoted by Bowen and others that assumed they themselves were overly powerful and required institutional constraints.¹²⁶

Historically and legally, agency theorists were wrong in their claim that investors ought to be the exclusive concern of corporate executives.¹²⁷ In actuality, the evolution of corporate law during the nineteenth century was a contentious political process finally won by the promoters of broad and accessible incorporation only by promising gains for the entire society that went well beyond maximizing profitability or shareholder value.¹²⁸ Likewise, no court

123. Paul Chesser, *On Milking a State's "Cash Cow,"* CAROLINA J. ONLINE, May 20, 2004, http://www.carolinajournal.com/exclusives/display_exclusive.html?id=1554 (on file with the *McGeorge Law Review*); David Isenberg & Ivan Eland, *Empty Promises: Why the Bush Administration's Half Hearted Attempts at Defense Reform Have Failed*, POL'Y ANALYSIS (Cato Inst.), June 11, 2002, <http://www.cato.org/pubs/pas/pa-442es.html> (on file with the *McGeorge Law Review*).

124. See Malott, *supra* note 116 and accompanying text.

125. Milton Friedman, *The Social Responsibility of Business Is To Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at SM17; Michael C. Jensen & Perry Fagan, *Capitalism Isn't Broken*, WALL ST. J., Mar. 29, 1996, at A10.

126. See CLAWSON ET AL., *supra* note 105, at 26-27 (discussing limits to business power and some executives' belief that “corporations are constantly under attack”).

127. See generally Friedman, *supra* note 125; Jensen & Fagan, *supra* note 125.

128. See generally DODD, *supra* note 5; ROY, *supra* note 1.

in the twentieth century imposed narrow duties to shareholders on corporate managers, particularly the managers of publicly-traded firms.¹²⁹ And while Berle and Means' insight regarding the separation of ownership and control in modern corporations was not inaccurate,¹³⁰ any managerial neglect or self-dealing that arose out of this institutional arrangement was not generally viewed by investors as a profound threat to their fundamental interests.¹³¹

What agency theorists claimed, then, were not some eternal truths but new, increasingly relevant ones. With signs of American industrial decline evident, society could no longer depend on a growing economic pie to ameliorate class conflict and satisfy other interests. Consciously or not, advocates of the primacy of investor interests were following Marx's views on the social role of finance. Marx saw financial capital as the collective capital of the ruling class of his day, ready to act for the benefit of the entire class, even if it required action in opposition to the interests or wishes of individual industrial capitalists. As he put it himself:

[M]oney capital emerges, more and more, in so far as it appears on the market, as not represented by the individual capitalist, the proprietor of this or that fraction of the mass of capital on the market, but rather as a concentrated and organized mass, placed under the control of bankers as representatives of the social capital¹³²

According to the agency view, shareholders or their agents needed to stop management from diverting cash that rightfully belonged to stockholders into "empire-building projects . . . bloated staffs, indulgent perquisit, and organizational inefficiencies" even if it was necessary to generate a "crisis atmosphere [where] managers [were] require[d] to slash unsound investment programs, shrink overhead, and dispose of assets."¹³³ Advocates of this position did not bother to pretend that the entire society would benefit, except perhaps hypothetically in the long run, since "real wages are likely to continue their sluggish growth and some will fall dramatically over the coming two or three decades, perhaps as much as 50% in some sectors."¹³⁴ What Jensen and his colleagues grasped was not a timeless principle but just the opposite. The time had only recently arrived for investors to look out for their immediate interests and stop putting faith in the continuation of broad and steady prosperity generated by an increasingly creaky American regime of capital accumulation.

129. Marens & Wicks, *supra* note 4, at 273.

130. See generally BERLE & MEANS, *supra* note 3.

131. See generally SWEEZY, *supra* note 118.

132. 3 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 491 (David Fernbach trans., Penguin Classics 1991) (1981).

133. Michael C. Jensen, *Eclipse of the Public Corporation*, HARV. BUS. REV., Sept.-Oct. 1989, at 61, 67.

134. Jensen & Fagan, *supra* note 125.

As a result, business academics interested in social responsibility not only faced potential career risks by advocating unionization, countervailing power, and additional regulation, they also faced the question of whether there was any practical benefit of advocating these arrangements in an era characterized by weak unions, mobilized shareholders, and cautious politicians of both parties.¹³⁵ Certainly, there was no shortage of ideologues willing to provide a view of the corporation more palatable to business executives. In 1956, not very long after the fall of McCarthy, Selekman, working in America's leading business school, published a book titled *Power and Morality in a Business Society*, without generating serious controversy. Sixteen years later, just before the dawn of a new era of executive assertiveness, two highly respected economists insisted that power was not even an issue in dealing with the modern corporations, since the business firm "has no power of fiat, no authority, no disciplinary action any different in the slightest degree from ordinary market contracting between any two people."¹³⁶

As a result, another approach to CSR developed out of what originally began as an effort to bring in scholars trained in ethical philosophy to fill an intellectual and pedagogical gap of earlier work, and to fill the lack of attention earlier scholars paid to the mechanics of making decisions in light of their social responsibilities.¹³⁷ What started, however, as a defensible, even laudable, effort to expand the boundaries of the field resulted in the eventual dominance of these newcomers, who abandoned most of the assumptions of their predecessors.

B. Redefining Corporate Social Responsibility

This new generation of scholars of CSR responded to the changes in the American business, political, and academic environments that had begun in the 1970s by *implicitly* conceding the right of corporate executives to exercise a high level of autonomy and power. They did this in an effort to *explicitly* influence corporate decision-makers to take a broader perspective than that demanded by agency theorists. In particular, they were responding to a *New York Times* article by Milton Friedman that claimed that profitability was the sole measure of a business's social responsibility,¹³⁸ turning the Nobel Laureate into "the favorite whipping boy of Business Ethicists."¹³⁹

135. See generally CLAWSON ET AL., *supra* note 105.

136. Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 777 (1972).

137. Richard T. De George, Address at the Third Biennial Global Conference on Business Ethics: A History of Business Ethics (Feb. 19, 2005), <http://www.scu.edu/ethics/practicing/focusareas/business/conference/presentations/business-ethics-history.html> (on file with the *McGeorge Law Review*).

138. See Friedman, *supra* note 125.

139. Denis Collins, *The Voluntary Brainwashing of Humanities Students in Stanford's MBA Program: Student Complaints and Some Recommendations*, 6 BUS. ETHICS Q. 393, 408 (1996).

While this new executive-centered approach to CSR may have won more tolerance than the pluralistic perspective it replaced, the approach's enhanced tolerance did not, in any obvious way, accompany a detectable influence over behavior, particularly when it came to the issue of distributive justice. The new scholars ignored the warnings of their predecessors regarding an over-reliance on empowering executives to define and pursue their social responsibilities. Dominated by nonconsequentialist ethics that, as the name implies, focused on deducing first principles rather than measuring and comparing outcomes, these scholars did not indicate any awareness that the United States has been mired for thirty years in an era of unprecedented wage stagnation and increasing concentration of wealth.¹⁴⁰ Nor did they acknowledge that corporate managers have, at least publicly, acquiesced to the demands of agency theorists. First threatened by raiders then bribed by stock options, top executives began treating their own employees in the manner of corporate raiders¹⁴¹ and, when that proved insufficient to feed a seemingly insatiable appetite for endlessly rising accounting numbers, began hatching their own scams to pump up the price of shares.¹⁴²

CSR scholars, in sharp contrast to their worldly predecessors, focused on abstractions. Inspired by the work of Donaldson and Freeman, both trained in philosophy, virtually the entire field turned to two new paradigms of voluntary ethics: stakeholder theory and social contracting.¹⁴³ In effect, these paradigms became functional substitutes for countervailing power and government regulation. According to the stakeholder perspective, managers need to consider the interests and goals of other groups connected to the corporation, not because these groups are themselves powerful institutions formed to compel such consideration through countervailing power, but because managers should accept the Kantian notion that other people are not merely means but ends in themselves.¹⁴⁴ While undoubtedly a worthwhile sentiment, leaving its implementation entirely up to executives mirrors Kant's own preference for the enlightened despotism of Frederick the Great over the random outcomes of republicanism.¹⁴⁵ However, just as Frederick could not allow his sympathy for the plight of Prussian peasantry to risk the political support of their landlords,¹⁴⁶ companies such as IBM, once admired for their responsible HR policies, ultimately yielded

140. See generally ECONOMIC REPORT OF THE PRESIDENT, *supra* note 17; MISHEL ET AL., *supra* note 17; Piketty & Saez, *supra* note 17.

141. See generally MICHAEL USEEM, INVESTOR CAPITALISM: HOW MONEY MANAGERS ARE CHANGING THE FACE OF CORPORATE AMERICA (1996).

142. See generally PARTNOY, *supra* note 18.

143. See generally Gerde & Wokutch, *supra* note 10.

144. William M. Evan & R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation: Kantian Capitalism*, in ETHICAL THEORY AND BUSINESS 75, 81-82 (Tom L. Beauchamp & Norman E. Bowie eds., 4th ed. 1993).

145. See generally Immanuel Kant, *The Nature of Enlightenment*, in ENLIGHTENED DESPOTISM: REFORM OR REACTION? 14, 14 (Roger Wines ed., 1967).

146. See generally MANFRED KUEHN, KANT: A BIOGRAPHY (2001).

to pressures from both competitors and investors to hire abroad while laying off Americans.¹⁴⁷ Even the rare firm that has maintained policies of enlightened generosity has been greeted with skepticism from Wall Street that what they are doing makes long-term sense.¹⁴⁸

Voluntary social contracting fills a role closer to what earlier ethicists awarded to government regulation, a way of imposing standards upon behavior within commercial relationships such as employment, sales, or land use. Social contracting, however, gives the executives, not the government, the ultimate power to decide what these standards should be.¹⁴⁹ The Donaldson-Dunfee view of social contracting as a voluntary process is a legacy of John Locke more than their contemporary John Rawls,¹⁵⁰ since the latter intended his social contract to be ultimately enforceable by the coercive power of the state and measured against the economic outcomes of the least well-off. Business ethicists, however, seem unaware that Locke's insistence on the voluntary nature of social contracting was a self-serving piece of fiction.¹⁵¹ Locke wished to justify the state-enforced privileges of property owners (a class that included Locke), while simultaneously legitimizing opposition to the absolutist pretensions of the Stuart Kings, an opposition in which his patron, Ashley-Cooper, played a major role.¹⁵² It would hardly have surprised the earlier generation of CSR scholars, witnesses to mass unemployment, violent labor strife, political battles over regulation, a world war (or two), and the resultant mixed economy, that a historical fantasy of broad voluntary agreement among the citizenry would fail to provide a sound basis for encouraging CSR.

VII. CONCLUSION

The scholars who first developed concepts of CSR in the 1950s were both successful academics and heavily involved with institutions outside of the academy. Not only did they typically possess backgrounds in government, foundations, and/or industrial relations, they belonged to a generation that had come of age during the most cataclysmic two decades in American history. By contrast, their most influential successors not only grew up during less tumultuous times, their professional experience tended to be much narrower as

147. Steve Lohr, *Cutting Here, But Hiring Over There*, N.Y. TIMES, June 24, 2005, at C1, available at <http://www.nytimes.com/2005/06/24/technology/24blue.html?pagewanted=print>.

148. Stanley Holmes & Wendy Zellner, *The Costco Way: Higher Wages Mean Higher Profits. But Try Telling Wall Street*, BUS. WK., Apr. 12, 2004, at 76.

149. See generally DONALDSON, *supra* note 2; Thomas Donaldson & Thomas W. Dunfee, *Integrative Social Contracts Theory: A Communitarian Conception of Economic Ethics*, 11 ECON. PHIL. 85 (1995).

150. JOHN RAWLS, *A THEORY OF JUSTICE* (rev. ed. 2003) (1971).

151. See generally Richard Marens, *Returning to Rawls: Social Contracting, Social Justice, and Transcending the Limitations of Locke*, 75 J. BUS. ETHICS 63 (2007).

152. See generally CRAWFORD BROUGH MACPHERSON, *THE POLITICAL THEORY OF POSSESSIVE INDIVIDUALISM: HOBBS TO LOCKE* (1964); NEAL WOOD, *JOHN LOCKE AND AGRARIAN CAPITALISM* (1984).

well. These differences are displayed in the change in visions of CSR over time. For the earlier group, CSR was defined by the larger society and imposed, to some degree, through both governmental acts and the countervailing power of labor unions and other institutions. By contrast, the most recent generation of scholars has consistently viewed CSR through the eyes of corporate executives, conceding them the power not only to choose when and how to implement it but even, to some degree, the right to define it. They have generally ignored the reminder offered by Donaldson's own dissertation chair that ethics need to be analyzed on more than the individual level of behavior. They should remember instead that questioning the nature of the corporation and weighing the welfare of the entire society as legitimate topics of ethics scholarship and pedagogy.¹⁵³

One can find parallels in this approach with what Polanyi termed the double movement of marketization and reaction.¹⁵⁴ According to Polanyi, much of the resistance to marketization and efforts to ameliorate its worst externalities were spearheaded by the old landed aristocracy, first in England and later in other European countries.¹⁵⁵ Members of this older elite were motivated to act not only because they saw extensive commercialization as a threat to their personal status, but also because they were sincerely offended by how the process violated their own traditional values. One can hypothesize that modern scholars of CSR hoped to inspire a similar effort from top corporate executives, whose social position has been threatened by growth of financial primacy. But, for those genuinely committed to the importance of "growing a business," the new emphasis on short-term financial reporting must appear to be a most unwelcome intrusion. Evidenced by the Business Roundtable's establishment of an ethics institute, whose advisory board includes Freeman, Donaldson, and some of the major ethicists working in business schools today, these academics have hit a responsive chord.

The fundamental difference between Polanyi's double movement and what business ethicists hope to accomplish is the question of timing. When, for example, the seventh Earl of Shaftsbury, a direct descendent of Locke's patron, organized efforts to restrict the work day, England's industrial hegemony was on the upswing. Business people could accept the costs imposed by the legislation and might even give sufficient credence to the claims that it would reduce labor strife while making it more practical for the working class to sustain and reproduce itself, particularly since England had few foreign competitors who could operate outside of the regulation. In a situation where competition is endemic, relative industrial decline is palpable, and there are good reasons not to rely on patience or some long-term horizon because the likelihood of a similar response is doubtful. Moreover, in the context of foreign competition and short

153. See generally Richard T. DeGeorge, *Will Success Spoil Business Ethics?*, in BUSINESS ETHICS: THE STATE OF THE ART 42 (R. Edward Freeman ed., 1991).

154. See generally KARL POLANYI, *THE GREAT TRANSFORMATION* (Octagon Books 1975) (1944).

155. *Id.*

horizons, government interventions increasingly appear to be yet another burden unlikely to produce some promised cross-class benefits. While it may be too late to reintroduce a CSR based on Keynesian economics, business unionism, and political pluralism, the prospects of a functioning ethics based on the enlightened despotism of American executives appears even dimmer. Any new formulation of CSR is likely to be spearheaded by new struggles and contradictions, especially those within the new core of the global economy and informed by a panoply of global experiences within a planet-spanning economic system.