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When I hear Hayden Smith giving us the gospel of corporate giving according to Emerson Andrews,[1] in which a corporate social investment began with minor investments in YMCAs in the 1870s,[2] and when I hear David Morgan's much more elaborate presentation of the numbers on corporate giving in the recent past,[3] my response is very much the response I find myself giving to philanthropists and philanthropoids when they start patting themselves on the back and trotting out numbers and tables. I ask: Where are our Carnegies? Where are our Rockefellers? It is easy to talk about growing dollar amounts,[4] but where are the bold gestures that create and recreate the fundamental institutions of our culture?

If the corporate charitable deduction[5]—a corporate tax policy designed to influence corporate giving—and the academic response to it is to be criticized, it is primarily because it has so tragically narrowed our understanding of the role the corporation plays, not only in American life, but in the life of civilization. If we only look at corporate contributions, if we only look at the dollars given to the nonprofit sector, important as they are, we get a very distorted idea of what business's role has been historically, and what it should be in the future.

I am particularly troubled when I see aggregate figures on corporate contributions being trotted out at a time when what is happening on the

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1. *See* F. EMERSON ANDREWS, CORPORATION GIVING 18 (1952) (identifying corporations' desires to increase business through improving customer relations, to aid research that will benefit the corporation in the future, and to help in the education of future employees, as reasons for contributing to various philanthropic causes).

2. *See id.* at 24 (stating that the YMCA movement in North America began in 1851 and that by 1890 there were 82 associations, all of which were supported financially by railroad corporations).

3. *See* David R. Morgan, *Trends in Corporate Charitable Contributions*, 41 N.Y.L. SCH. L. REV. 771, 774-75 (1997) (stating that in 1995, there were approximately $8 billion in charitable contributions).

4. *See* Hayden W. Smith, *If Not Corporate Philanthropy, Then What?*, 41 N.Y.L. SCH. L. REV. 757, 758-60 (1997) (stating that corporate giving has increased from $30 million in 1936 to approximately $8 billion today).

5. *See* I.R.C. § 170(a) (1994) (allowing a charitable deduction for both individuals and corporations).

national level really means less and less. The fact of the matter is that regions have changed, the centers of giving have changed, as have the centers of service delivery to the regions and localities. We know very well, from the work of people like Hayden Smith[6] and Julian Wolpert,[7] that there is enormous variation between regions.[8] There are stingy regions, there are generous regions, there are regions that still have not tapped manufacturing bases, just to give a few examples. Therefore, talking about large, aggregate national figures tells us very little.

For example, speaking as a board member of an organization in a locality where the for-profit economy has largely disappeared and where the largest firms are nonprofit firms—and I think this is true for a good many places in the Northeast—I know corporate contributions do not really matter very much when you are fund-raising, because there are not many corporations to go to. You can go to Fleet Bank and get five thousand dollars, but that is now considered a large contribution. Donors like to give smaller amounts to a larger number of organizations, and that cannot compare to Eli Whitney's providing education for his employees.[9] It does not involve the bold gestures which historically have been associated not with corporate dollars, but with a broader conception of the corporate role in society.[10]

I think the definition of giving is very important. I have always agreed with Hayden's characterization of "corporate philanthropy" as an oxymoron[11] and I was pleased to hear David Morgan say that corporate contributions are only a little piece of the picture.[12] Granted, it is the only one we are going to talk about today, but I think we must bear in mind that corporate social investment includes not only corporate contributions but other bolder investments as well.

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6. *See* Smith, *supra* note 4, at 765 (stating that corporations generally prefer to give to local charities and therefore areas with few major industries receive little in corporate contributions).

7. *See* Julian Wolpert, *Scrooges Among Us*, WASH. POST, June 29, 1995, at A21.

8. *See generally* Charles T. Clotfelter, *Tax-Induced Distortions in the Voluntary Sector*, 39 CASE W. RES. L. REV. 663, 689 (1989) (stating that "charitable giving varies with geographic region").

9. *See* Peter Dobkin Hall, *Business Giving and Social Investment in the United States, 1790-1995: "The Dealings of My Trade Were but a Drop of Water in the Comprehensive Ocean of My Business!"*, 41 N.Y.L. SCH. L. REV. 789, 803 (1997) (describing how Eli Whitney established a school in his village in order to create a workforce that could read and write).

10. *See id.* at 803 (stating that Whitney's charity was not unique and that many companies "took on broad responsibilities for the welfare of their employees").

11. *See* Smith, *supra* note 4, at 762.

12. *See* Morgan, *supra* note 3, at 786.

Workplace practices have social costs. Do businesses externalize that cost or do they take the cost onto themselves? This is not a hazy, humanistic matter. This is a dollars-and-cents matter. If the corporation is not responsible, society pays.

Community Involvement: What do I mean when I say community involvement? Does it matter that corporate people serve on boards? I believe it matters. How were urban school systems paid for in the early twentieth century? The majority of the financing of these school systems were not paid for out of tax dollars, they were paid for in the private capital markets through bonding.[13] Who bought those bonds? Who gave those bonds credibility? The presence of business people on those boards of education and municipal boards of finance made all the difference.[14] If they had not been there, the bonds would not have been marketable.

Product Integrity: Once again, the question is do you internalize or externalize the cost? Again, this is a dollars-and-cents matter, not a hazy matter of ethics. However, there are deeper issues. Markets do not just happen, markets are created. They are products of investments in human capital, in values and skills—produced by institutions like schools, churches, and universities—that are supported by business people and that create business people with the right kinds of values. It was a very conscious, intentional product of invested time and energy in the creation of institutions that could in turn create the social capital necessary to sustain orderly systems of economic exchange.[15]

People tend to think of turn-of-the-century Progressivism as a political movement.[16] While it *was* political, the movement that really mattered was the shift in the economy from one based on heavy industry, in which large companies sold products like locomotives and huge quantities of steel to one another, to an economy based on mass production and mass consumption of products like automobiles, home furnishings, and electrical

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13. *See generally* William E. Sparkman, *The Legal Foundation of Public School Finance*, 35 B.C. L. REV. 569, 581-86.

14. *See generally* MICHAEL B. KATZ, THE IRONY OF EARLY SCHOOL REFORM: EDUCATIONAL INNOVATION IN MID-NINETEENTH CENTURY MASSACHUSETTS (1968).

15. *See generally* JOHN COOLIDGE, MILL AND MANSION: A STUDY OF ARCHITECTURE AND SOCIETY IN LOWELL, MASSACHUSETTS, 1820-1865 (Russell & Russell ed. 1967) (1942); ROBERT F. DALZELL, JR., ENTERPRISING ELITE: THE BOSTON ASSOCIATES AND THE WORLD THEY MADE (1987); THOMAS DUBLIN, WOMEN AT WORK: THE TRANSFORMATION OF WORK AND COMMUNITY IN LOWELL, MASSACHUSETTS, 1826-1860 (1979); HANNAH JOSEPHSON, THE GOLDEN THREADS: NEW ENGLAND'S MILL GIRLS AND MAGNATES (1949); CAROLINE F. WARE, THE EARLY NEW ENGLAND COTTON MANUFACTURE: A STUDY IN INDUSTRIAL BEGINNINGS (1931).

16. *See generally* JOHN BUELL, DEMOCRACY BY OTHER MEANS: THE POLITICS OF WORK, LEISURE, AND ENVIRONMENT 72, 120-23 (1995) (discussing the Progressive Era and the changes in corporate values and capitalism during the early part of the century).

appliances.[17] The people who effected that revolution were not legislators in Washington. They were business people in offices and boardrooms who made strategic decisions about their long-term interest. They effected that revolution not just by creating new products, but by making heavy investments in the development of public schools which were perceived to be engines for marketing their products.

Among the fundamental concerns of the Progressive movement were issues like nutrition, hygiene, and housing.[18] Progressive academics and professionals may have defined the problems, but business supplied the solutions in the form of reasonably-priced refrigerators, stoves, cook-ware, and plumbing fixtures. Business also subsidized the new home economics curricula which taught people how to use these new technologies and paid its employees enough to purchase them.

Conventional accountings of corporate contributions barely begin to capture the scale or the imaginativeness of their investments in human and social capital. For example, if you count only direct corporate gifts to Harvard in the mid-1920s, the dollar amounts are unimpressive, amounting to less than ten percent of annual gifts received by the university. However, if you combined those with contributions made by officers of the corporations that made gifts, they account for nearly *forty percent* of the contributions Harvard received. If you add in grants from foundations with which these individuals were associated, the totals are even more impressive.[19]

What were they investing in? They were investing in a school of public health, industrial safety education, and industrial relations. All of these were self-interested investments, not hazy, ethical investments, but investments that were absolutely central to the success of their strategy of transforming an economy from being one based on the production of large products for consumption by other large corporations to an economy based on the empowerment of the consumer. Empowerment, not simply in an economic sense, but also in the sense of being able to partake of the

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17. *See id.*

18. *See generally* William J. Stuntz, *The Substantive Origins of Criminal Procedure*, 105 YALE L.J. 393, 431 (1995) (stating that during the Progressive era, Congress enacted the Food and Drug Law and states passed workers' compensation and other regulatory statutes).

19. Based on annual listings of gifts from individuals, foundations, and corporations in Harvard's annual Treasurer's Report and biographies of Harvard graduates in class reunion books.

benefits of a healthy, well-nourished society.[20] Once again, this illustrates why we need to look more broadly at business giving than we have.[21]

Recent events call attention to the need for the broader view. When Communism collapsed, we assumed that capitalist economies would spring up overnight. What we discovered was that market economies require democratic polities—and that these, in turn, require intermediary institutions that can generate and effectively transmit civic skills and values. We now know that this crucial intersection of polity, economy, and society—the elements of "civil society"—are not accidents. They are created by investments as careful and thoughtful as those which give rise to new technologies and material prosperity.[22]

Therefore, having abandoned my text, I want to stress, underline, and call attention to the urgency with which we must get beyond these narrow, tax-driven views of what the corporate stake is and what the scope and scale of corporate investment ought to be. When I say this, I am not saying give more money. What I am saying is give more strategically, give more thoughtfully, and give with an awareness that the dealings of your trade are but a drop of water in the comprehensive ocean of your business.

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20. *See generally* DALZELL, *supra* note 15.

21. *See* GUY ALCHON, THE INVISIBLE HAND OF PLANNING: CAPITALISM, SOCIAL SCIENCE, AND THE STATE IN THE 1920S (1985); LOUIS GALAMBOS & JOSEPH PRATT, THE RISE OF THE CORPORATE COMMONWEALTH: UNITED STATES BUSINESS AND PUBLIC POLICY IN THE 20TH CENTURY (1988); MORRILL HEALD, THE SOCIAL RESPONSIBILITIES OF BUSINESS: COMPANY AND COMMUNITY, 1900-1960 (1970); DAVID F. NOBLE, AMERICA BY DESIGN: SCIENCE, TECHNOLOGY, AND CORPORATE CAPITALISM (1977); MARTIN J. SKLAR, THE CORPORATE RECONSTRUCTION OF AMERICAN CAPITALISM, 1890-1916: THE MARKET, THE LAW, AND POLITICS (1988).

22. *See* FRANCIS FUKUYAMA, TRUST: THE SOCIAL VIRTUES & THE CREATION OF PROSPERITY (1995); Peter Dobkin Hall, *The Managerial Revolution, the Institutional Infrastructure, and the Problem of Human Capital, in* VOLUNTAS 7, at 3-16 (1996); ROBERT PUTNAM, MAKING DEMOCRACY WORK: CIVIC TRADITIONS IN MODERN ITALY (1993); CIVIL SOCIETY: THEORY, HISTORY, COMPARISON (John A. Hall ed., 1994).