BOOK REVIEW

THE UNIVERSITY AS A SHAREHOLDER AND INVESTOR IN PUBLICLY HELD CORPORATIONS: A COMMENT ON *THE ETHICAL INVESTOR*†

ROBERT H. MUNDHEIM*

Corporate law in the 1970's is witnessing a reassertion of the feasibility and desirability of shareholder participation in the government of corporations. Although shareholdings in major American corporations are widely dispersed, substantial shareholdings are concentrated in the hands of individual institutional investors. The Securities and Exchange Commission's *Institutional Investor Study*[1] pointed out that as of September 30, 1969, five or fewer institutions had voting power with respect to ten percent or more of the outstanding stock of over one-half of the billion-dollar corporations in the United States.[2] Although the *Study* recognized that its statistical findings did not mean that institutions in fact exercised their potential power, its findings indicate that on specific issues it is possible to address a small group of nonmanagement persons who control a substantial number of votes. Quite naturally, the tactics of those seeking to enlist corporations in their campaigns for peace, social and racial justice, environmental defense, and consumer protection have included concerted appeals to specific institutional investors.

Universities constituted a natural target of these efforts. Universities hold roughly eight billion dollars in corporate stock.[3] In addition to the stock they control, university trustees frequently are on the

† By John G. Simon, Charles W. Powers, and Jon P. Gunnemann. New Haven and London: Yale University Press, 1972. Pp. X, 208.

* Fred Carr Professor of Law, University of Pennsylvania Law School; Director, University of Pennsylvania Law School Center for Study of Financial Institutions. B.A., 1954, LL.B., 1957, Harvard University. The author serves as Counsellor to the University of Pennsylvania Trustees' Committee on Corporate Responsibility.

1. SEC, INSTITUTIONAL INVESTOR STUDY REPORT, H.R. Doc. No. 92-64, 92d Cong., 1st Sess. (1971).

2. *Id.* vol. 5, pt. 5, at 2657-58. In 23 out of the 55 companies with over a billion dollars in market value, five or fewer institutions had sole voting authority over 10 percent or more of the outstanding stock. *Id.* at 2560.

3. *Id.* at vol. 1, pt. 1, 118.

boards of directors of other institutional investors or have close links with them. If these trustees could be persuaded to support a particular social effort in their capacity as university officials, they might be helpful in securing support from the other institutions with which they are connected. University trustees are a splendid gateway into the business establishment because the faculty-student constituency to which they can be expected to be responsive is typically sympathetic to many of the goals of these campaigns.

Professors Simon, Powers and Gunnemann[4] have written a highly useful and timely book. They provide, in easily readable form, much of the intellectual material needed by universities that are seeking to respond to pressures which would turn them from passive investors into shareholders who take an active interest and role in the affairs of companies whose stock they hold. Their book provides a comprehensive and balanced review of the arguments (including specific legal arguments) for and against corporations acting on the basis of moral and social concerns where doing so would detract from long run profitability. It goes on to examine the considerations specifically relevant to universities which, as shareholders, are contemplating whether actively to encourage corporate management to look beyond profit maximization and questioning whether to express themselves to management in specific instances where management is asked on social or moral grounds to take action whieh might result in lower corporate profits. In addition to discussing arguments, the authors have drafted a set of "Guidelines" for use by universities willing to consider factors other than maximum economic return in the management of their investments.[5] The writers also have included nineteen hypothetical situations which show how the Guidelines work in specific cases.[6]

THE SOCIAL INJURY CONCERN

The Simon-Powers-Gunneman analysis of the responsibilities of a university as an investor and shareholder in publicly held companies begins by assuming that maximum economic return should be the normal criterion for selection and retention of portfolio investments.

4. The authors are, respectively, a professor of law at the Yale Law School, an associate professor of social ethics at the Yale Dvinity School, and an assistant professor of religious studies at the Pennsylvania State University.

5. THE ETHICAL INVESTOR 171-78.

6. *Id.* at 109-28.

However, the authors argue that all corporations have a duty not to earn their profits at the cost of creating social injury. Social injury is defined as "the injurious impact which the activities of a company are found to have on consumers, employees, or other persons, particularly including activities which violate, or frustrate the enforcement of, rules of domestic or international law intended to protect individuals against deprivations of health, safety, or basic freedoms;"[7] however, social injury does not result from activities limited to doing business with other companies engaged in socially injurious activities.[8] The authors further contend that no shareholder has the right to sit silently while the corporation of which it is a partial owner inflicts social injury. Indeed, each shareholder, including the university, has "the moral minimum responsibility" to take such action as he can to prevent or correct corporate social injury.[9]

This analysis draws a sharp distinction between shareholder concern for the harm caused by the corporation's activities and the duty (or right) of a shareholder to use his ownership position to have the corporation promote certain social goals. Although the authors recognize that this distinction is sometimes blurred,[10] it is useful in most cases. Their analysis focuses on the harm created by a corporation's present activities and seeks mitigation of such harm. Thus, if a corporation expands its plant facilities in an area, it may have an obligation to minimize the effects of the dislocation caused by the expansion; however, it has no obligation to ameliorate conditions which would exist even if the plant facilities had not been expanded. The Guidelines impose a parallel limitation at the university-shareholder level by prohibiting the university from buying stock for the purpose of challenging or supporting a specific corporate policy.[11] Purchase decisions must be made on investment criteria. The authors make an important contribution to the effort to persuade universities that they can safely depart from an express policy of maximizing economic return in the management of their portfolios by showing that such a departure can be accompanied by intellectually acceptable standards for limiting university involvement in corporate affairs.

The extent of the limits imposed on university-shareholder in-

---

7. *Id.* at 171.
8. *Id.* at 171-72.
9. *Id.* at 65.
10. *Id.* at 20-21.
11. *Id.* at 172.

volvement by the social injury concept depends on the standards used to define social injury. Every corporate act has an impact. The critical question is: Which of these impacts should be judged as creating social injury?

If a corporate activity in a state violates the law or frustrates its implementation, society through the political process has made the judgment that social injury occurs. Although the question of whether or not a particular corporate activity violates the law or frustrates its implementation is often difficult to answer, adoption of such a standard as defining social injury would provide an objective and understandable boundary. The university as a shareholder would be required only to help implement judgments explicitly made outside the university. The authors of *The Ethical Investor,* however, contemplate a broader definition of social injury. The potential reach of their concept is illustrated by a hypothetical case in which a corporation imposes an inflationary price increase on a product.[12] The treatment of the hypothetical situation assumes that the inflationary impact of the corporation's activities could be considered a social injury, even though the price rise does not violate the law.[13] Does this rationale mean that a corporation engaged in producing cosmetics could be viewed, under the authors' Guidelines, as inflicting social injury because it diverts economic resources from socially necessary products to frivolities?

The touchstone for answering this question for the university shareholder is the "opinions which appear to be held by substantial numbers of persons within the university community."[14] Thus, social injury is seen through the eyes of the shareholder. The university shareholder should, in the authors' view, give expression to the sentiments of the members of the university community. Although such a standard has the advantage of permitting deeply held feelings within the university community to be expressed in a concrete act such as a vote, it raises a number of problems to which I will turn later.[15] It could also result in considerable expansion of the points at which the university would take a position opposed to management. However, the authors are very sensitive to pragmatic considerations and sug-

12. *Id.* at 117.

13. The hypothetical case occurs long before the wage-price freeze imposed in August, 1971.

14. THE ETHICAL INVESTOR 177.

15. These problems are discussed at pp. 1066-68 *infra.*

gest, quite helpfully, that the subjective judgment of social injury should not be made unless the opinion of the university community is fairly clear and is not subject to great internal controversy. For example, in a hypothetical case in which the university is asked to take action against a company supplying computers for use in connection with the installation of missile launching equipment in Egypt, there is no finding of social injury because it would be "particularly difficult in this case to ascertain what 'opinions . . . appear to be held by substantial numbers of persons within the university community.' "[16]

A CIRCUMSCRIBED ROLE FOR THE UNIVERSITY SHAREHOLDER

Sensitivity to pragmatic considerations makes *The Ethical Investor* and the Guidelines it sets forth a particularly helpful point of departure for those persons faced with formulating the proper role of the university as an investor and shareholder. Although the authors are committed to having universities encourage corporations to think beyond profit maximization, they are acutely aware that failure to circumscribe sharply the role of universities poses the danger that persons in the university community will be required to spend increasing amounts of time and energy on an expanding list of social responsibility issues. Thus, the university is enjoined, except in unusual situations, from adopting an initiating role as a shareholder.[17] The university should normally involve itself only if a social investment question is thrust upon it by other shareholders.[18] Further, the authors limit university action to those situations where it is a shareholder. Although it can be argued that the university can affect corporate action by the weight of its prestige alone, the authors seem to recognize that the university would dissipate its influence with corporate management if it intervened to mitigate social injury in cases in which the university did not have a substantial economic stake which would be affected adversely by the suggested ameliorating action. In this connection, it might have been useful for the Guidelines to give the university an explicit right to avoid an issue where its economic stake

16. THE ETHICAL INVESTOR 113.

17. *Id.* at 90, 173.

18. Under the Guidelines, the university will consider social injury questions raised by a member of the university community. However, except for communications with management, the university would not take any formal shareholder action unless the social injury is "grave" and no other shareholder has taken effective steps to initiate action to correct the injury. *Id.* at 90.

is de minimis. In addition, the standards which the Guidelines provide for judging specific situations are sufficiently broadly worded that the development of criteria will occur on a case-by-case basis. The chapter entitled "Hypothetical Cases Illustrating the Guidelines"[19] demonstrates the common law type of process which the authors see as the appropriate way of developing the standards. Finally, the Guidelines' escape clause, which provides that the university need not take action when doing so "is likely to impair the capacity of the university to carry out its educational mission,"[20] is a recognition that the university's role as an ethical investor is subordinate to its educational responsibilities.

PRESERVING THE "ACADEMIC CONTEXT"

The Ethical Investor sees the primary function of the university as adopting the stance which "best preserves the conditions and atmosphere required for fostering academic work—particularly including the conditions for the maintenance of academic freedom."[21] The authors call these conditions and atmosphere the "Academic Context" and recognize the importance of protecting it. Concern for preserving the Academic Context indicates that, as a minimum restraint, a university should remain neutral on substantive issues (such as the decision to continue waging war in Vietnam) which have strong moral overtones and about which there is some diversity of view. The process of arriving at a university-community position will often lead to oversimplification of the issues and the use of opinion-mobilizing techniques. This process creates a risk of dividing groups within the community on political or doctrinal grounds and exposes to censure those who disagree with the formalized community view. *The Ethical Investor* recognizes that the same problem of keeping the Academic Context unspoiled may occur when a university, as a shareholder, makes a judgment on what is or is not a social injury. However, the authors argue that when the university makes investment decisions or exercises its ownership powers, it cannot avoid making such judgments.[22] The best the university can do is stress that in these situations

19. *Id.* at 109-28.

20. *Id.* at 174.

21. *Id.* at 70.

22. A policy of abstention on all proxy matters is not a complete answer to this argument. In some cases, the practical effect of abstention is the support of management; in others (such as where a specified percentage of the votes of the outstanding shares is required), abstention operates as a negative vote.

it is exercising a non-academic function, much as it does when it lets a construction contract or purchases supplies. The concerned university will seek a mechanism which permits it to make a judgment without having that judgment attributed to its academic activities.

The Academic Context would be effectively insulated from the university's shareholder decisions if the criteria for judging the existence of social injury were generated outside the academic community. However, the authors of *The Ethical Investor* are not prepared to provide that degree of insulation. Although they stress the desirability of using externally generated criteria, the authors also believe that judgments on social responsibility issues should reflect the special institution which is making them. Thus, a finding of social injury depends to some extent upon views held by a substantial number of individuals within the university community.[23]

The Ethical Investor's primary solution to insulating the Academic Context from the university's shareholder decisions is to lodge the ultimate power to decide social responsibility questions in the trustees. It does so on the assumption (which could be disputed) that trustee decisions are generally regarded as not being part of the academic activities of the university. However, although the Guidelines give the trustees the responsibility for making the final decision, the procedure for considering a social responsibility question contemplates participation by a University Investment Council whose members are carefully chosen from various elements within the university community.[24] The Guidelines suggest a twelve-member council, appointed by the trustees on nomination of the president and consisting of three faculty members, three students, three alumni, one trustee, one administrator, and one employee (other than a faculty member or administrator). After investigation of any social responsibility question involving the university as a shareholder or investor, the Council is to make a recommendation to the trustees. In making their judgment, the trustees are required to give presumptive but not conclusive weight to the Council's recommendations.

The Ethical Investor carefully explains that the University Investment Council should not be viewed as representing the university community. It is not elected, but is appointed by the administration in a way which permits the trustees to enlist certain skills which exist within the student body, faculty, alumni, and other elements of the

23. See pp. 1064-65 *supra*.

24. THE ETHICAL INVESTOR 175-78.

university, and to assure in a general way that the judgment expressed reflects the views of the university community. However, institutionalizing such a structure obscures the careful but subtle distinction between trustee and university-community judgments which *The Ethical Investor* finds essential to the preservation of the Academic Context. In cases where the trustees do not follow the Council's recommendations and thus seem to be disregarding the judgment of the university community, there is a heightened risk of confrontation within the community, with all the attendant harms for the Academic Context.

The creation of a formal structure drawn from the university community also assures that substantial time and energy will be spent each year on social responsibility questions. However, experience suggests that there is an ebb and flow of interest in such questions within a university community. For example, in 1971, interest in corporate social responsibility issues on the University of Pennsylvania campus was relatively intense, and public hearings and other forms of participation by members of the university community proved useful. On the other hand, examination of the numerous social responsibility issues raised by shareholder proposals in spring 1972 proxy statements was accomplished by a committee of the trustees and its counsellor, a law school professor. Although the student newspaper followed the trustees' action with respect to these issues, there seemed to be very little active interest in the university community. If a University Investment Council had been established at the University of Pennsylvania, additional people in the university community would have become involved and substantially more time and effort would have been spent on these shareholder proposals. Thus, universities which share *The Ethical Investor*'s desire to keep as much distance as possible between the Academic Context and the university's decisions on corporate responsibility issues may find that an ad hoc procedure determined by a specially constructed committee of trustees and its staff will be more useful than a University Investment Council in accommodating the shifting pressures to which the university can expect to be subjected.

VOLUNTARY INTERNALIZATION OF SOCIAL COSTS

The Ethical Investor's view of the appropriate role of the university as an investor and shareholder in publicly held corporations is premised on the assumption, noted previously, that corporations have a responsibility to consider factors other than profit maximization in the conduct of their affairs. In other words, the authors argue that corporations should voluntarily internalize costs which would otherwise have to be borne by society as a whole.[25] For example, the book's first hypothetical case[26] deals with Company *A*'s pollution of certain waterways by the discharge of industrial waste. The authors conclude that this discharge constitutes a social injury even though Company *A* appears to have brought itself into compliance with applicable (though inadequate) state and federal laws, and even though further measures would require massive capital expenditures. However, the authors agree that because compelling such expenditures would prejudice Company *A* as against others in the same industry, the appropriate shareholder action is to encourage Company *A* to provide leadership for "industry wide efforts to eliminate such pollution."[27] Yet if the industry voluntarily undertakes the cost of eliminating the pollution it creates, consumers may switch to a substitute product which may create its own form of pollution, or the industry action may cause other forms of social injury such as unemployment among the workers in that industry.

The authors' argument for voluntary internalization of social costs rests on the view that the determination of priorities among various social objectives need not always be left to the political process, but can often best be left to private action by companies or industries. In making that argument, the authors should recognize that normally these determinations are not made by the persons who own a majority of the corporation's stock and thus have the major economic stake in the decision. In the typical case involving publicly held corporations, the decision to spend corporate money on non-profit-maximizing activity will be made by management, a minority interest. For example, in *Medical Committee for Human Rights v. SEC*,[28] it appeared that the management of Dow Chemical Corporation had decided to continue the production of napalm in spite of business considerations in order to satisfy management's concept of desirable moral and political action.[29] *The Ethical Investor* suggests the importance of balancing the power of management with share-

25. In most cases where the law has told the corporation that it must bear the cost, the problems presented in the text do not arise.

26. THE ETHICAL INVESTOR 109.

27. *Id.*

28. 432 F.2d 659 (D.C. Cir. 1970), *vacated as moot*, 404 U.S. 403 (1972).

29. 432 F.2d at 681.

holder power. However, this shareholder power would typically be exercised by a minority which is able to exert enough pressure to force management to accede to its demands.[30] Instead of allowing minority interests in corporations to battle about what is responsible conduct, it might be more helpful to require that, except for de minimis matters such as relatively modest charitable contributions, people connected with business enterprises should limit themselves to business judgments and the political process should make social judgments. Under such a regime, it might be easier to allocate responsibility and to hold people accountable for failure to achieve objectives.

The Ethical Investor rejects this approach for a number of reasons. For me the most compelling reason is the rigidity inherent in leaving questions of defining priorities solely to government regulation. Society's problems are too numerous and too diverse for government regulation to deal with them all. Moreover, government regulation frequently appears not to work well in assessing society's will and often is limited in the imagination with which it can respond to problems. In addition, government may be subject to disproportionate pressures from business interests. Corporate responsibility notions encourage a healthy diversity of approach to solving society's problems and promote a desirable dispersion of power. However, in the event that a particular problem looms large enough, the political process can take the ultimate judgment away from the corporation and return it to society as a whole.

The authors' analysis is more helpful in justifying some of the socially responsible behavior demanded of corporations than the frequently heard argument that profit maximization itself requires corporations to take account of the social impact of their activities. That argument rests on the view that the public expects corporations to act responsibly and punishes those that do not do so. Although that observation is true to a large extent, the profit-maximization rationale leaves management subject to the discipline of asking in a cold-blooded way whether a particular, socially responsible course of action will maximize economic return in the foreseeable future. It does not permit management merely to ask, as I think many corporate reformers intend them to ask, whether a particular course of action is the right thing to do.

30. The suggestion made on page sixty-two of *The Ethical Investor*—that the issue is the fairness of a majority of shareholders correcting a social injury over the objection of a minority of shareholders—accurately describes only the most unusual case.

COST-BENEFIT ANALYSIS

Although the authors of *The Ethical Investor* believe that corporations must, at a minimum, regulate themselves to avoid causing social injury and that shareholders must take steps to avoid collaborating in activities causing social injury, they recognize that the university's limited resources may justify its not taking a role in implementing their social investment program if the cost to the university is high in relation to the benefits derived. Accordingly, the authors purport to subject their view of the university's shareholder responsibilities to a cost-benefit analysis.[31] However, they posit that any person who does not accept the university's minimum obligation to prevent social injury has the burden of proving that the costs of fulfilling that obligation exceed the benefits of doing so.

Three types of costs are analyzed: non-fiscal costs (impact on the Academic Context); the expense of administering the Guidelines; and possible reduction in endowment returns.[32] The authors believe that the Guidelines adequately insulate the Academic Context and that their adoption would not be a precedent for more aggressive social or political action by the university in the future. They also think that administrative expense, in terms of trustee and university personnel time and out-of-pocket costs for doing the research necessary to make responsible decisions, would be relatively small (or at least could be controlled). Finally, the authors conclude that the impact on endowment return would be minimal "in view of the Guideline provisions requiring that most buy-and-sell decisions be based on maximum economic return criteria and that securities be sold if the correction of social injury significantly impairs the return."[33] In reaching this conclusion, the authors may have overlooked an important consequence of implementing the suggested social investment program. If substantial segments of American industry were persuaded to internalize many of the costs now borne by society in general, the return on portfolio investment, at least in the short run, would probably decline. Thus, even if universities continued to follow maximum economic return criteria, the amount of such return and the amount available for university budgets would diminish. The offset to re-

31. See THE ETHICAL INVESTOR 100-08.

32. The authors also weigh the impacts—pro and con—on potential donors to the university and conclude that these effects probably offset each other. *Id.* at 103-04.

33. *Id.* at 103.

duced university finances would have to come from society's willingness to share some of its savings with the university. Under present conditions it is not easy to assume that society would do so.

Although I think that the authors understate the potential cost to the university of implementing the social investment program, increasing the cost side of the equation would probably have little effect on the ability of an opponent of university involvement to meet *The Ethical Investor*'s burden of proving that the costs of the university's fulfilling its social obligation exceed the benefits which would result therefrom.[34] The authors weigh the costs to the university against the benefits to society of reducing social injury. They recognize that it is difficult to assess the impact of university-shareholder action on reducing social injury.[35] Moreover, it is hard, as they point out, to compare costs to the university against benefits to society. Thus the analysis requires a balancing of factors which are hard to measure and which, even if they could be measured, would be hard to compare. Under these circumstances allocation of the burden of proof is determinative, and the authors' cost-benefit analysis adds nothing to the value judgments they have made in defining the role they wish a university shareholder to play.

UNIVERSITY INVOLVEMENT IN CORPORATE STRUCTURE

As indicated earlier, *The Ethical Investor* views the university's role as dealing with substantive issues involving questions of social injury which have been raised by shareholder proposals or by a member of the university community. The Guidelines provide a mechanism for investigating these issues, making judgments, and then having the university take action such as voting proxies or communicating with management. The Guidelines generally leave to future consideration questions involving the structure of the corporation. Such questions do not directly pose ethical problems and do not involve the creation of social injury.[36]

On the other hand, corporate reform movements such as Cam-

34. See text following note 31 *supra*.

35. Of course, the less the impact, the lower the net cost to the university from reduction on portfolio investment.

36. In one of the hypothetical cases, the University Investment Council votes for the election of a professor of forestry to the board of directors of a corporation engaged in strip mining. The Council's recommendation reflects a finding that the company's strip mining has created a social injury and that the election of the professor as a director would help raise environmental questions within the company. THE ETHICAL INVESTOR 121-22.

paign GM have focused substantial energy on structural problems.[37] For example, the initial round of Campaign GM sought to create a Shareholders Committee for Corporate Responsibility. Later efforts were directed at opening the board of directors to nominees from groups such as employees, consumers and dealers. In the spring 1972 proxy season a number of companies received shareholder proposals which asked the board of directors to take appropriate steps to broaden its composition by nominating for the position of director women and representatives of employee organizations, consumers, and minority groups. The declared purpose of these resolutions was "to insure that the Corporation will consider the impact of its decisions on important public issues, including auto safety, pollution, repairs, mass transportation, and equal employment opportunity."[38]

Although the specific shareholder proposals were voted down by overwhelming majorities, many universities which voted against them expressed sympathy for the aim of broadening the composition of the board of directors, albeit not with representatives of special interest groups. One university official wrote:

> The university voted its shares against Shareholder Proposal No. 1 because we believe that the public interest in corporate affairs can best be served by avoiding special interest representation on boards of directors. We feel that every director must be free to use his best judgment in serving the interests, both public and private, of the entire corporation and not those of any particular constituency. On the other hand, the Committee believes that your board of directors should give consideration to achieving a broader diversification in its membership.[39]

I think it unfortunate that *The Ethical Investor* did not consider

---

37. For discussion of Campaign GM, see Schwartz, *Towards New Corporate Goals: Co-Existence With Society*, 60 GEO. L.J. 57 (1971); Schwartz, *The Public Interest Proxy Contest: Reflection on Campaign GM*, 69 MICH. L. REV. 419 (1971).

Reform efforts have also concentrated on requiring disclosure of corporate activity in matters such as minority hiring, pollution control, and product safety. *See generally* Schoenbaum, *The Relationship Between Corporate Disclosure and Corporate Responsibility*, 40 FORD. L. REV. 565 (1972). Requests for disclosure rather than specific corporate action may avoid a confrontation over difficult issues under the proxy rules relating to the appropriateness under state law of the subject for shareholder action or its classification as an ordinary business matter. Forcing disclosure will require management to examine the corporation's activities seriously and may result in the discovery of information which permits mobilization of public pressure for change. *The Ethical Investor* provides virtually no analysis of this technique for making corporations behave responsibly.

38. Chrysler Proxy Statement, dated March 3, 1972, at p. 25.

39. Letter from Bernard G. Segal, Chairman, University of Pennsylvania Trustees' Committee on Corporate Responsibility, to Lynn Townsend, Chairman, Chrysler Corporation, April 19, 1972.

in depth the value of giving a high priority to encouraging boards of directors of publicly held companies to diversify their membership. My impression is that the boards of directors of many major companies are composed of persons with quite similar backgrounds and experience. In addition, there is very little turnover in the composition of those boards. Under such circumstances, it is unlikely that difficult social responsibility issues will be independently raised or thoroughly analyzed. Like-minded people do not challenge each other's long-held assumptions. Creation of an environment in the board room which stimulates searching discussion of corporate responsibility issues can make an important contribution to responsible corporate behavior.

There are particular advantages to university concentration on this issue. Promoting the diversification of boards of directors has the least potential for disturbing the Academic Context because it does not require the university to take a substantive stand on any particular question. This approach focuses on the procedure for making the corporation itself able to deal with social responsibility questions by giving the public confidence that the managers of the corporation will carefully consider these questions and not merely react reflexively toward them. In addition, focusing university attention on reform of the composition of the boards of directors permits the university to take the initiative on one relatively easily understood issue instead of distributing its energies over a broad spectrum of issues.

Before reaching final conclusions on the desirability of promoting the diversification of boards of directors, it would be worthwhile to learn more about the role boards play in determining social responsibility activities of large publicly held companies.[40] A first step might be a study to determine whether diversity in the composition of a board of directors and some turnover on it enhances the ability of a corporation to cope effectively with demands for socially responsible action. There is a growing list of corporations which have moved in the direction of diversifying their boards of directors and thus might furnish a basis of experience from which to draw conclusions. In addition, it would be necessary to evaluate the diversity of existing

---

40. One commentator has concluded that outside directors do not play a significant role in governing business activity. M. MACE, DIRECTORS: MYTH AND REALITY (1971). However, there are frequent assertions that "'the directions for change [on social responsibility issues] must come from the boardrooms back home.'" Blashill, *The Proper Role of U.S. Corporations in South Africa*, FORTUNE, July 1972, at 49, 91 (quoting Mr. Bill Marshall Smith of Caltex).

boards of directors and begin the process of identifying sources of director candidates who could provide the desired diversity.

Heavy reliance on shareholder (particularly university-shareholder) oversight to assure appropriate corporate response to changing times and expectations seems to me to be unwise. Shareholder interest is hard to organize and tends to be sporadic. The best hope may be to enlist shareholder support for the creation of a management structure (of persons loyal to the corporation) which encourages openness to a broad segment of the society within which a corporation exists.