

May 1976

Where the Law Ends: The Social Control of Corporate Behavior (By Christopher D. Stone)

Dale A. Normington
University of Dayton

Follow this and additional works at: <https://ecommons.udayton.edu/udlr>



Part of the [Law Commons](#)

Recommended Citation

Normington, Dale A. (1976) "Where the Law Ends: The Social Control of Corporate Behavior (By Christopher D. Stone)," *University of Dayton Law Review*: Vol. 1: No. 2, Article 12.
Available at: <https://ecommons.udayton.edu/udlr/vol1/iss2/12>

This Book Review is brought to you for free and open access by the School of Law at eCommons. It has been accepted for inclusion in University of Dayton Law Review by an authorized editor of eCommons. For more information, please contact mschlange1@udayton.edu, ecommons@udayton.edu.

BOOK REVIEW

WHERE THE LAW ENDS: THE SOCIAL CONTROL OF CORPORATE BEHAVIOR. By Christopher D. Stone.* New York: Harper & Row, Publishers. 1975. pp. xiii, 273. \$12.95.

*Dale A. Normington***

There has been a growing concern recently that many of society's ills are a result of a lack of social responsibility on the part of America's business corporations. The corporation is portrayed as acting without regard for the public welfare or the morality of its decision. Pollution, lack of product safety, bribery, political intrigue, financial frauds, energy abuses and even inflation are among the charges leveled against corporations. If the corporation is made more "socially responsible," it is argued, its impact on the "quality of life" will be positive and beneficial. The advocates of corporate responsibility have proposed many solutions to effect this result. As corporate abuses seemingly increase in number and magnitude, the clamor for corporate responsibility has intensified, while the debate over which solution provides the best remedy continues.

In the midst of this controversy, Christopher Stone's *Where the Law Ends* is an innovative, controversial and far-reaching alternative proposal for attempting to solve the question of how corporations can be made a more responsible force in our society. His thoughtful and imaginative approach to the corporate responsibility issue is consistent with his novel premise regarding environmental protection issues in his previous book, *Should Trees Have Standing? Toward Legal Rights for Natural Objects*.¹

Professor Stone contends that the present legal system is ineffectual in causing corporations to act responsibly. The law considers a corporation to be a *persona ficta*, a "legal fiction," to which the laws governing individuals are equally applicable in their deterrent effect. Through studies of various cases of corporate irresponsibility (financial collapse, financial fraud, product defects, and pollution), Stone argues that the law should not treat the corporate structure in the same manner as it treats individuals. The notions of human

* Professor, University of Southern California Law Center. A.B., 1959, Harvard University; LL.B., 1962, Yale University.

** Assistant Professor, University of Dayton School of Law. B.A., 1966, University of Akron; J.D., 1969, University of Akron.

1. C. STONE, *SHOULD TREES HAVE STANDING? TOWARD LEGAL RIGHTS FOR NATURAL OBJECTS* (1974).

behavior and motivation have been transferred to the corporation, and it is this fallacy which precludes a satisfactory solution to the problems created by corporations. The corporation cannot be imprisoned, a large fine is viewed by corporate managers as only one of many business concerns, and the courts may be reluctant to impose onerous damage awards on corporations in any event.² The American corporation is not as profit-oriented as was thought and attempting to regulate corporate behavior on a "cost" basis "is no guarantee that the corporation will respond as we should like."³

In addition to, or as an alternative to the corporation as the source against whom the law can provide sanctions for irresponsible behavior is the "key" corporate individual. Stone argues these sanctions are also ineffectual. Corporations protect top executives by diffusing the information process and allow "key" individuals to profess ignorance of corporate wrongdoing. Responsibility for their actions may then fall on an individual other than the decision-maker.⁴ Even if knowledge can be traced to the highest level of the corporate hierarchy, the standards of proof make a finding of liability difficult. Further, the corporate executive has the security of indemnification and liability insurance as an additional protection.

Professor Stone believes that the law must be changed, in order to encourage corporations to prevent problems. Rather than relying on threats to the corporation, a separate system of laws must be formulated to deal with corporations as institutions and not persons. The present laws which treat the corporation as an institution deal primarily with the internal relationships between management and shareholders and do not focus on the corporation's effect on the public. Stone seems to imply that the advocates of Federal Chartering⁵ and federal corporate minimum standards⁶ are merely continuing the misdirection of the law's emphasis. What is needed, he argues, is an emphasis on the corporation's perceptions or information-gathering systems. The legal system must move "toward an increasingly direct focus on the processes of corporate

2. For examples of the rationale of protecting the corporate investor from damage awards which would cause financial ruin to a corporation, see *Rogensky v. Richardson-Merrell, Inc.*, 378 F.2d 832 (2d Cir. 1967) (Friendly, J.) and *S.E.C. v. Texas Gulf Sulphur*, 401 F.2d 833 (2d Cir. 1968) (Friendly, J., concurring), *cert. denied*, 394 U.S. 976 (1969).

3. C. STONE, *WHERE THE LAW ENDS* 57 (1975).

4. See, e.g., *Graham v. Allis-Chalmers Mfg. Co.*, 41 Del. Ch. 78, 188 A.2d 125 (1963).

5. See, e.g., *THE CASE FOR FEDERAL CHARTERING IN CORPORATE POWER IN AMERICA*, 67 (Nader and Green ed. 1973); Henning, *Federal Corporate Chartering for Big Business: An Idea Whose Time Has Come?* 21 DE PAUL L. REV. 915 (1972).

6. Cary, *A Proposed Federal Corporate Minimum Standards Act*, 29 BUS. LAW. 1101 (1974).

decision-making, at least as a supplement to the traditional strategies that largely await upon the corporate acts.”⁷ It may be that the effect of the law is understated, but the arguments are persuasive.

The main thrust of Stone’s proposals is aimed at changing the cognitive processes of the corporation. If presented with the opportunity to reflect on the consequences of their actions, corporate managers will make a responsible decision. Fully informed, a corporate manager will act to stop product defects, pollution, and illegal corporate payments. This premise may seem too optimistic in its assumptions, but it is aimed at the source of the problem. The first change Stone proposes is a revision of the board of directors: inside directors in corporations of major impact would be eliminated; the functions of directors would be specifically defined; directors’ liability standards would include, as a supplement to liability for gross negligence, liability for failure to perform the specified functions; and, indemnification and liability insurance would be eliminated. In addition, certain designated categories of information would have to be brought to the board’s attention. Stone recognizes, however, that these reforms would only be a beginning in revising the corporate decision-making process.

General Public Directors (primarily semi-retired or retired executives and academics) would be appointed by the federal government in defined percentages to corporations with over \$1 billion in sales or assets with approval and removal authority resting in the corporation. These public directors would hopefully serve a greater function, “a more, obtrusive, nagging reminder of these companies’ obligations to society than the American flag over their plants.”⁸ They would have authority to perform “legal audits” to assure that laws were being complied with, to propose remedial plans, to serve as liaison in proposing legislation and trade standards, to ensure that internal systems were effective, and to act as receivers of information from anyone in the corporation who might “blow the whistle” on something which was seriously wrong in the corporation. Special Public Directors could also be appointed to any corporation demonstrating repeated violations of the law. In addition to the recidivist corporations, special directors would be appointed to companies in industries having particular problems such as industrially caused cancer, product safety or pollution.

Professor Stone emphasizes that the issue of corporate responsibility should focus on how a corporation decides and not on what it

7. C. STONE, *supra* note 3, at 121.

8. *Id.* at 174.

decides. He argues that further or alternative reforms focusing on other factors than the board of directors may be needed. For example, the corporation "information net" should be revitalized. Specially qualified individuals could be interjected into the corporate system at various levels below the board, given special powers and made responsible for performing certain tasks in an effort to head off problems before they occur. An outside agency could pass upon a corporation's organizational structure to ensure an effective operation and information flow. Controls could be placed on a corporation's internal information processes requiring that certain information be collected and forwarded to the decision-makers, in effect forcing them to consider all the information available in making a decision. Stone is hopeful that this would force the manager to make the morally "right" decision, but at the very least, it would seem that the manager could no longer claim ignorance. Additional reforms advocated include giving of new powers to government inspectors to seek out problems by going directly into the corporation's information system, and establishing protections which expose corporate violations. Finally, Stone proposes that the board of directors be required to vote on those corporate decisions which are "likely to have a critical social impact."⁹ In addition, before a corporation could act in a designated area it would have to make certain findings analogous to an environmental impact statement.

Professor Stone argues that "vague and airy demands,"¹⁰ made in the abstract, will not give society the corporate responsibility it demands. "[S]pecific impositions on the corporation's inner, traditionally 'private' processes"¹¹ are needed. He is quick to point out that his suggestions have many limitations. Further, Stone has recently admitted some misgivings about the placement of public directors on the board and the conflicts which could result.¹²

This reviewer feels that more focus was needed on the specifics of the manner in which, and by whom, many of the reforms would be implemented. The impact of these internal conflicting goals on the effectiveness and efficiency of the corporate operation has not been adequately considered, and it is foreseeable that many objections will be made to such drastic restructuring of the corporation. However, in spite of the problems inherent in implementing Professor Stone's proposals, a substantial addition has been made to the

9. *Id.* at 219.

10. *Id.* at 227.

11. *Id.*

12. C. Stone, *Public Directors Merit A Try*, 54 HARV. BUS. REV. 20 (Mar.-Apr. 1976).

debate on the question of how to achieve corporate responsibility. One reviewer has gone so far as to state, "any future discussion of social responsibility that ignores this book will simply be irrelevant."¹³ Certainly, this book must be given consideration in dealing with this issue. Professor Stone has recognized that his book is not a panacea when he suggested its purpose: "I like to think that some of the ideas in this book, expanded upon by others, will suggest the steps we might now begin to consider."¹⁴

13. Lieberman, Book Review, BUS. WEEK 7 (Aug. 25, 1975).

14. C. STONE, *supra* note 3, at 248.

