

We Don't Need You Anymore: Corporate Social Responsibilities, Executive Class Interests, and Solving Mizruchi and Hirschman's Paradox

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I. INTRODUCTION

One can almost envision Mark S. Mizruchi and Daniel Hirschman shaking their heads in puzzlement when they presented a paper at the 2009 Berle Center Symposium and described the business community as having become “incapable of coordinated action to advance its interests,”¹ since it has no specific proposals regarding important contemporary political issues, such as the cost of health insurance and closing the deficit.² Mizruchi and Hirschman expressed confusion as to why business leaders, after achieving great political successes in the 1970s and 1980s in collectively responding to a multitude of mounting pressures, became, two decades later, “incapable of generating any form of collective effort to address not only the larger problems of society, but also to even address issues of concern to the corporations themselves.”³ They added:

What these examples represent, then, is a paradox. In the period of managerial ascendance in which their power was largely unquestioned and untouched, the leaders of the American business community exhibited a pragmatic, moderate perspective that allowed them to support a relatively active state and to accept the legitimacy, if not the demands, of labor unions. In the post-managerial period, in which corporate CEOs no longer enjoy their earlier level of autonomy, we have a fragmented, ineffectual business community,

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1. Mark S. Mizruchi & Daniel Hirschman, *The Modern Corporation as Social Construction*, 33 SEATTLE U. L. REV. 1065, 1106 (2010).

2. *Id.* at 1104–06.

3. *Id.* at 1104.

one that is seemingly incapable of addressing any of the important issues of the day.⁴

Ironically, the authors' own narrative history of the public role of top management provides clues for generating an explanation quite capable of resolving this paradox. A short version of this explanation would go as follows: During the half century or so that stretched from the ending of the wave of strikes that followed World War I to the oil crisis of the 1970s, an era characterized by extraordinary corporate stability,⁵ corporate leaders could afford to be pragmatic and moderate. Precisely because they possessed what Mizruchi and Hirschman label "largely unquestioned power,"⁶ corporate leaders faced little risk of this moderation backfiring by exposing weakness, and there were potential political, managerial, and economic benefits to accrue from embracing moderation. As the seventies progressed, however, they were challenged by the forces the two authors themselves list: labor unions, Naderist reformers, new competitors, and impatient shareholders.⁷ The corporate elite responded collectively with a harder, more defensive line.⁸

The authors' mistake, however, is in implicitly assuming that, having overcome these threats to their personal autonomy, American corporate leaders went their own ways, essentially unable or unwilling to collectively meet the new challenges that have since arisen. The reality is that corporate leaders have continued to respond in a collective manner in pursuing both their personal and class interests, but these earlier victories have both transformed the nature of these interests and altered the boundaries of the group that shares these interests. Mizruchi and Hirschman's paradox has disappeared now that their claim "the basis of this cohesive corporate community was in the corporation, per se, not as Zeitlin argued, in an owning class"⁹ has simply become obsolete.

In short, corporate leaders overcame the many difficulties they faced in the 1970s by essentially abandoning any serious division between ownership and control, at least with respect to the relations between corporate executives and investors on one side and their employees and the general taxpaying citizenry on the other. Challenged from both the left and the right, corporate leaders either survived by assuming

4. *Id.* at 1106–07.

5. See Richard C. Edwards, *Stages in Corporate Stability and the Risks of Corporate Failure*, 35 J. ECON. HIST. 428, 433 (1975).

6. Mizruchi & Hirschman, *supra* note 1, at 1106 ("In the period of managerial ascendance in which their power was largely unquestioned and untouched . . .").

7. See, e.g., DAN CLAWSON ET AL., *DOLLARS AND VOTES: HOW BUSINESS CAMPAIGN CONTRIBUTIONS SUBVERT DEMOCRACY* 146–50 (1998).

8. See *id.* at 150–54.

9. Mizruchi & Hirschman, *supra* note 1, at 1094.

the interests of investors or were replaced by those who would. As Useem has pointed out, by the end of the 1980s, the view from the executive suite shifted from that of organizations' leaders to in-house raiders, perpetually looking for ways to cut costs to enhance "shareholder value," the euphemism for the trading price of the company's stock.¹⁰ These leaders were not only surviving but also typically thriving by adopting investor interests.

This is not to say that conflict between executives and outside investors disappeared. It did not, any more than conflict between mafia dons, feudal lords, or nobles and rulers disappeared. But executives, the independently wealthy, and financial industry insiders who manage other people's money all found common ground in defining sources of wealth and the means in which to extract it, even if they inevitably squabbled as to the size of individual slices of this wealth and, as is often the case, with insiders seeking to find ways to take advantage of outsiders. Notorious examples include Enron, Global Crossing, and Worldcom.¹¹ Corporate executives continued to pursue their shared class and professional interests, much as they had always done, but the exact nature of these interests had changed.

Perhaps Mizruchi and Hirschman missed this explanation because it is uncommon for the class interests of an elite group to shift in this manner, although the authors should probably have seen it, given their own passing insight that executive concerns for the quality of a national educational system diminishes if companies can recruit around the globe.¹² Historically, it is far more common for an elite stratum to maintain a set of interests even as its membership is altered or even replaced through upheaval such as war or coup d'état. Normally, power centers may shift geographically, political or economic governance may end up more or less centralized, or ground rents may become taxes. But few of these changes, even if personally cataclysmic for some of the actors, actually shift the fundamental interests of the elites in maintaining the dynamics of the social order.¹³

Occasionally, however, elite interests and goals do change. Among the most significant examples of this rare phenomenon was the commercialization of English agriculture in the early modern period. During that

10. MICHAEL USEEM, *INVESTOR CAPITALISM: HOW MONEY MANAGERS ARE CHANGING THE FACE OF CORPORATE AMERICA* 10–11 (1996); *see also* MARY O'SULLIVAN, *CONTESTS FOR CORPORATE CONTROL: CORPORATE GOVERNANCE AND ECONOMIC PERFORMANCE IN THE UNITED STATES AND GERMANY* (2001).

11. FRANK PARTNOY, *INFECTIOUS GREED* 1–2 (2003).

12. Mizruchi & Hirschman, *supra* note 1, at 1104.

13. *See generally* PERRY ANDERSON, *LINEAGES OF THE ABSOLUTIST STATE* (Verso 1979) (1974).

era, the owners of estates increasingly abandoned the nearly universal interest of landed oligarchs in keeping or even attracting largely self-sufficient peasant tenants through one or another mixture of coercion and enticement. Due to economic and demographic change, some of which, such as the growing demand for wool, were global in scope, English landlords increasingly adopted policies of “improvement” to earn revenue, often by enclosing fields and renting to commercially oriented farmers and herders, and in the process repudiating many customary peasant rights, even physically driving people off their land.¹⁴ Similar policies would eventually distinguish English settler colonies such as those in North America from the colonial practices of those of their neighbors. What resulted was a very different set of class relations in the English countryside despite much continuity of actual elite membership, a continuity that largely survived the civil wars of the seventeenth century. Consider this contemporary observation of enclosing from Thomas More, as informed and articulate a witness of these events as one could hope for:

[T]here noble men, and gentlemen . . . not contenting themselves with the yearly revenues and profits, that were wont to grow to their forefathers and predecessors of their lands, nor being content that they live in rest and pleasure nothing profiting, . . . leave no ground for tillage. They enclose all into pastures, they throw down houses, they pluck down towns, and leave nothing standing, . . . the husbandmen be thrust out of their own, or else either by *coveyne* and fraud, or by violent oppression they be put besides it, or by wrongs and injuries they be so wearied, that they be compelled to sell all¹⁵

This example is not meant to idealize or sentimentalize the exploitation of peasants by a multitude of aristocracies down the centuries throughout the world. The point here is that given dramatic shifts in political-economic circumstances, elite interests can change while elite membership holds fairly steady, the reverse of typical historical change. The former dependence of lords on the peasantry put a floor on how poorly the latter could be treated, and respecting their customary rights was, at least under some circumstances, more stable and less costly than relying on pure coercion, especially when peasants had the means to resist with violence. Once these traditional relationships were no longer as profitable as the alternatives, they could, and often were, cast aside (alt-

14. Robert Brenner, *Dobb on the Transition from Feudalism to Capitalism*, 2 CAMBRIDGE J. ECON. 121, 125–26 (1978), available at <http://www.scribd.com/doc/24231925/Robert-Brenner-Dobb-on-the-Transition-From-Feudalism-to-Capitalism>.

15. THOMAS MORE, *UTOPIA* 26 (J. M. Dent & Sons 1974) (1516).

though the process was not necessarily easy) regardless of the consequences for those so cast.¹⁶

Analogizing farm enclosures with the contemporary abandonment of corporate responsibilities on the part of business leaders is neither farfetched nor strained. Although American labor-management relations were hardly idyllic during the first third of the twentieth century, corporate leaders required a degree of cooperation from their employees, and after experiencing the shock of depression and the economic benefits of world war, many of these same leaders could see the value in accepting a greater degree of government involvement in the economy. For the rulers of both English estates and American corporations, practicing a degree of *noblesse oblige* proved to have tangible value, even if often honored in the breach. In both cases, however, as the world changed, that payoff diminished, or at the very least, the opportunity costs of practicing responsible behavior rose dramatically. In short, many corporate leaders preached, and sometimes practiced, involvement with national problems, tolerance of unions, acceptance of some degree of government interference in their affairs, and even a willingness to pay higher taxes when it appeared, at least to some, in their personal or professional interest to do so. Once these institutional arrangements were viewed as shackles or burdens that worked to limit or even threaten executive career advancement and financial gain, they were rationally regarded as anathema.

The question that this presents is what concrete political-economic shift propelled this change in attitude. Here Arrighi's theory of the rise and fall of global economic hegemonies can provide an answer.¹⁷ According to Arrighi, history features strong precedents of classes of national entrepreneurs who, having once dominated global trade, find that as their commercial dominance erodes, they must increasingly turn to extracting wealth from what was accumulated in the financial system as their primary source of income.¹⁸ To Arrighi, the change in the focus of American top management away from production and toward finance happened because "it always happens."¹⁹

Previously, Northern Italian, Dutch, and then English entrepreneurs had dominated global trade in turn, and when after a century or so their respective hegemonies began to show cracks, each group refocused its efforts in the service of tapping already-accumulated wealth through fi-

16. See J. M. NEESON, *COMMONERS: COMMON RIGHT, ENCLOSURE AND SOCIAL CHANGE IN ENGLAND, 1700–1820*, at 17–18 (1993).

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

18. *Id.* at 8.

19. Giovanni Arrighi, Speech at the Workers in the Global Economy: Organizing for a New Century Conference: Workers of the World at Century's End (May 5, 1995).

nancial speculation and, in the process, also financed the rise of their successors.²⁰ If Dahrendorf was correct, and American capital was managed during the era of American industrial dominance by “a class of career bureaucrats, whose primary loyalty lay with their employer rather than with a class of property owners,”²¹ there are good reasons to believe that that has ceased to be the case. “Property owners,” meaning in the American case those who control and stand to benefit from financial activity (leaving aside the question as to whether shares of corporate stock should be defined as “property”), have absorbed these onetime “career bureaucrats” into their ranks. And as this subsumption has occurred, corporate executives have had no reason to either identify themselves as a distinct political grouping or proactively embrace civic responsibilities once thought necessary for maintaining a productive society.

This Article will cover these issues in five Parts. Part II lays out Arrighi’s theory of hegemonic rise and decline in detail. Parts III, IV, and V apply Arrighi’s model of a three-stage hegemonic cycle to the assumption, application, and abandonment of corporate social responsibility on the part of American corporate leaders: first, when the United States became the world’s dominant manufacturer; then, in the post-war years when it became militarily and politically hegemonic as well, and finally, during this last generation, as the hypertrophy of the American financial sector masked the nation’s hegemonic decline. Part VI concludes by solving, in more detail, Mizruchi and Hirschman’s paradox.

II. A WORLD SYSTEMS PERSPECTIVE ON SHIFTING GLOBAL HEGEMONY

Mizruchi and Hirschman note with apparent disappointment that it would be difficult to find an expression of social responsibility, especially in the financial sector, comparable to the attitude espoused forty years ago in this quote from the then-CEO of Bank of America, at the time the nation’s largest bank: “[Clausen’s] thoughts turn often to: how to alleviate if not cure the blight now spreading at Hunter’s Point and south of Market Street [in San Francisco]; how to crack the city’s hard-core unemployment; how to cope with student unrest at Berkeley or down the peninsula at Stanford.”²² In actuality, the abandonment of this attitude is unremarkable since the history of this bank and its relationship to the larger society provides almost a perfect exemplar of Arrighi’s model of three stages of hegemonic rise and decline. If Arrighi was correct, then

20. ARRIGHI, *supra* note 17, at 159–62.

21. Mizruchi & Hirschman, *supra* note 1, at 1078 (discussing RALF DAHRENDORF, *CLASS AND CLASS CONFLICT IN INDUSTRIAL SOCIETY* (1959)).

22. *Id.* at 1095 (quoting DANIEL BELL, *THE COMING POST-INDUSTRIAL SOCIETY* (1973) (quoting John Davenport, *Bank of America is Not for Burning*, *FORTUNE*, Jan. 1971)).

the change in attitude was a rational response to a changing political-economic environment.

Bank of America's early years were, to an extent, a model of enlightened finance. Founder A. P. Giannini developed a great deal of good will for his bank, then one among many in San Francisco, by freely extending credit after the 1905 earthquake, a policy repeated after the stock market crash.²³ Then, during and after World War II, the bank grew along with California, the primary beneficiary of the new American Keynesianism.²⁴ The bank's technological lead in data processing that would later lead to developing the VISA system began with the handling of bundled GI checks during the war itself, and the bank grew rapidly by investing in its state's post-war growth, a growth stimulated by aerospace and other military expenditures, irrigation, highway construction, and an expansive new higher educational system.²⁵ By 1971, at the tail end of this era, when American growth still appeared endless, Clausen could not only afford to play the statesmen but he also might well have seen doing so as in the interest of his bank and his own personal stature.

By contrast, the seventies and eighties brought an endless stream of bad news for Bank of America. This news came in the form of poorly performing foreign loans, increased competition, and technological breakthroughs that made functions of the traditional branch network obsolete, followed by a series of layoffs and speed-ups by this formerly highly admired employer.²⁶ The bank eventually survived and prospered, but only through a series of mergers and acquisitions in connection with NationsBank, including acquiring the fire sale of First Republic and Continental Illinois assets after the savings and loan scandals that served as the starting point of the rolling financial scandal over the last generation.²⁷ While the bank regained its own prosperity, it did so by committing most of the well-publicized sins of contemporary corporate America: moving its headquarters to low-wage North Carolina, involvement in any number of financial scams ranging from Enron²⁸ to collateralized

23. See MOIRA JOHNSTON, *ROLLER COASTER: THE BANK OF AMERICA AND THE FUTURE OF AMERICAN BANKING* 27, 41 (1990).

24. *Id.* at 29–32.

25. *See id.* at 50–52.

26. *Id.* at 210–14, 233–34; see VICKI SMITH, *MANAGING IN THE CORPORATE INTEREST: CONTROL AND RESISTANCE IN AN AMERICAN BANK* 11 (1992) (“Given the greater uncertainty and struggle for profitability in the 1980s and beyond, . . . companies now seek to cut back on practices and expectations associated with old models . . . American corporate management has been unraveling the stable employment relations framework that has been in place for decades.”).

27. *See* JOHNSTON, *supra* note 23, at 244–51.

28. Simon Bowers, *Bank of America Settles Enron Lawsuit for \$69m*, *GUARDIAN*, July 2, 2004, <http://www.guardian.co.uk/business/2004/jul/03/corporatefraud.enron>.

mortgage obligations²⁹ and robo-signings,³⁰ and the outsourcing to India of both information systems and financial work.³¹

These stages all have their counterpart within Arrighi's model of hegemonic rise and decline. Arrighi's theory begins with Braudel's account—itsself inspired by a passing comment of Marx³²—of the rise and fall of leading European metropolises within a globe-spanning network of trade and finance.³³ Arrighi constructed a causal model upon Braudel's historical narrative, subdividing the history of international capitalism since the conquest of the Western Hemisphere into four separate eras or “hegemonic waves” dominated by successively larger and more politically coherent core regions, each of which controlled the production and trade of the most important goods of its time.³⁴ Every hegemon eventually discovers that its growing economic dominance not only allows, but also even requires it to extend its hegemony into other spheres.³⁵ Of course, economic might can buy a great deal of military power and diplomatic influence, but Arrighi follows Gramsci in arguing that global hegemony goes beyond compulsion and is based as much on cooperation as coercion.³⁶ Not only does the hegemon establish comprador clients among local elites, but the very vitality of the hegemonic society also proves attractive to other social groups as manifested in their demands for its commodities and cultural products, the latter including ideological constructs that help legitimize this hegemony. In the case of the United

29. BANK OF AMERICA, 2004 ANNUAL REPORT, MARKET RISK MANAGEMENT (2005), available at http://www.bankofamerica.com/annualreport/2004/backmatter/mda/mda_marketrisk.cfm.

30. Pallavi Gogoi, *Robo-Signing Scandal May Date Back to Late '90s*, MSNBC, Sept. 1, 2011, http://www.msnbc.msn.com/id/44365184/ns/business-real_estate/t/robo-signing-scandal-may-date-back-late-s/.

31. Dean Foust, *How B of A Banks on Offshoring*, BUS. WK., Jan. 20, 2006, http://www.businessweek.com/magazine/content/06_05/b3969413.htm; see also PARTNOY, *supra* note 11.

32. ARRIGHI, *supra* note 17, at 13. The passing comment by Marx was as follows:

Thus the villainies of the Venetian thieving system formed one of the secret bases of the capital-wealth of Holland to whom Venice in her decadence lent large sums of money. So was it with Holland and England. By the beginning of the 18th century . . . Holland had ceased to be the nation preponderant in commerce and industry. One of its main lines of business, therefore, [became] the lending out of enormous amounts of capital, especially to its great rival England. [And the] same thing is going on to-day between England and the United States.

Id. (quoting 1 KARL MARX, CAPITAL: A CRITIQUE OF POLITICAL ECONOMY 755–56 (Foreign Languages Publ'g House 1959) (1867)).

33. *Id.* at 4 (referencing, among other works, FERNAND BRAUDEL, THE WHEELS OF COMMERCE (1982)).

34. *Id.* at 6.

35. *Id.* at 8–9.

36. *Id.* at 28–29 (citing ANTONIO GRAMSCI, SELECTIONS FROM THE PRISON NOTEBOOKS (1971)).

States, one such ideological construct has been corporate social responsibility.³⁷

One can certainly find Arrighi's hegemonic pattern in American economic history. The United States moved from being primarily an exporter of agricultural commodities as late as the 1870s to becoming the world's leading manufacturer by century's end, exporting as much as Britain while also supplying a much larger domestic market.³⁸ Moreover, this growth was concentrated in the high-tech sectors of the day: locomotives, industrial machinery, electrical equipment, typewriters, and farm machinery.³⁹ The new large American industrial corporations were not only successful in their own right—but they also provided models for the rise of new giants in retail and other sectors.⁴⁰ Internationally, many of the new industrial giants, rather than simply selling their wares to wholesalers abroad, set up subsidiaries for marketing and even educating potential customers.⁴¹

In the early decades of the century, Europeans were quite cognizant of the threat posed by the American commercial “menace.” As early as the beginning of the new century, Charles Flint, eventually a founder of both U.S. Rubber and IBM, reported with a great deal of national pride that an editorial in a Hamburg newspaper complained that

it may be remarked that the typewriting machine with which this article is written, as well as the thousands—nay, hundreds of thousands—of others that are in use throughout the world, was made in America, that it stands on an American table, in an office furnished with American desks, bookcases and chairs, which cannot be made in Europe of equal quality, so practical and convenient, for a similar price.⁴²

A big part of the industrial explosion was the rise of the American “Chandlerian” corporation: autonomous, geographically extensive, and typically publicly traded after the Great Merger Movement of the late-

37. Dirk Matten & Jeremy Moon, “Implicit” and “Explicit” CSR: A Conceptual Framework for a Comparative Understanding of Corporate Social Responsibility, 33 *ACAD. MGMT. REV.* 404, 404 (2008).

38. See 6 EDWARD C. KIRKLAND, *INDUSTRY COMES OF AGE: BUSINESS, LABOR, AND PUBLIC POLICY 1860–97*, at 1–8 (1961).

39. See *id.* at 163–80.

40. See ALFRED D. CHANDLER, JR., *THE VISIBLE HAND: THE MANAGERIAL REVOLUTION IN AMERICAN BUSINESS* 209 (1977).

41. *Id.* at 302–03.

42. Charles R. Flint, *Business Situation in the United States and the Prospects for the Future*, 172 *N. AM. REV.* 381, 384–85 (1901) (internal quotations omitted).

nineteenth century.⁴³ Other nations, notably Britain and Germany, also possessed large corporations, although not as many and not in so many different industries.⁴⁴ But what was especially notable was the degree of autonomy that American management enjoyed. Firms in other nations evolved within the corporatist legacy of absolutism—an institutional pluralism of aristocracies, churches, guilds, military, and others linked together through networks of patronage.⁴⁵ One American diplomat actually referred to German cartels with some insight as a new form of guild.⁴⁶ Even Britain, whose revolutionary seventeenth century had swept away a number of institutional constraints on business,⁴⁷ retained sufficient ties to an oligarchical past to experience a Polanyistic⁴⁸ reaction to the evils of industrialization led by such aristocrats as the Seventh Lord Shaftesbury, ironically a descendent of an architect of the defeat of British absolutism.⁴⁹

In keeping with Arrighi's model, the rise of the American Chandlerian corporation was both a product of the legacy generated by the last hegemon and an improvement on it. If the British had superseded "the Dutch by internalizing production costs" within the factory,⁵⁰ and the Dutch had previously eclipsed the Italian cities by "internalizing production costs" instead of relying on Hapsburg armies,⁵¹ then the American corporation trumped Britain by "internalizing transaction costs" within the continent-spanning corporation.⁵² This change occurred, however, not without the massive assistance of its predecessor. Naturally, as a former colony, the United States inherited a great deal of the mother country's political-economic legacy, ranging from textile factories, to the clearing of land of its inhabitants for commercial exploitation, to the corporate charter itself,⁵³ just as Dutch trading networks and support for the

43. ARRIGHI, *supra* note 17, at 239–42; CHANDLER, *supra* note 40, at 3–4; WILLIAM G. ROY, *SOCIALIZING CAPITAL: THE RISE OF THE LARGE INDUSTRIAL CORPORATION IN AMERICA* 7–8 (1995).

44. CHRISTOPHER J. SCHMITZ, *THE GROWTH OF BIG BUSINESS IN THE U. S. AND WESTERN EUROPE* (1995).

45. See ANDERSON, *supra* note 13, at 403–04; JOHN HALDON, *THE STATE AND THE TRIBUTARY MODE OF PRODUCTION* (1993).

46. Morton Keller, *Regulation of Large Enterprise*, in *MANAGERIAL HIERARCHIES* 161, 164 (Alfred D. Chandler, Jr. & Herman Daems eds., 1980) ("In the 1870s United States ambassador Andrew White called the ever more numerous German cartels "some new form of guilds.").

47. See ANDERSON, *supra* note 13, at 142.

48. KARL POLANYI, *THE GREAT TRANSFORMATION: THE POLITICAL AND ECONOMIC ORIGINS OF OUR TIME* (2001).

49. See NEAL WOOD, *JOHN LOCKE AND AGRARIAN CAPITALISM* 32 (1984).

50. ARRIGHI, *supra* note 17, at 239.

51. *Id.*

52. *Id.*

53. See *id.* at 272–73.

Glorious Revolution facilitated the rise of British capitalism.⁵⁴ More specifically, however, as much as Dutch investment helped spur the English agricultural revolution,⁵⁵ Britain stimulated the emergence of the large American corporation by buying the bonds that built the American railroads.⁵⁶ These railroads not only provided the physical means to make continental-wide manufacturing and sales possible but they also brought financial, managerial, and technological innovations that strongly influenced the development of industrial corporations and insatiably consumed inputs, generating a great deal of the initial demand for the output of the industrial sector.⁵⁷

Once industrial dominance was established, the United States achieved the second stage of a fuller, more mature hegemony by the end of World War II. Between the fall of Berlin and the fall of Saigon, American hegemony within the capitalist world system spread well beyond mere commercial triumph.⁵⁸ Conventions and institutions such as Bretton Woods, the Marshall Plan, NATO, the United Nations (established in New York as a result of a donation from, appropriately enough, the second John Rockefeller), plus America's network of military bases abroad, the permanent war economy at home and its interference in the politics of distant lands⁵⁹ (a process in which the namesake of this very symposium was a major player), collectively represented a radically different role for a nation that had previously maintained only small peacetime armies, was a minor participant in the nineteenth-century rush for colonies, entered World War I only in its third year, refused to join the League of Nations, and regarded isolationism as a legitimate political position. American cultural and intellectual influence also spread during the course of the century,⁶⁰ if less abruptly, and these were often the unintended product of the European wars, as European countries absorbed huge quantities of American goods and sent over waves of refugees in return.⁶¹

Finally, however, the American hegemon began to lose its comparative advantages. Europe and East Asia, recovering from thirty years of

54. *Id.* at 246.

55. LAWRENCE STONE, *THE CRISIS OF THE ARISTOCRACY: 1558–1641*, at 355 (1965).

56. ROY, *supra* note 43, at 78, 90.

57. *Id.* at 78–79; *see also* CHANDLER, *supra* note 40; LELAND HAMILTON JENKS, *THE MIGRATION OF BRITISH CAPITAL TO 1875*, at 129–30 (1963); LES STANDIFORD, *MEET YOU IN HELL: ANDREW CARNEGIE, HENRY CLAY FRICK, AND THE BITTER PARTNERSHIP THAT TRANSFORMED AMERICA* 45 (2005).

58. *See* ARRIGHI, *supra* note 17, at 295–304.

59. *See id.*

60. ROBERT B. REICH, *THE WORK OF NATIONS: PREPARING OURSELVES FOR 21ST-CENTURY CAPITALISM* 65 (1991).

61. *Id.* at 269–71.

disaster that were themselves the product of a spreading industrialization, could, to a very large extent, imitate American success while adding their own comparative advantages under changing circumstances, advantages that varied from place to place—lower labor costs, newer plants, fewer diversions of resources into the military, greater reliance on family-based networking, welfare-state social contracts, and lifetime employment.⁶² American manufacturing dominance was eroding from a variety of directions, and services would not make up the difference because, for the most part, the kinds of services that could readily be traded across borders were even easier to imitate than manufacturing.⁶³

On the other hand, the United States had accumulated a great deal of paper wealth, much of it stored in the pensions and mutual funds of workers or backed by either the security of American governments or the supposedly irreversible desirability of American urban and suburban real estate.⁶⁴ Eventually, tapping and leveraging this wealth became more reliably profitable than the uncertainty of competing in international product markets.⁶⁵ At the same time, those who continued to compete in product markets, often because they had no choice, attempted to reduce costs, especially labor costs, through a variety of means like union busting, layoffs, speed-ups, and of course, outsourcing, both by contracting abroad and setting up manufacturing elsewhere for reimporting as well as sales abroad.⁶⁶

This last step in the process may have triggered another Arrighian wave. As manufacturing has moved abroad, not only has the industrial capacity of other nations become more sophisticated over time but the work of engineering, designing, and programming has also increasingly followed to one degree or another occupations that defenders of outsourcing had argued would stay in the United States (especially to South China).⁶⁷ While much of this offshore activity still benefits ostensibly “American” firms, it is not clear how this profitability benefits the great majority of Americans who have little stake in the stock market.⁶⁸ Furthermore, to the extent these global profits are not repatriated, they too are invested abroad, and while marketing and branding continue to allow

62. GIOVANNI ARRIGHI & BEVERLY J. SILVER, *CHAOS AND GOVERNANCE IN THE MODERN WORLD SYSTEM* (1999); *see also* ROBERT BRENNER, *THE BOOM AND THE BUBBLE* 155–56 (2002); ROBERT POLLIN, *CONTOURS OF DESCENT: US ECONOMIC FRACTURES AND THE LANDSCAPE OF GLOBAL AUSTERITY* (2003).

63. RON HIRA & ANIL HIRA, *OUTSOURCING AMERICA: WHAT’S BEHIND OUR NATIONAL CRISIS AND HOW WE CAN RECLAIM OUR JOBS* 67–70 (2005).

64. *See* BRENNER, *supra* note 62, at 188–89.

65. *See id.* at 192–95.

66. *See id.* at 128–29; REICH, *supra* note 60, at 89–94.

67. *See, e.g.*, REICH, *supra* note 60, at 93–94.

68. *See* LAWRENCE MISHEL ET AL., *THE STATE OF WORKING AMERICA* 81 (2009).

some American companies to profit from globalization, it is not obvious that these advantages are any more sustainable than they were for IBM when, under its own logo, it sold personal computers that were simply assemblages of parts produced by other firms.

To justify this change in economic relations, a new ideology of “shareholder value” emerged, something of a replay of the triumph of the “City”⁶⁹ in late-nineteenth-century Britain. The triumph of finance is perfectly exemplified by the oncologist who left one of the most desirable posts in his field at Harvard Medical School in order to pick health care stocks for a financial firm,⁷⁰ or the Secretary of Labor who when confronted with the reality of weak job creation responded by pointing to a recovering stock market, reminding the journalist that “[t]he stock market is, after all, the final arbiter.”⁷¹

The point of this excursion in American-twentieth-century economic history is to lay the groundwork for explaining the twists and turns over time of executives’ perceptions and acknowledgement of their corporate responsibilities. As I discuss in the following Parts, the executives of an industrializing pre-Depression America focused on labor relations as the locus of their responsibilities. As the scope of American hegemony broadened after World War II, so too did views on corporate responsibilities, reflecting the supposedly nonideological pluralism of elite perspectives on American society. As pluralism died in the eighties, and executives felt besieged by both activists and investors, formulations on corporate responsibilities retreated to vague banalities to be defined by management itself, whose primary functions were public relations and, perhaps, a justification in the face of shareholder complaints.

III. CORPORATE RESPONSIBILITY FOR KEEPING THE LABOR PEACE

Perhaps the distinguishing feature of the American large corporation as it emerged in the late-nineteenth century was the relatively high levels of autonomy it granted management from the demands of creditors,⁷² government regulators, cartels, and of course, labor unions. What-

69. ARRIGHI, *supra* note 17, at 165.

70. Louis Uchitelle, *Very Rich are Leaving the Merely Rich Behind*, N.Y. TIMES, Nov. 27, 2006, at A1, available at http://www.nytimes.com/2006/11/27/business/worldbusiness/27iht-web.1127rich.3679607.html?pagewanted=1&_r=1.

71. HIRA & HIRA, *supra* note 63, at 79.

72. See, e.g., *Union Pac. Ry. Co. v. Chi., Rock Island & Pac. Ry. Co. (Union Pacific)*, 163 U.S. 564, 600 (1896); D. H. Chamberlain, *New-Fashioned Receiverships*, 10 HARV. L. REV. 139, 144–45 (1896).

ever the union tactics—the industrial approach of the ARU⁷³ or the established craft unions of the AFL,⁷⁴ the cooperative philosophy of the Knights of Labor⁷⁵ or the radicalism of the IWW⁷⁶—time and again the new corporate giants thwarted and even reversed organized labor’s efforts to gain a foothold.⁷⁷

Part of this success in thwarting organized labor can be attributed to state power intervening on the side of management in the form of court orders and the associated deployment of state force.⁷⁸ Despite a common law right to strike, courts consistently found grounds to restrict it, especially where large concerns were involved, undermining the right by applying doctrines such as conspiracy, intimidation, restraint of trade, and intentional infliction of economic distress.⁷⁹ This practice was taken to the extreme with Chief Justice Taft’s infamous decision to ignore the plainly worded exemption of labor unions from the Clayton Act.⁸⁰ As for

73. WILLIAM E. FORBATH, *LAW AND THE SHAPING OF THE AMERICAN LABOR MOVEMENT* 74 (1991) (“The American Railway Union (ARU) called the Pullman Strike. In 1894 the ARU was a fledgling industrial union . . .”).

74. American Federation of Labor. *Id.* at 8.

75. *Id.* at 12–13.

76. International Workers of the World. *Id.* at 143.

77. *See id.* at 148.

78. *Id.* at 2.

79. *Id.* at 149–52; *see* VICTORIA C. HATTAM, *LABOR VISIONS AND STATE POWER: THE ORIGINS OF BUSINESS UNIONISM IN THE UNITED STATES* 56–62 (1993).

80. *Am. Steel Foundries v. Tri-City Cent. Trades Council*, 257 U.S. 184, 201–04 (1921). In 1914, American Steel Foundries succeeded in enjoining members of the labor movement from “carrying on a conspiracy to prevent [American Steel Foundries] from retaining and obtaining skilled laborers to operate its plant.” *Id.* at 193. The conspiracy was given effect by “organized picketing, accompanied by threats, intimidation and violence toward persons employed or seeking employment there.” *Id.* The Court determined that Section 20 of the Clayton Act applied but did not prevent an injunction. *Id.* at 201–04. Section 20 states in relevant part:

That no restraining order or injunction shall be granted by any court of the United States, or a judge or the judges thereof, in any case between an employer and employés, or between employers and employés, or between employés, or between persons employed and persons seeking employment, involving, or growing out of, a dispute concerning terms or conditions of employment, unless necessary to prevent irreparable injury to property, or to a property right, of the party making the application, for which injury there is no adequate remedy at law, and such property or property right must be described with particularity in the application, which must be in writing and sworn to by the applicant or by his agent or attorney.

Id. at 201; *see also* 29 U.S.C. § 52 (2006). In upholding injunctions against labor activity, Chief Justice Taft wrote:

If in their attempts at persuasion or communication with those whom they would enlist with them, those of the labor side adopt methods which however lawful in their announced purpose inevitably lead to intimidation and obstruction, then it is the court’s duty which the terms of section 20 do not modify, so to limit what the propagandists do as to time, manner and place as shall prevent infractions of the law and violations of the right of the employees, and of the employer for whom they wish to work.

Id. at 203–04.

violence against strikers, an entire library of literature covers state violence against strikers by police, national guard and federal troops,⁸¹ state-sanctioned violence on the part of deputized Pinkertons,⁸² and even unprosecuted private violence as practiced by Ludlow guards,⁸³ Harry Bennett at Ford,⁸⁴ or the Black Legions of Michigan.⁸⁵ The sum total of this deadly force through the depression years, employed overwhelmingly on the side of management, led a presidential commission to label the United States as the possessor of the bloodiest labor history of any nation.⁸⁶

This violence itself was the product of the second Industrial Revolution in the United States, concentrated as it was among railroads, mining, heavy industry, and the occasional large textile mill.⁸⁷ Before the Great Railroad Strike of 1877, labor relations in the United States had been largely free of deadly violence,⁸⁸ and strikes against smaller enterprises continued thereafter at the relatively smaller rate of a few thousand a year with relatively little state interference, resulting, according to government statistics, with either success for the workers or compromise most of the time.⁸⁹ Perhaps the far lower success rate and the greater likelihood of deadly force at the larger enterprises was due to the sheer mass of employees involved, which generated more fear among the public, or alternatively, the managers of these concerns had more political pull, able to appeal to the governor if the local officials were recalcitrant, or the nearest federal garrison or even the president, should the governor prove unsympathetic.⁹⁰ Correspondingly, the strikers themselves, often immigrant groups,⁹¹ might have engendered less sympathy from both the

81. *See, e.g.*, JERRY M. COOPER, *THE ARMY AND CIVIL DISORDER* (1980); ROBERT JUSTIN GOLDSTEIN, *POLITICAL REPRESSION IN MODERN AMERICA* (1978); ALMONT LINDSEY, *THE PULLMAN STRIKE* (First Phoenix ed. 1964).

82. FRANK MORN, "THE EYE THAT NEVER SLEEPS": A HISTORY OF THE PINKERTON NATIONAL DETECTIVE AGENCY 98–99 (1982).

83. JOSIAH BARTLETT LAMBERT, *IF THE WORKERS TOOK A NOTION: THE RIGHT TO STRIKE AND AMERICAN POLITICAL DEVELOPMENT* 68–69 (2005).

84. IRVING BERNSTEIN, *TURBULENT YEARS: A HISTORY OF THE AMERICAN WORKER 1933–1941*, at 503 (1969).

85. *See* MICHAEL E. BIRDWELL, *CELLULOID SOLDIERS: THE WARNER BROS. CAMPAIGN AGAINST NAZISM* 46–47 (2000).

86. Philip Taft & Philip Ross, *American Labor Violence*, in *THE HISTORY OF VIOLENCE IN AMERICA: HISTORICAL AND COMPARATIVE PERSPECTIVES* 221–301 (Hugh Davis Graham & Ted Robert Gurr eds., 1969).

87. *See generally* LAMBERT, *supra* note 83.

88. *Id.* at 22.

89. *See* P. K. EDWARDS, *STRIKES IN THE UNITED STATES: 1881–1974*, at 41–43 (1981).

90. LINDSEY, *supra* note 81, at 7–8; *see also* COOPER, *supra* note 81, at 45–47; GOLDSTEIN, *supra* note 81, at 41.

91. DAVID BRODY, *WORKERS IN INDUSTRIAL AMERICA* 14–17 (1980); James Holt, *Trade Unionism in the British and U.S. Steel Industries, 1880–1914*, 18 *LAB. HIST.* 5, 16 (1977).

general public and public officials than the established, often indispensable, craftsmen who tended to engage in smaller-scale actions.⁹² Perhaps John Rockefeller was at least partially correct in arguing, after his own embarrassment at Ludlow, that the very size of the new enterprises had destroyed the personal connections that had kept things from getting out of hand in the past.⁹³

Repression was by no means entirely the cause of the defeat of organized labor. In Germany and Britain, workers were able to take advantage of centralized, parliamentary government to organize politically,⁹⁴ and if they were not entirely able to capture the state, they could at least exert sufficient political pressure to prevent the kind of judicial decisions and state actions that so bedeviled their American counterparts.⁹⁵ German guilds, well-established in corporatist preindustrial Germany, were even able to parlay their strong social position into organizing the new factories with ultimately a great deal of success in unionizing heavy industry.⁹⁶ By contrast, the American decentralized federal system was a far more difficult polity to capture, especially since crucial parts of it (the Senate and judiciary) were not structurally democratic. Moreover, labor organizing was undermined from the start by racial, ethnic, and regional differences that tended to be more extreme than elsewhere.⁹⁷ Catholic and Jewish labor leaders found it difficult to cooperate with evangelistic populists who, though they may have shared the complaints of organized labor regarding the growing power of corporations, were as Samuel Gompers himself noted, often employers themselves and not necessarily good ones at that.⁹⁸

Moreover, the kind of labor organizing that survived, typically among the skilled crafts industry that remained an essential part of the American economy, were simply not equipped to deal with what opportunities arose in the new organizations. John Patterson of National Cash Register and Gerard Swope of General Electric, perhaps the two most famous welfare capitalists of the early-twentieth century, both invited

92. *Id.* at 21–23.

93. See John D. Rockefeller, *Labor and Capital—Partners*, ATLANTIC MONTHLY, Jan. 10, 1916, at 12 (“But employers as well as workers are more and more appreciating the human equation, and realizing that mutual respect and fairness produce larger and better results than suspicion and selfishness.”).

94. See Marco Pagano & Paolo F. Volpin, *The Political Economy of Corporate Governance*, 95 AM. ECON. REV. 1005, 1006 (2005).

95. HATTAM, *supra* note 79, at 181; ELIZABETH SANDERS, *ROOTS OF REFORM: FARMERS, WORKERS, AND THE AMERICAN STATE* (1999); Holt, *supra* note 91, at 33.

96. See Keller, *supra* note 46, at 163–64.

97. Holt, *supra* note 91, at 16.

98. HAROLD C. LIVESAY, *SAMUEL GOMPERS AND ORGANIZED LABOR IN AMERICA* (1978); SANDERS, *supra* note 95.

unions to organize their workers, opportunities that the unions themselves squandered.⁹⁹ Perhaps understandably, Gompers, after two decades spent hobnobbing with the corporate elite at the National Civic Federation,¹⁰⁰ gave up on confrontation and was reduced to quixotic pleading for cooperation,¹⁰¹ clinging to memories of the short-lived labor-management detente struck during World War I, a detente driven by the spike in government funding and demands for labor peace.

Corporate triumph over their own workers was not simply a matter of defeating organized labor or even preventing the formation of a mass labor party exerting political pressure to regulate the workplace. Employment-at-will evolved to a near absolute state as a result of court cases instigated, but lost, by the new white collar workers filling occupations that were themselves generated by the new corporate bureaucracies.¹⁰² White collar or blue, by the early years of the twentieth century, corporate management had established their right to treat their employees basically as they wished.

Criticism and suspicion of how the new firms were using this freedom did not simply originate from labor leaders and liberal reformers. The very same judge who was active in the indictment of a number of Pullman¹⁰³ strikers¹⁰⁴ wrote in a national magazine that the new corporate bureaucracies were undermining supposedly “republican” values of independence and entrepreneurship,¹⁰⁵ a charge echoed elsewhere by a

99. BERNSTEIN, *supra* note 84, at 104–05 (discussing Gerard Swope); Daniel Nelson, *The New Factory System and the Unions: The National Cash Register Company Dispute of 1901*, 15 LAB. HIST. 163, 169 (1974) (discussing John Patterson).

100. See DAVID MONTGOMERY, *THE FALL OF THE HOUSE OF LABOR* 262–63 (1987). The National Civic Federation (NCF) was interested in, among other things, “promot[ing] stable contractual relationships between unions and associated groups of employers by means of propaganda as well as direct intervention in industrial disputes.” *Id.* at 263.

101. See Sanford M. Jacoby, *Union-Management Cooperation in the United States: Lessons from the 1920s*, 37 INDUS. & LAB. REL. REV. 18, 21–22 (1983).

102. Jay M. Feinman, *The Development of the Employment at Will Rule*, 20 AM. J. LEGAL HIST. 118, 127 (1976).

103. The Pullman Strike lasted from late-June to mid-July 1894. GERALD G. EGGERT, RICHARD OLNEY: EVOLUTION OF A STATESMAN 147 (1970). It started as a strike against George Pullman’s Palace Car Company that grew into a general strike against “all railroads operating in and around Chicago and on westward to the Pacific.” *Id.* at 133. The strike collapsed after federal intervention, including the use of federal troops and indictments against the workers. *Id.* at 147–48.

104. LINDSEY, *supra* note 81, at 277 (“In his instructions to this [special grand jury] Judge Grosscup smoothed the way for prompt action by leaving virtually no course open but the one demanded by the government.”); see also EGGERT, *supra* note 103, at 133–50. District Judge Grosscup worked closely with government officials in their efforts to end the Pullman Strike. LINDSEY, *supra* note 81, at 276. He granted an injunction against the strikers, *id.* at 161, signed a formal request for the aid of United States troops in responding to the strike, *id.* at 170, and was rumored to owe his judicial position to political contributions by George Pullman, *id.* at 193.

105. Peter S. Grosscup, *How to Save the Corporation*, 24 MCCLURE’S MAG. 443, 443–44 (1905).

number of other establishment figures who were concerned that these radically new forms of business organizations violated the tradition of the independent American.¹⁰⁶ Furthermore, even conservative establishment figures of the time acknowledged the need for some form of union organization to bargain on behalf of employees.¹⁰⁷ Those cautiously supportive of the idea of collective bargaining included Richard Olney,¹⁰⁸ the U.S. Attorney General who called out the Army and prosecuted the Pullman strikers,¹⁰⁹ and two of the nation's most prominent economists, Arthur Hadley, a conservative President of Yale,¹¹⁰ and John Bates Clark,¹¹¹ a pioneer of marginalism, a doctrine often employed to justify the status quo of compensation. Even William Howard Taft, in the same decision that ignored congressional intent in barring application of the Clayton Act to labor unions,¹¹² could acknowledge the following, in an astonishing exercise of cognitive dissonance:

[Unions] were organized out of the necessities of the situation. A single employee was helpless in dealing with an employer. He was dependent ordinarily on his daily wage for the maintenance of himself and family. If the employer refused to pay him the wages that he thought fair, he was nevertheless unable to leave the employ and to resist arbitrary and unfair treatment. Union was essential to give laborers opportunity to deal on equality with their employer. They united to exert influence upon him and to leave him in a body in order by this inconvenience to induce him to make better terms with them. They were withholding their labor of economic value to make him pay what they thought it was worth. The right to combine for such a lawful purpose has in many years not been denied by any court. The

106. See CLARK DAVIS, *COMPANY MEN: WHITE-COLLAR LIFE AND CORPORATE CULTURES IN LOS ANGELES* 132 (2000).

107. See JOHN BATES CLARK, *ESSENTIALS OF ECONOMIC THEORY* 467–69 (1907); EGGERT, *supra* note 103, at 157; ARTHUR TWINING HADLEY, *ECONOMICS* (1896).

108. EGGERT, *supra* note 103, at 157 (“Whatever else may remain for the future to determine, it must now be regarded as substantially settled that the mass of wage-earners can no longer be dealt with by capital as so many isolated units. The time has passed when the individual workman is called upon to pit his feeble single strength against the might of organized capital.” (internal quotations omitted)).

109. *Id.* at 133–50. “From the announcement of the boycott in late June to the collapse of the strike in mid-July, Olney’s primary objective was to crush the strike.” *Id.* at 147.

110. HADLEY, *supra* note 107, at 366–67 (“[T]he substitution of a bargain between united labor and capital, for the independent competition of laborers and capitalists with one another, could hardly prove a gain to the laborer. In a bargain, the capitalist’s superior strength and intelligence must tell against the laborer.”).

111. CLARK, *supra* note 107, at 466 (“When labor makes its bargains with employers without organization on its side, the parties in the transaction are not on equal terms and wages are unduly depressed.”).

112. See *supra* text accompanying note 80.

strike became a lawful instrument in a lawful economic struggle or competition between employer and employees as to the share or division between them of the joint product of labor and capital.¹¹³

With very few exceptions, Swope being the most notable, top management would have none of this union tolerance.¹¹⁴ If anyone was going to look after the interests of employees, it was going to be the new enlightened managers who understood that they would be held responsible for what occurred in their workplaces, not only by workers but also by investors and an educated public quite willing to openly acknowledge the potential for class conflict in mistreating employees.¹¹⁵ The rapaciously and counterproductively shortsighted owner-operators such as George Pullman, whom even Marc Hanna called a “damned idiot” in public for refusing to compromise,¹¹⁶ could not meet the challenge of a disgruntled working class, the pressures of competitive markets, or the skepticism of the public concerning their policies. Much as an occupying army must find a way to run the nation it has overrun, management was under pressure to organize their employees and workplaces in a manner that would not only prove efficient and relatively free of disruptive conflict but also be acceptable to larger society.¹¹⁷

Workers were largely prevented from organizing and striking, but they could not be prevented from doing individual acts of sabotage, slacking off, or simply walking away.¹¹⁸ At the same time, massive rates of turnover were ironically becoming a larger, more expensive problem for corporations, as company-trained semi-skilled workers and job specific knowledge became increasingly important.¹¹⁹ Scholars subsequently conducted a number of studies analyzing these serious social and economic concerns.¹²⁰ Observing the apparent end of the struggle with organized labor in a 1928 Harvard lecture, future NLRB commissioner William Leiserson argued that while corporations had largely solved the “Large L” labor question in an enlightened matter, a number of “small I”

113. *Am. Steel Foundries v. Tri-City Cent. Trades Council*, 257 U.S. 184, 209 (1921).

114. See BERNSTEIN, *supra* note 84, at 20.

115. See generally Richard Marens, *Generous in Victory? American Managerial Autonomy, Labour Relations and the Invention of Corporate Social Responsibility*, 10 SOCIO-ECON. REV. 59 (2012).

116. LINDSEY, *supra* note 81, at 319. Marc Hanna was a successful politician and a president of the National Civic Federation. *Id.* at 318; MONTGOMERY, *supra* note 100, at 280.

117. BRODY, *supra* note 91, at 51, 105–06; DAVIS, *supra* note 106, at 103–04.

118. MONTGOMERY, *supra* note 100, at 204.

119. See BRODY, *supra* note 91, at 53; MONTGOMERY, *supra* note 100, at 242.

120. See, e.g., RONALD W. SCHATZ, *THE ELECTRICAL WORKERS* (1983); SUMNER HUBER SLICHTER, *THE TURNOVER OF FACTORY LABOR* (1919); Paul H. Douglas, *The Problem of Labor Turnover*, 8 AM. ECON. REV. 306 (1918).

labor problems connected with morale and efficiency remained for management to solve.¹²¹ Moreover, as Florence Kelley, the founder of the National Consumers League,¹²² insisted, the important political issue of the quality and safety of the consumables and clothing generated by the new corporate giants was actually intertwined with the issues arising from who actually made or handled them and under what conditions.¹²³

A variety of personnel policies and “welfare plans” were proposed and implemented as solutions to these workplace-related issues.¹²⁴ Efficiently organized workplaces were one solution—optimally, they would be free of the petty and arbitrary tyranny of foremen and would produce enough to cover incentive pay.¹²⁵ Job ladders were reframed as offering opportunities for safe and modern entrepreneurship rather than simply steps that led only deeper into a stifling, inhuman bureaucracy.¹²⁶ Corporate promoter James Dill¹²⁷ even had the temerity to suggest that if the large corporation was destroying opportunities for small business startups, then these would-be entrepreneurs would be well-advised to invest their capital in an increasingly safe stock market.¹²⁸ Welfare programs as a solution were thought to not only please employees and alleviate concerns of the public at large but, if focused on health and nutrition, also produce more efficient workers as well.¹²⁹

As the president of Studebaker Motors put it, it is “the duty of capital and management to compensate labor liberally, paying at least the current wage and probably a little bit more, and give workers healthful surroundings and treat them with the utmost consideration.”¹³⁰ *Forbes Magazine* put the same argument negatively, warning that “[g]iven [employees’] power to help or hinder a firm, the employer who does not do

121. W. M. Leiserson, *Contributions of Personnel Management to Improved Labor Relations*, in WERTHEIM LECTURES ON INDUSTRIAL RELATIONS 1928 (1929).

122. NELSON LICHTENSTEIN, *STATE OF THE UNION: A CENTURY OF AMERICAN LABOR* 10 (2002) (“As the brilliant strategist for the National Consumers League, Kelley was an indefatigable crusader against the twelve-hour day in the steel mills, child labor in textile mills, and starvation wages for women home workers.”).

123. Florence Kelley, *Aims and Principles of the Consumers’ League*, 5 AM. J. SOC. 289, 301 (1899).

124. BRODY, *supra* note 91, at 49–50; DAVIS, *supra* note 106, at 123–25; MONTGOMERY, *supra* note 100, at 242.

125. MILTON J. NADWORN, *SCIENTIFIC MANAGEMENT AND THE UNIONS, 1900–1932* (1955).

126. DAVIS, *supra* note 106, at 125.

127. See ROY, *supra* note 43, at 166.

128. James B. Dill, *Industrials as Investments for Small Capital*, 15 ANNALS AM. ACAD. POL. & SOC. SCI. (SUPPLEMENT 13) 109, 115 (1900).

129. BRODY, *supra* note 91, at 52; DAVIS, *supra* note 106, at 124; MONTGOMERY, *supra* note 100, at 244.

130. B. C. Forbes, *Our Men Build their Souls into Studebaker Cars*, FORBES MAG., Apr. 26, 1924, at 113.

everything in his power to satisfy his men is not only short-si[gh]ted from his point of view but is an enemy of national peace and harmony.”¹³¹

Furthermore, a strong reputation as an employer could help allay public concerns about other aspects of a business. The halo from NCR's¹³² reputation as an employer helped the company win broad public support in its battle against price fixing,¹³³ a tactic of deflection consciously imitated by public relations pioneer Ivy Lee on behalf of the legally troubled International Harvester,¹³⁴ a company considerably less benign in its treatment of employees.¹³⁵ Deliberately or not, Hershey's and Heinz also followed Florence Kelley's advice and used their own corporate welfare programs as evidence of the wholesomeness of their food products.¹³⁶

The issue here, however, is not the sincerity or even the effectiveness of these efforts at workplace reform. Understanding the development of the construct of corporate social responsibility is not dependent on whether U.S. Steel's Elbert Gary, who fought his own board of directors to preserve a subsidized stock purchase plan for his workers,¹³⁷ was genuinely helping his employees who were more interested in higher wages and shorter shifts than in buying stock.¹³⁸

What *is* significant is that during the first quarter of the twentieth century, top management of the new American corporate giants, such as Gary, began to shift their self-presentation from a somewhat defensive stance along the lines of “I am a good employer,” to a more proactive one of trying to be a good citizen, mindful of the interests of a variety of stakeholders and cognizant of the welfare of the society as a whole. Owen Young, General Electric's Chair, Swope's boss, and a friend of Louis Brandeis,¹³⁹ told a Harvard audience:

131. B. C. Forbes, *Fact and Comment*, 2 FORBES 112, 112 (1917).

132. National Cash Register Company. ANDREA TONE, *THE BUSINESS OF BENEVOLENCE: INDUSTRIAL PATERNALISM IN PROGRESSIVE AMERICA* 66 (1997). “[T]he National Cash Register Company became the nation's leading exemplar of welfare work. By 1904 the firm's 3,800 workers could take advantage of numerous benefits . . .” *Id.*

133. JUDITH SEALANDER, *GRAND PLANS: BUSINESS PROGRESSIVISM AND SOCIAL CHANGE IN OHIO'S MIAMI VALLEY, 1890–1920*, at 34–35 (1988).

134. ALAN R. RAUCHER, *PUBLIC RELATIONS AND BUSINESS* 19–20 (1968); TONE, *supra* note 132, at 115. For a chronicling of International Harvester's failings as an employer during this period see ROBERT OZANNE, *A CENTURY OF LABOR-MANAGEMENT RELATIONS AT MCCORMICK AND INTERNATIONAL HARVESTER* (1967).

135. See OZANNE, *supra* note 134, at 38–40; TONE, *supra* note 132, at 207.

136. TONE, *supra* note 132, at 125–26, 134.

137. IDA M. TARBELL, *THE LIFE OF ELBERT H. GARY: A STORY OF STEEL* 164–65 (1925).

138. See BRODY, *supra* note 91, at 59.

139. Louis Brandeis was a Progressive, an attorney, and a representative of eastern shippers during the labor upheaval. MONTGOMERY, *supra* note 100, at 246 (“Brandeis argued that application

We think of managers no longer as the partisan attorneys of either group [capital or labor] against the other. Rather we have come to consider them as trustees of the whole undertaking, whose responsibility is to see to it on the one side that the invested capital is safe and that its return is adequate and continuous; and on the other side that competent and conscientious men are found to do the work and that their job is safe and their earnings are adequate and continuous.¹⁴⁰

The liberal Gerard Swope, who had once tutored at Hull House and whose wife was a close friend of Florence Kelley's, explicitly put the public interest and his employees ahead of the interest of stockholders,¹⁴¹ but even the reactionary Liberty Leaguer Alfred Sloan acknowledged in his memoirs that "[t]hose charged with great industrial responsibility must become industrial statesmen."¹⁴²

Before the Depression changed everything, corporate leaders, fully aware of the extraordinary autonomy they enjoyed with regard to how they ran "their" companies, did their best to present themselves as fully worthy of the public's trust, although even sympathetic observers were not necessarily convinced that what they heard was necessarily more than public relations or self-congratulations.¹⁴³ Writing in his own magazine, B. C. Forbes noted with some frustration that conditions in a large number of businesses still "tend to breed socialists, communists, and other unwholesome agitators,"¹⁴⁴ while the Dean of Harvard Business School complained that "[w]ords about service too often are a smug cover for the desire to be left alone."¹⁴⁵

Nonetheless, there appears to have been a realization that there were limits to how poorly employees could be treated, and no doubt some executives genuinely wished to share the company's successes with their workers and look after their welfare, though, with very few exceptions, always on their own terms and virtually never voluntarily limiting their own autonomy by recognizing unions or tolerating intrusive regulation.¹⁴⁶ At the same time, business leaders needed to convince a skeptical public across classes of the new form of business organization

of scientific management would allow the railroads to raise wages without raising freight rates: It would save them a million dollars a day." (internal quotation marks omitted)).

140. Owen D. Young, *Dedication Address*, HARV. BUS. REV., Oct. 1927, at 392.

141. MORRELL HEALD, *THE SOCIAL RESPONSIBILITIES OF BUSINESS: COMPANY AND COMMUNITY, 1900-1960* (1970).

142. ALFRED P. SLOAN, JR., *ADVENTURES OF A WHITE COLLAR MAN* 145 (1941).

143. See MONTGOMERY, *supra* note 100, at 348.

144. HEALD, *supra* note 141, at 107.

145. Wallace B. Donham, *The Emerging Profession of Business*, HARV. BUS. REV., July 1927, at 401, 404.

146. See BRODY, *supra* note 91, at 57.

that it was not undermining the American value of independence, itself a reaction to old world dependencies. Before this public relations offensive had time to build much momentum, the Depression arrived, diminishing the significance of the public musings of corporate executives with regard to their own voluntarily assumed responsibilities.

IV. CORPORATE SOCIAL RESPONSIBILITY UNDER MATURE HEGEMONY

During the two decades of turmoil that began with the stock market crash and ended with such stabilizing institutions as the establishment of NATO¹⁴⁷ and the “Treaty of Detroit,”¹⁴⁸ corporate leaders’ self-definition of their responsibilities were eclipsed by both a federal government that regulated and spent to an unprecedented degree and a resurgent labor movement that finally posed a genuine threat to the autonomy of corporate management. As a new social equilibrium was reached, questions of corporate social responsibilities resumed, but the focus shifted to some degree away from what responsibilities executives were willing to assume to what society at large had the right to expect.

This stance kept with the transitory pluralism of the post-war generation.¹⁴⁹ As Mizruchi and Hirschman themselves point out,¹⁵⁰ after the Depression, much of the corporate world acknowledged the need for a degree of fiscal management by government,¹⁵¹ appreciated the new higher levels of government expenditures on infrastructure and defense,¹⁵² and even to a degree, accepted unionization or at least understood the need to match union gains elsewhere.¹⁵³ While corporate executives continued to offer their proverbial “two cents” on the issue of corporate responsibilities—Standard Oil Chair Frank Abrams’s *Harvard Business Review* piece on the topic¹⁵⁴ was widely noted at the time¹⁵⁵—

147. North Atlantic Treaty Organization, which was created on April 4, 1949 by the North Atlantic Treaty. *A Short History of NATO*, NATO, <http://www.nato.int/history/index.html> (last visited Apr. 7, 2012).

148. LICHTENSTEIN, *supra* note 122, at 123 (“The five-year UAW-GM contract of May 1950 guaranteed pensions, health insurance, the union shop, and a 20 percent increase in the standard of living of those auto workers who labored under its provisions.”).

149. *Id.* at 148–49.

150. Mizruchi & Hirschman, *supra* note 1, at 1086.

151. See ROBERT M. COLLINS, *THE BUSINESS RESPONSE TO KEYNES* 54–55 (1981).

152. See PAUL A. C. KOISTINEN, *ARSENAL OF WORLD WAR II: THE POLITICAL ECONOMY OF AMERICAN WARFARE 1940–1945*, at 5–6 (2004).

153. See LICHTENSTEIN, *supra* note 122, at 122–25.

154. Frank W. Abrams, *Management’s Responsibilities in a Complex World*, *HARV. BUS. REV.*, May 1951, at 29.

155. WILLIAM C. FREDERICK, *CORPORATION, BE GOOD! THE STORY OF CORPORATE SOCIAL RESPONSIBILITY* 7 (2006).

the setting for this discourse became increasingly academic, driven to a degree by the explosive growth in business schools after World War II.¹⁵⁶

The new unionization, and its relationship with corporate management, actually played a central role in post-war formulation of corporate responsibility. While other issues were incorporated, the relationship of the corporation to its employees never budged from the center of discussions of corporate responsibilities, beginning with Depression-era exchanges between Berle and Dodd that put the issue on the academic map.¹⁵⁷ These two law professors disagreed over many issues, but the authors were in general agreement with regard to the centrality of the treatment of employees. According to Dodd: “There is a widespread and growing feeling that industry owes to its employees, not merely the negative duties of refraining from overworking or injuring them, but the affirmative duty of providing them so far as possible with economic security.”¹⁵⁸ Berle and Means essentially echoed Dodd’s sentiments in their short list of social obligations that a court would and should uphold against shareholder opposition, giving priority to employee interests: “fair wages, security to employees, reasonable service to their public, and stabilization of business.”¹⁵⁹

For the new academic cohort of corporate social responsibility formulators, the onus for protecting society’s interests would be dependent less on the goodwill or enlightened self-interest of management and more on the countervailing power of the new industrial unions, whose success in carrying out this mission would not only boost the welfare of their immediate members but also assist business.¹⁶⁰ On the macro level, widespread collective bargaining would lead to rent sharing and prevent the kind of under-consumption that many felt had bedeviled the Ameri-

156. See RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION 233–35 (2007).

157. See, e.g., E. Merrick Dodd, Jr., *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1147–48 (1932) (“The present writer is thoroughly in sympathy with Mr. Berle’s efforts to establish a legal control which will more effectually prevent corporate managers from diverting profit into their own pockets from those of shareholders, and agrees with many of the specific rules the latter deduces from his trusteeship principle. He nevertheless believes that it is undesirable, even with the laudable purpose of giving stockholders much-needed protection against self-seeking managers, to give increased emphasis at the present time to the view that business corporations exist for the sole purpose of making profits for their shareholders.”).

158. *Id.* at 1151.

159. ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 312 (Harcourt, Brace & World, Inc. rev. ed. 1968) (1932).

160. See JOHN KENNETH GALBRAITH, AMERICAN CAPITALISM: THE CONCEPT OF COUNTERVAILING POWER 113–17 (rev. ed. 1956).

can economy before and during the Depression,¹⁶¹ and on the micro level, union recognition would allow labor to cooperate with management for the sake of shared efficiency gains and financial success.¹⁶²

The central place of labor-management cooperation in the development of post-war concepts of corporate responsibility was exemplified by the first book-length discussion of the topic, Howard Bowen's *Social Responsibility of the Businessman*.¹⁶³ The worldly Bowen, an economist who had worked for Congress and had become a university administrator,¹⁶⁴ acknowledged that "[t]he idea that there should be broader participation in business decisions—that businessmen should share their powers with other groups—has frequently been expressed over the past fifty years."¹⁶⁵ In support of this claim, Bowen cited (among others) John Maynard Keynes, Peter Drucker, James Lincoln, Ordway Tead, Morris Cooke, J. M. Clark and Sumner Slichter, Neil Chamberlain, and a "steelworkers' trilogy" of union officials: Philip Murray, Clinton Golden, and Harold Ruttenberg.¹⁶⁶ Keynes, Drucker, and Lincoln are well-known for advocating, respectively, government demand management,¹⁶⁷ "corporatist" corporate relationships,¹⁶⁸ and gainsharing.¹⁶⁹ Cooke and Tead were pro-labor Taylorists¹⁷⁰ who had discovered through consulting that unions tended to be more interested in improving workplace practices than a large segment of the managers they had dealt with.¹⁷¹ Tead co-

161. See Michael A. Bernstein, *Why the Great Depression was Great: Toward a New Understanding of the Interwar Economic Crisis in the United States*, in *THE RISE AND FALL OF THE NEW DEAL ORDER, 1930–1980*, at 32, 34–36 (Steve Fraser & Gary Gerstle eds., 1989).

162. See GALBRAITH, *supra* note 160, at 115–16.

163. HOWARD R. BOWEN, *SOCIAL RESPONSIBILITIES OF THE BUSINESSMAN* (1953).

164. See Winton U. Solberg & Robert W. Tomilson, *Academic McCarthyism and Keynesian Economics: The Bowen Controversy at University of Illinois*, 29 *HIST. POL. ECON.* 55–59 (1997).

165. *Id.* at 177.

166. *Id.* at 177 n.2.

167. COLLINS, *supra* note 151, at 9 (discussing the policy advanced in JOHN MAYNARD KEYNES, *THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY* (1936)).

168. Stephen P. Waring, *Peter Drucker, MBO, and the Corporatist Critique of Scientific Management*, in *A MENTAL REVOLUTION: SCIENTIFIC MANAGEMENT SINCE TAYLOR* 205, 208 (Daniel Nelson ed., 1992) ("In 1939 [Drucker] expressed admiration for three corporatist thinkers of the Restoration era, . . . admir[ing] their 'Christian' conception of 'authority,' which stressed the 'duties' of property ownership, not merely its 'privileges,' and which called for responsible exercise of power in the interest of 'its subjects.'" (quoting PETER F. DRUCKER, *THE END OF THE ECONOMIC MAN: THE ORIGINS OF TOTALITARIANISM* 106–07 (New York 1969) (1939))).

169. Rosabeth Moss Kanter, *The Changing Basis for Pay*, 26 *SOC'Y* 54, 56 (1989) (Lincoln Electric's plan is particularly generous and well known. The world's largest manufacturer of arc-welding products, Lincoln shares with its two-thousand-plus workers the gains from a level of profitability above the top quartile for Fortune 500 companies. Lincoln has the oldest documented gain-sharing plans, touted in a 1951 self-published book, *Incentive Management*, by then-chief executive James Lincoln.").

170. Jacoby, *supra* note 101, at 19.

171. See *id.* at 19; NADWORNY, *supra* note 125, at 108–10.

authored a Depression-era personnel textbook that quoted John Stuart Mills approvingly on the need for worker self-protection,¹⁷² and would publish, as an editor at Harper Brothers, many of the corporate social responsibility books of the fifties and sixties.¹⁷³ Cooke was a theorist of labor-management cooperation who gained the confidence of Sidney Hillman,¹⁷⁴ who as president of the Textile Workers Union, put many of his ideas into practice between the wars, albeit at smaller firms than the corporate giants that dominated the American economy.¹⁷⁵ Cooke was later involved with the steelworker officials, even “co-writing” a book on labor management with United Steelworkers’ President Murray.¹⁷⁶ Golden, who was labeled by the *Saturday Evening Post* “labor’s ambassador to business,”¹⁷⁷ was a patron of Joseph Scanlon whose own gainsharing plan became an inspiration for Douglas McGregor’s Theory Y.¹⁷⁸ Golden and Ruttenberg wrote their own well-received book on labor-management cooperation,¹⁷⁹ which Ruttenberg used as a career springboard, making him possibly the only union staffer in American history to eventually become a corporate vice-president.¹⁸⁰ Clark and Slichter were successful mainstream economists, both one-time presidents of the AEA.¹⁸¹ Clark shared his father’s (John Bates Clark) appreciation of the economic role of labor unions, even writing that “[h]igh wages are good for business; probably higher wages than business as a whole would pay

172. ORDWAY TEAD & HENRY C. METCALF, PERSONNEL ADMINISTRATION 444 (1933) (“[W]e draw again upon the astute comments of John Stuart Mill in the previously quoted essay when he says: ‘Human beings are only secure from evil at the hands of others, in proportion as they have the power of being, and are, self-protecting; and they only achieve a high degree of success . . . in proportion as they are self-dependant, relying on what they themselves can do, either separately or in concert, rather than on what others can do for them.’”).

173. See, e.g., ORDWAY TEAD, ADMINISTRATION: ITS PURPOSE AND PERFORMANCE (1959); ORDWAY TEAD, THE ART OF ADMINISTRATION (1951).

174. STEVEN FRASER, LABOR WILL RULE: SIDNEY HILLMAN AND THE RISE OF AMERICAN LABOR 131–32 (1991).

175. *Id.* at 377–87.

176. KENNETH E. TROMBLEY, LIFE AND TIMES OF A HAPPY LIBERAL: A BIOGRAPHY OF MORRIS LLEWELLYN COOKE 182 (1954) (describing the inception of MORRIS LLEWELLYN COOKE & PHILLIP MURRAY, ORGANIZED LABOR AND PRODUCTION (1940)).

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

178. DOUGLAS MCGREGOR, THE HUMAN SIDE OF ENTERPRISE 110–13 (1960). “The central principle which derives from Theory Y is that of integration: the creation of conditions such that the members of the organization can achieve their own goals *best* by directing their efforts toward the success of the enterprise.” *Id.* at 49.

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

180. See BROOKS, *supra* note 177, at 225.

181. American Economic Association. John M. Clark served as president in 1935, and Sumner Slichter served in 1941. *Past Officers*, AM. ECON. ASS’N, http://www.aeaweb.org/honors_awards/officerspast.php (last visited Apr. 11, 2012).

without some pressure of the sort unions exert. Therefore unions have almost certainly been good for business.”¹⁸² Slichter, while often critical of unions in his work, acknowledged their positive roles in enhancing intrafirm communications and providing justice for the rank-and-file.¹⁸³

Neil Chamberlain, a young industrial relations academic, provided the transition from the relatively narrow academic study of unions to broader concerns over the optimum relationship between the corporation and the larger society in his post-war book *The Union Challenge to Management Control*.¹⁸⁴ There, he stated that the labor-management relationship 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.”¹⁸⁵

Not surprisingly then, the academics who pursued the topic were trained in either industrial relations¹⁸⁶ or macroeconomics.¹⁸⁷ Selekman, the figure from this post-war cohort of scholars who wrote most extensively on the subject of business ethics and responsibilities, actually began his research career working with social reformer Mary Van Kleeck, writing a critical study of Colorado Fuel’s representation plan established in the aftermath of the Ludlow disaster.¹⁸⁸

The content of this literature varied, but it ultimately converged on the point that what the United States required was an institutional balance between various organized interest groups—businesses, unions, schools, churches, agriculture—refereed by an overseeing but light-of-touch government on behalf of the general public whose independence ought to be respected by all participants. This arrangement would not only ensure continued and broad-based prosperity but would also provide the American answer to communism and social democracy’s challenge to American hegemony. Bowen, who understood something about exploiting the fear of communism from having once been red-baited out of

182. JOHN MAURICE CLARK, *ALTERNATIVE TO SERFDOM* 87 (1948).

183. SUMNER H. SLICHTER, *THE CHALLENGE OF INDUSTRIAL RELATIONS: TRADE UNIONS, MANAGEMENT, AND THE PUBLIC INTEREST* 170–71 (1947).

184. NEIL W. CHAMBERLAIN, *THE UNION CHALLENGE TO MANAGEMENT CONTROL* (1948).

185. *Id.* at 8.

186. *See, e.g.*, BUSINESS AND PUBLIC POLICY (John T. Dunlop ed., 1980); JAMES W. KUHN & IVAR BERG, *VALUES IN A BUSINESS SOCIETY* (1968); BEN M. SELEKMAN & MARY VAN KLEECK, *EMPLOYEES’ REPRESENTATION IN COAL MINES* (1924).

187. *See, e.g.*, BOWEN, *supra* note 163; GALBRAITH, *supra* note 160; SEYMOUR MELMAN, *DECISION-MAKING AND PRODUCTIVITY* (1958); Ernest Dale, *Management Must be Made Accountable*, *HARV. BUS. REV.*, Mar.–Apr. 1960, at 49; Carl Kaysen, *The Social Significance of the Modern Corporation*, 47 *AM. ECON. REV. (PAPERS & PROC. SIXTY-EIGHTH ANN. MEETING AM. ECON. ASS’N)* 311 (1957).

188. SELEKMAN & VAN KLEECK, *supra* note 186.

a dean's position for his Keynesian views,¹⁸⁹ expressed the common sentiment in his book 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."¹⁹⁰ Selekman was even more explicit, noting 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.'"¹⁹¹ Even Selekman's Harvard Business School colleague Theodore Levitt, a critic of imposing social responsibilities upon management, conceded that "[f]ew people will man the barricades against capitalism if it is a good provider, minds its own business, and supports government in the things which are properly government's."¹⁹²

This was a worldly group, with backgrounds beyond economics, including government, nonprofits, and administration, and they generally expressed contempt for either the pretensions of a self-regulating *laissez-faire*, or a dependence on the enlightened wisdom of an autonomous managerial stratum. Selekman, perhaps benefitting from his experience with Rockefeller's efforts after Ludlow, found such dependency absurd, observing 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."¹⁹³ Kaysen expressed these sentiments even more strongly:

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.¹⁹⁴

Finally, Dale, as a European refugee who understood the dangers of tyranny, warned:

189. Solberg & Tomilson, *supra* note 164, at 55.

190. BOWEN, *supra* note 163, at 4–5.

191. Benjamin M. Selekman, *Is Management Creating a Class Society?*, HARV. BUS. REV., Jan.–Feb. 1958, at 37.

192. Theodore Levitt, *The Dangers of Social Responsibility*, HARV. BUS. REV., Sept.–Oct. 1958, at 49, 50.

193. Selekman, *supra* note 191, at 39.

194. Kaysen, *supra* note 187, at 39.

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.¹⁹⁵

What might seem most remarkable to contemporary eyes is not so much what these individuals wrote but how they were received. While not uncritically accepted,¹⁹⁶ this perspective, which would be labeled today as “ultra-liberal,” earned a polite and sometimes enthusiastic reception among the corporate elite. Bowen’s book—in which he made such assertions as: “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”;¹⁹⁷ “the distribution of property and power [was] diffused widely”¹⁹⁸ by limiting large incomes “to what is justified by . . . need, incentive, and capital formation”;¹⁹⁹ and “[p]rices, wages, and profits should be determined with considerations of justice paramount”²⁰⁰—earned a much more positive review from a corporate executive in the pages of *Management Review* than it did from the left-leaning *The Nation*.²⁰¹ For the post-war generation of executives who had experienced first-hand the traumas of the previous generation, surrendering a degree of autonomy in return for labor peace, a stable and prosperous economy, the security of government appropriations, and protection from a serious

195. Dale, *supra* note 187, at 54, 55.

196. See Levitt, *supra* note 192, at 41 (“Contrary to what some uncharitable critics say, this preoccupation is not an attitudinizing pose. Self-conscious dedication to social responsibility may have started as a purely defensive maneuver against strident attacks on big corporations and on the moral efficacy of the profit system. But defense alone no longer explains the motive.”).

197. BOWEN, *supra* note 163, at 13.

198. *Id.* at 41.

199. *Id.*

200. *Id.*

201. Compare H. A. Bullis, 42 MGMT. REV. 554 (1953) (book review) (“This reviewer can highly recommend *Social Responsibilities of the Businessman* to everyone who is giving thought to the social unrest which is so evident everywhere. It will be a great help in developing sound basic philosophy in business.”), with *Business vs. Ethics*, THE NATION, 1953, at 529 (book review) (“Though Professor Bowen believes that business ethics have substantially improved in the last half-century, the most sympathetic reader can derive from him no clear statement of what those ethics are Perhaps the author’s most useful service is in letting us see how confused the whole subject is. It might be well if the series stopped here without rubbing this condition in, in three additional volumes.”).

antibusiness threat from abroad did not necessarily seem like an unreasonable deal. This entente, however, was about to run its course.

V. THE DECLINE OF AMERICAN HEGEMONY AND THE END OF CORPORATE RESPONSIBILITY

As Mizruchi and Hirschman themselves chronicle,²⁰² along with a number of other commentators,²⁰³ the 1970s and early 1980s were a disaster for established American manufacturing for a number of reasons: inflation followed by high interest rates and a strong dollar, a productivity slowdown, and increased competition, both domestic and international, often by companies with lower labor costs.²⁰⁴ Furthermore, raiders and shareholder activists, breaking with the long-time toleration of “separation of ownership and control” when it generally served the shared class interests of investors,²⁰⁵ were increasingly dissatisfied with the arrangement in an age of increasingly uncompetitive firms and high-paying alternative investments in the bond market. Justified by finance academics, they began to exert their well-documented pressure on management, which led to the historic compromise of stock option compensation.

Historically and legally, agency theory was not an accurate account of how corporations were expected to be run. Incorporation in general, and limited liability specifically, were never sold to the voting public as intended exclusively for the benefit of investors.²⁰⁶ Nor had courts ever imposed such a single-minded duty on the managers of publicly traded firms.²⁰⁷ But it was an idea whose time had arrived, a time when the United States could no longer count on industrial hegemony to generate a broadly shared prosperity that could more or less satisfy a variety of stakeholders. Jensen, the most famous of the agency theorists, was quite candid at the disruption that would result from imposing shareholder primacy, noting that it would generate a “crisis atmosphere [where] man-

202. Mizruchi & Hirschman, *supra* note 1, at 1096–97.

203. See, e.g., BRENNER, *supra* note 62; POLLIN, *supra* note 62.

204. BRENNER, *supra* note 62, at 16–24; see POLLIN, *supra* note 62, at 195.

205. PAUL M. SWEEZY, *THE PRESENT AS HISTORY* 195–96 (1953).

206. See, e.g., EDWIN MERRICK DODD, *AMERICAN BUSINESS CORPORATIONS UNTIL 1860*, at 12 (1954) (“Business corporations, whose function is to carry on business for profit, inevitably breed more litigation than incorporated churches, colleges, or orphanages”); ROY, *supra* note 43, at 54–55 (“Rather than being an extension of government power to perform tasks on behalf of the public, [the corporation] became a legal individual, legitimized by its alleged ability to maximize utility in the market.”); *Art. VI.—Corporations*, 4 AM. JURIST & L. MAG. 298, 298 (1830) (“The objects in the creation of corporations, were to perpetuate succession, . . . and to enable numerous bodies of men, acting under a charter, as municipal, pecuniary, or other associations, to negotiate as an individual.”).

207. 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, 275–76 (1999).

agers [were] require[d] to slash unsound investment programs, shrink overhead, and dispose of assets.”²⁰⁸ Nor did he pretend that once the smoke cleared the entire society would benefit, and actually promoted a situation in which “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.”²⁰⁹ What Jensen was suggesting then was that it was high time for investors to look out exclusively for their own interests and reward only those executives who would serve these.

The shareholder revolution, however, was only the tip of the iceberg. In a situation where the future appeared so uncertain, and academic theory emerged to argue that the stock market was the most reliable guide to understanding it, cost-cutting to please Wall Street and maximizing one's income in the process was easy for top management to rationalize as economically sound as well as self-aggrandizing. It did not take much to convince top management to organize against union political initiatives because unions were blamed, and with some reason, for contributing to inflation and blocking reforms meant to increase workplace efficiency.²¹⁰ But even after suffering defeat after defeat, many unions offered a new cooperative relationship, much as they had during the 1920s rollbacks,²¹¹ but these were generally rejected or repudiated.²¹² Moreover, the decline in the power and membership of organized labor was accompanied by a rolling wave of outsourcing and downsizing, starting with line workers and middle management,²¹³ and extending to white collar and even professional work.²¹⁴ Even when freed of union power, management tried to free itself from dependency on individual American workers who were not only expensive by world standards, but were also, as one management consultant remarked to this author, “walk-

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

209. Michael C. Jensen & Perry Fagan, *Capitalism Isn't Broken*, WALL STREET J., Mar. 29, 1996, at A10.

210. See D. Quinn Mills, *Flawed Victory in Labor Law Reform*, HARV. BUS. REV., May–June 1979, at 92, 100.

211. Jacoby, *supra* note 101, at 18.

212. See, e.g., Thomas A. Kochan, *Rebuilding the Social Contract at Work, Lessons from Leading Cases 51* (Inst. for Work & Emp't Research, Task Force Working Paper No. WP09, 1999), available at <http://www.dol.gov/oasam/programs/history/herman/reports/futurework/conference/contract/contract.pdf> (“Concern over political backlash from the rank and file or potential rivals to current officers makes union leaders reluctant to appear to have a cooperative or cozy relationship with the company. The same view prevails among some company executives.”).

213. See SMITH, *supra* note 26, at 1–2.

214. See HIRA & HIRA, *supra* note 63, at 2–3.

ing lawsuits,” as the rights of individual employees had expanded in the wake of the civil rights movement.

Meanwhile, following this pattern of reducing costs while increasing revenues, government was reshaped to accomplish these ends, especially at the federal level. An often-told story of executive mobilization sparked by the “Powell letter” of 1971 to the Chamber of Commerce,²¹⁵ and organized by such business leaders as Donald Kendall,²¹⁶ proved quite effective. Whatever resistance the Democratic Party and the liberal wing of the Republicans might have offered were largely quashed by the election of 1980 and the rethinking of the Democratic Caucus under Tony Coelho’s leadership.²¹⁷ From then on, regardless of the specific outcome of elections, taxes would be kept low or even rolled-back—primarily those that affected businesses and upper-bracket incomes—“expensive” regulation would be reduced or avoided, especially in the financial sector, and subsidies to corporations through the Department of Defense and various health-related programs (Medicare, Medicaid, and National Institute of Health) would actually increase. States, competing with one another for increasingly scarce well-paying jobs and with politicians for the inducements of money instead of their federal counterparts, generally followed suit by limiting or reducing taxes while also introducing and strengthening a plethora of economic development programs and tax benefits that were rarely audited for effectiveness.²¹⁸

Ideology was fashioned to justify these shifts. Money was spent on a variety of think tanks and university centers,²¹⁹ exemplified by the once mildly Keynesian Committee for Economic Development turning sharply against regulation.²²⁰ One CEO warned universities in the pages of the

215. In 1971, shortly before he was appointed to the Supreme Court by President Nixon, Lewis F. Powell wrote a “confidential memorandum” to the chairman of the U.S. Chamber of Commerce. Nancy Blodgett, *The Ralph Naders of the Right*, 70 A.B.A. J. 71, 74 (1984). In it he “wrote, ‘Business and the enterprise system are in deep trouble. It’s time for American business . . . to apply their great talents vigorously to the preservation of the system itself The judiciary may be the most important instrument for social, economic and political change.’” *Id.*

216. CEO of Pepsico and chair of the Business Roundtable, an influential business policy organization. CLAWSON ET AL., *supra* note 7, at 149, 151.

217. *Id.* at 155. Tony Coelho was a successful fundraiser and the chair of the Democratic Congressional Campaign Committee. *Id.*

218. GREG LEROY, *THE GREAT AMERICAN JOBS-SCAM: CORPORATE TAX DODGING AND THE MYTH OF JOB CREATION* 70–74 (2005).

219. Val Burrell, *Elite Policy-Planning Networks in the United States*, 4 RES. POL. & SOC’Y 111, 113 (1992).

220. RESEARCH & POLICY COMM., COMM. FOR ECON. DEV., *REDEFINING GOVERNMENT’S ROLE IN THE MARKET SYSTEM* 14 (1979) (“Overregulation has seriously eroded the effectiveness of some markets and created enormous costs in terms of higher prices and premature changes in capital equipment that have not usually led to technological progress This Committee believes that the country would be well served by freeing markets from ill-designed government constraints.”); L. H.

Harvard Business Review that from now on it would be “Corporate Support of Education: Some Strings Attached,”²²¹ with the author finding that even Galbraith, the most famous of the corporate pluralists, who had been attacked at one time by Sweezy for his failure to grasp the class conflict,²²² was too far left to be taught without “balance” in the curriculum.²²³ Money, however, was not always necessary to induce the proper intellectual ammunition. Not long after the Red Scare, Selekman could still publish with his wife a book titled *Power and Morality in a Business Society*²²⁴ with little controversy.²²⁵ By the seventies, two highly respected economists could write with bold-face audacity that power was not even an issue within the modern corporations because 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”²²⁶ and, in doing so, produce one of the most cited economic articles of the era.

In a similar Orwellian reversal of reality, the construct of corporate social responsibility survived and even thrived, but in a form that was little more than an empty slogan. Discussions of corporate responsibilities continued through the sixties and seventies, though tellingly, Bowen had already given up hope a generation after his seminal book was published.²²⁷ The second cohort of academics who participated in this discourse—like Davis, Epstein, Frederick, Mahan, Post, and Preston²²⁸—lacked the stature or knowledge of their Ivy League predecessors and were always regarded by some of their business school colleagues as being “anti-business.” In the eighties, the discussion of corporate responsi-

Clark, *Rehabilitation Project: Once-Mighty CED Panel of Executives Seeks a Revival*, WALL STREET J., Dec. 17, 1976, at 38.

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

222. Paul M. Sweezy, *Galbraith's Utopia*, N.Y. REV. BOOKS, Nov. 15, 1973, at 3 (book review).

223. See Malott, *supra* note 221, at 135.

224. SELEKMAN & VAN KLEEK, *supra* note 186.

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

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

227. Howard R. Bowen, *Social Responsibility of the Businessman—Twenty Years Later*, in RATIONALITY, LEGITIMACY, RESPONSIBILITY: SEARCH FOR NEW DIRECTIONS IN BUSINESS AND SOCIETY 116, 128–29 (Edward M. Epstein & Dow Votaw eds., 1978).

228. See, e.g., DAVIS, *supra* note 106; FREDERICK, *supra* note 155; JAMES E. POST, LEE E. PRESTON & SYBILLE SACHS, *REDEFINING THE CORPORATION* (2002); RATIONALITY, LEGITIMACY, RESPONSIBILITY: SEARCH FOR NEW DIRECTIONS IN BUSINESS AND SOCIETY, *supra* note 227.

bilities was revived as the new subfield of business ethics established a place for itself in business schools as a kind of chaplaincy.²²⁹

The new field deliberately established itself as an alternative to the shareholder-primacy view by arguing that managements should use their legal and organizational discretion not to ignore shareholders but rather to also consider the interests of other “stakeholders” (the near-pun was deliberate),²³⁰ honor implicit “social contracts,”²³¹ or practice personal virtues.²³² Explicitly reproducing the advice offered by Kant, Locke, and Aristotle to elite rulers—Frederick the Great, the English landed gentry, and the voting citizens of Athens, respectively—the new version of corporate social responsibility was in many respects a throwback to the “wise executive” version of the 1920s. But this throwback was even vaguer, paying less attention to the realities of American employees, though the victims of sweat shops in distant barbarous lands did receive an occasional mention.²³³ Tellingly, John Rawls is the most frequently cited contemporary philosopher within this literature, though it is largely for his “veil of ignorance.”²³⁴ His “difference principle”²³⁵ from the same work is virtually never mentioned, although its contemporary relevance to an ethical examination of income inequality would seemingly be beyond question. An indication of the innocuousness of the new literature is that even Michael Jensen, as strong an advocate for shareholder primacy as one could find, embraced a version of stakeholder management.²³⁶

Relying on “nonconsequentialist” ethics, the new generation of scholars rarely looked at the empirical record and generally avoided naming actual firms. And when they did, unless it was Enron, Wal-Mart, or another company on a very short list of acceptable villains, it was to praise them. As a result, Shell Oil was noted for its commitment to

229. See Earl F. Cheit, *Coming of Middle Age in Business and Society*, 33 CAL. MGMT. REV. 71, 72 (1991).

230. R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH*, at vi (1984).

231. THOMAS DONALDSON, *CORPORATIONS AND MORALITY* 36 (1982).

232. Robert C. Solomon, *Corporate Roles, Personal Virtues: An Aristotelian Approach to Business Ethics*, 2 BUS. ETHICS Q. 317, 312 (1992).

233. See, e.g., Dennis G. Arnold & Norman E. Bowie, *Respect for Workers in Global Supply Chains: Advancing the Debate over Sweatshops*, 17 BUS. ETHICS Q. 135 (2007).

234. JOHN RAWLS, *A THEORY OF JUSTICE* 17 (rev. ed. 1999) (“One excludes the knowledge of those contingencies which sets men at odds [social position, wealth, natural abilities,] and allows them to be guided by their prejudices. In this manner the veil of ignorance is arrived at in a natural way.”).

235. *Id.* at 65–66 (“[T]he difference principle is a strongly egalitarian conception in the sense that unless there is a distribution that makes both persons better off . . . an equal distribution is to be preferred.”).

236. Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 14 J. APPLIED CORP. FIN. 8, 9 (2001).

stakeholder management,²³⁷ despite deceiving investors regarding reserves, purchasing weapons for Nigerian police, or attempting to conceal the impact of MTBE.²³⁸ Before the Deepwater Horizon oil spill disaster,²³⁹ BP was praised for its environment responsiveness.²⁴⁰ Also, Microsoft was invited to speak to a Society of Business Ethics Conference shortly before it announced that despite fifty-six billion dollars in cash and a near monopoly in its core product markets, it was planning to cut employee benefits.²⁴¹ Overall, the literature of the field has been consistently too polite to discuss declining wages, the buying of politicians, the military or prison industrial complex, state-level subsidies, union busting, and the undermining of regulation.

VI. CONCLUSION: END OF AN ERA AND A PARADOX SOLVED

The “rentierization”²⁴² of the American economy continued apace over the last generation. Between the early 1970s and the early 2000s, the “FIRE” sector (finance, insurance, and real estate) of the economy nearly doubled its share of corporate profits from just over 20% to around 40%, although it counted for only a tenth of total employment, and that was before the housing bubble inflated.²⁴³ Furthermore, the profitability of nonfinancial corporations increasingly depends on the performance of these companies’ own portfolio of financial investments.²⁴⁴ Meanwhile, subsidies in the form of military procurement or state-level development incentives have proceeded largely unabated, even increased, as a share of federal and state budgets.²⁴⁵ The taxes of greatest interest to rentiers—taxes on the top income bracket, capital gains, and corporate profits—have been under continuous downward pressure, and

237. POST, PRESTON & SACHS, *supra* note 228, at 162–63.

238. Richard Marens, *What is to be Done? Theory, Research, and Reforming American Capitalism in the Twenty-First Century*, 16 BUS. ETHICS Q., 599, 610 (2006).

239. On the evening of April 20, 2010, a gas release and subsequent explosion occurred on the Deepwater Horizon oil rig working on the Macondo exploration well for BP in the Gulf of Mexico. *Deepwater Horizon Accident*, BP, <http://www.bp.com/sectiongenericarticle800.do?categoryId=9036575&contentId=7067541> (last visited Apr. 12, 2012).

240. Linda S. Munilla & Morgan P. Miles, *The Corporate Social Responsibility Continuum as a Component of Stakeholder Theory*, 110 BUS. & SOC’Y REV. 371, 379 (2005).

241. Kim Peterson, *Microsoft Workers Vent Over Cuts in Benefits*, SEATTLE TIMES, May 26, 2004, at C1, available at http://seattletimes.nwsourc.com/html/business/technology/2001938654_microsoft26.html.

242. David Ricardo, who was himself both a stockbroker and a loan broker, was the first to argue that owners of assets will eventually capture the lion’s share of economic growth in DAVID RICARDO, *PRINCIPLES OF POLITICAL ECONOMY AND TAXATION* (Dutton Press 1969) (1817).

243. Greta R. Krippner, *The Financialization of the American Economy*, 3 SOCIO-ECON. REV. 173, 178–79 (2005).

244. *Id.* at 184–86.

245. LEROY, *supra* note 218, at 168–73.

regulations and liability regarding financial transactions were relaxed by Congress and the Supreme Court in the 1990s, while enforcement agencies were undermined by funding cuts and political appointments.²⁴⁶ Corporate pensions have been manipulated—and even looted—not only to enhance firm profitability and thus raise the value of executive stock options but also to directly subsidize executive pensions.²⁴⁷ Periodic campaigns to privatize social security or reduce benefits should be viewed as the ultimate effort of the rentier class to tap this vast store of wealth or employ it in the continuous reduction of their own taxes.

In short, the paradox presented by Mizruchi and Hirschman becomes readily explicable. Protected by golden parachutes on the downside with no evident ceiling in potential earnings, it has become quite rational for American top management to view their primary economic interest as the upward redistribution of income coupled to the robustness of financial markets and supportive government policies or inaction. Given the realistic uncertainty of where the world is heading in even the near future, there is little to be gained by self-sacrificing these potential rents in favor of trying, perhaps quixotically, to bolster the long-term viability of one's own organization, let alone that of the larger society. Even those who appear committed to the success of their own firm—perhaps because, like Steve Jobs, as founders they are motivated by more than pecuniary interests—do not apparently identify their organizations with the great bulk of their employees, most of whom are either readily replaced or deftly given reduced terms of employment (more work or less compensation) when practical.²⁴⁸ Employees may even be extorted, possibly through the use of severance packages as in the case of such “hi-tech” firms as Siemens and IBM, to train their replacements.²⁴⁹

Mizruchi and Hirschman are correct in claiming that from a long-term organizational point of view, a single-payer system of health insurance makes sense because it removes a genuine burden on corporations, or at least, it would make the cost more certain in the manner of workers compensation a century ago.²⁵⁰ From the rentier's perspective, however, single-payer health insurance would be a disaster. Not only would it reduce the nearly guaranteed profits of the influential insurance industry but it would also concede the power of government to intercede in a traditionally managerial prerogative, while offering further protection to

246. *Id.* at 168–69; PARTNOY, *supra* note 11, at 141–43.

247. ELLEN E. SCHULTZ, RETIREMENT HEIST: HOW COMPANIES PLUNDER AND PROFIT FROM THE NEST EGGS OF AMERICAN WORKERS 2–4 (2011).

248. See Peterson, *supra* note 241.

249. See Jim Gardner, *Bank Job: You're Fired, Now go Train Your Replacement*, S.F. BUS. TIMES, Nov. 24, 2002, <http://www.bizjournals.com/sanfrancisco/stories/2002/11/25/tidbits.html>.

250. Mizruchi & Hirschman, *supra* note 1, at 1106.

employees that would reduce dependency on specific employers. In short, it would work against broader rentier interest in fostering a low-regulation and high-subsidy state and a workforce with little individual or collective bargaining power. Old habits do not die immediately, and it was true that in the early eighties, when this rentierization process was only just underway, the business roundtable could advocate taxing its own members to close what they perceive as the economic threat of budget deficits. Having survived those deficits, however, and having become more acclimated to their new role and the interests that attach to it, it has become almost unimaginable for the corporate elite to collectively offer to surrender a share of personal wealth to a government that spends it in ways that the individual executive regards as a waste, or worse, a threat to his own power.

This too, however, will pass. Arrighi notes that the end of a hegemonic cycle ends not with financial hypertrophy, or even the steady rise of a successor, such as China, but a generation of major warfare.²⁵¹ Let us hope that this is one part of the cycle that won't revisit.

251. ARRIGHI, *supra* note 17, at 23.