

## A Brief Reflection on *Spirit of the Corporation*

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Thanks to Professors Charles R.T. O’Kelly, Harwell Wells, and The Adolf A. Berle, Jr. Center on Corporations, Law & Society at Seattle University for hosting the Twelfth Annual Berle Symposium. It was the most serious and diverse gathering of scholars to consider corporate law, religion, and spirituality that I am aware of. I am especially thankful for the dialogues we were able to have related to ethics and the common good.

My goal in writing *Spirit of the Corporation*, which was originally published in 44 SEATTLE U. L. REV. 371 and is reprinted in this issue, was to reflect on the question that Adolf A. Berle, Jr. posed in his essay *Corporate Capitalism and “The City of God”*: whether corporate managers should consider the common good while discharging their duty to act in the best interest of the corporation.<sup>1</sup> I hoped to use my interdisciplinary expertise in corporate law and religion to add a theological perspective to the conversation. The comments on *Spirit of the Corporation* were extremely helpful and insightful. In this essay, I intend to respond to those comments and questions, thus providing further clarity on *Spirit of the Corporation*.

### I. CORPORATE SPIRIT VS. CORPORATE CULTURE

The core question for some participants was the distinction between “corporate culture” and “corporate spirit.” Assuming that readers accept consideration of the spiritual, how do its meanings and impacts differ from culture? There is a rich business and legal literature considering the impacts of corporate culture and ways to transform it.<sup>2</sup>

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1. Adolf A. Berle, Jr., *Corporate Capitalism and “The City of God”*, in *The 20th Century Capitalist Revolution* 164, 166 (1954).

2. See, e.g., John R. Graham, Jillian Grennan, Campbell R. Harvey & Shivaram Rajgopal, *Corporate Culture: Evidence from the Field* (Colum. Bus. Sch., Research Paper No. 16-49, 2021); Robert Audi, Tim Loughran & Bill McDonald, *Trust, but Verify: MD&A Language and the Role of Trust in Corporate Culture*, 139 J. Bus. Ethics 551 (2016); Roland Bénabou, Davide Ticchi & Andrea Vindigni, *Religion and Innovation*, 105 Am. Econ. Rev. 346 (2015); Lee Biggerstaff, David C. Cicero & Andy Puckett, *Suspect CEOs, Unethical Culture, and Corporate Misbehavior*, 117 J. Fin. Econ.

### A. *Spirit vs. Corporate Social Responsibility*

In many cases, the discourses of corporate culture refer to or incorporate principles from corporate social responsibility scholarship. Here I will be quite frank. In the 1990s and early 2000s, I was optimistic that the emergence of corporate social responsibility ideas could be transformative and mitigate the destructive extreme impacts of corporate capitalism as a number of core principles were institutionalized by major corporations.<sup>3</sup> Some evidence indicates that there have been important shifts in values and norms, along with some negative impacts.<sup>4</sup> However, I am concerned that corporate social responsibility has largely been co-opted for marketing and public relations purposes.<sup>5</sup> I also acknowledge that corporate social responsibility can create moral hazards, pitting board and manager fiduciary duties against pet- or self-interested causes. Therefore, much of what passes as corporate social responsibility may not actually address the sort of common good concerns raised by Berle in *The 20th Century Capitalist Revolution*.<sup>6</sup>

I do not object to readers choosing to consider my formulation of corporate spirit a variation of corporate culture discourse. That said, in *Spirit of the Corporation*, I sought to seriously engage theological traditions in their own contexts (Catholicism and broader Christianity, in particular). In my symposium presentation, I explained that I was attempting to use Rawlsian method regarding public discourse by

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98 (2015); Robert A. Cooke & Denise M. Rousseau, *Behavioral Norms and Expectations: A Quantitative Approach to the Assessment of Organizational Culture*, 13 Grp. & Org. Stud. 245 (1998); Luigi Guiso, Paola Sapienza & Luigi Zingales, *The Value of Corporate Culture*, 117 J. Fin. Econ. 60 (2015); Denise Lee Yohn, *Company Culture Is Everyone's Responsibility*, Harv. Bus. Rev. (Feb. 8, 2021), <https://hbr.org/2021/02/company-culture-is-everyones-responsibility> [<https://perma.cc/QRD3-ETEL>].

3. See, e.g., Russell Powell, 44 Seattle U. L. Rev. 371, 399–407 (describing the commitment to corporate social responsibility at Interface, Costco, Starbucks, and Microsoft during this period).

4. See, e.g., Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function* (Amos Tuck Sch. of Bus. at Dartmouth Coll., Working Paper No. 01-09, 2001); Ioannis Ioannou & George Serafeim, *The Consequences of Mandatory Corporate Sustainability Reporting* (Harv. Bus. Sch., Working Paper No. 11-100, 2017); Andreas Georg Scherer & Guido Palazzo, *Globalization and Corporate Social Responsibility*, in *The Oxford Handbook of Corporate Social Responsibility* 413 (Andrew Crane, Abigail McWilliams, Dirk Matten, Jeremy Moon & Donald S. Siegel eds., Oxford Univ. Press 2008); Stephen M. Bainbridge, *Don't Compound the Caremark Mistake by Extending It to ESG Oversight* (UCLA Sch. of L., Law & Econ. Research Paper No. 21-10, 2021).

5. See, e.g., Corporate Reform Collective, *Fighting Corporate Abuse: Beyond Predatory Capitalism* 52–58 (2014) (suggesting the corporate social responsibility is a “mirage”); Joyce Falkenberg & Petter Brunsæl, *Corporate Social Responsibility: A Strategic Advantage or a Strategic Necessity?*, 99 J. Bus. Ethics 9, 16 (2011) (“[W]hen these [corporate social responsibility] resources lead to an economic advantage for the firm, then other firms may look to see if the activity can be copied in their firms. This makes the resource no longer an advantage but it becomes a strategic necessity, in that firms who do not have the resource are at a competitive disadvantage.”).

6. See generally Berle, Jr., *supra* note 1.

presenting my private, religiously based reasons along with parallel, secular reasons. Professor David Skeel appeared to take a similar approach with his very interesting paper *The Corporation as Trinity*.<sup>7</sup>

### *B. The Definition of Spirit Differs from the Definition of Culture*

I am comfortable with the range of definitions I provided for “spirit” in the paper, but I do not focus on corporate culture explicitly. After all, spirit is a term that is used in common parlance yet carries a variety of definitions depending on its context. There is obviously a rich and diverse body of literature on corporate culture from a variety of fields over the past fifty years.<sup>8</sup> Many of those descriptive and normative approaches would be consistent with my characterization of corporate spirit. However, I would argue that there are distinctions, even from a purely secular perspective. Definitionally, I am uncomfortable completely conflating spirit with culture. For example, is the spirit of the law (its essence or ideal) completely synonymous with legal culture or the culture of law? I think of corporate culture as the granular social facts that shape the tacit values, customs, traditions, and meanings within a particular business organization. In much of the business literature, there is an emphasis on internal mechanisms, policies, and incentives, while legal scholars tend to emphasize the role of external rules. Corporate spirit might be considered a broader, inclusive category that focuses on the orientation of the entity toward particular goods rather than the myriad mechanisms that contribute to that orientation. Although changing internal structures and external incentives can impact corporate culture, I wonder whether religious traditions that emphasize the need for internal transformation may contribute a helpful insight regarding the necessity for internal transformation as an important predicate for institutional reform.

### *C. Corporate Spirit Does Not Imply Corporate Soul*

One reader expressed discomfort with the use of spirit to the extent that it might imply that corporations have soul. To be clear, I do not attribute to corporations a soul. From a Christian scriptural perspective, the soul may be distinguished from the spirit (e.g., *I Thessalonians* 5:23 and *Hebrews* 4:12). Though undoubtedly an oversimplification, I would argue from a Christian perspective that soul consists of mind, emotions, and will (aspects not easily attributable to institutions), while spirit reflects a person’s orientation toward the divine (or more generally, the good). Scholars of structural sin might identify a “spirit of violence” or a “spirit

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7. David Skeel, *The Corporation as Trinity*, 45 SEATTLE U. L. REV. 155 (2021).

8. See sources cited *supra* note 2.

of joy” within a human institution.<sup>9</sup> However, even in a Christian theological context, this does not mean that separate ethereal entities are created by human–institutional interactions, and that is not my contention. Furthermore, I am not arguing that there is something eternal about the spirit of Nike or McDonalds. Corporations wind up, sell their assets, or are purchased or merged in ways that dissolve the entity or radically transform internal culture as well as their essential orientation toward particular goods.<sup>10</sup> Think, for example, of the purchase of Whole Foods by Amazon and the macro and micro changes in management that followed.<sup>11</sup>

#### CONCLUSION

My paper is not meant as an endorsement of any specific contemporary approach to corporate decision-making or purpose (though I note several); instead, it is primarily a reflection on Berle’s essay *Corporate Capitalism and “The City of God”*, wrestling with the question of whether corporate managers ought to consider the common good along with or as part of their obligation to act in the best interests of the corporation. To that end, I wanted to bring theological perspectives to the discourse, and I am heartened that the piece has generated some fruitful cross-disciplinary interest and dialogue.

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9. See, e.g., Vitor Westhelle, *O Tamanho do Paraíso: Pressupostos do Conceito de Pecado na Theologia Latino-Americana*, 38 *Estudos Teológicos* 239 (1998); Jose Ignacio Gonzalez Faus, *Sin, in Mysterium Liberationis: Fundamental Concepts of Liberation Theology* 536–39 (Ignacio Ellacuria & Jon Sobrino eds., 1993).

10. *But see* Powell, *supra* note 3, at 408 (discussing Ben & Jerry’s continued emphasis on its social mission despite the company’s sale to multinational conglomerate Unilever).

11. See Michael Blanding, *Amazon vs. Whole Foods: When Cultures Collide*, Harv. Bus. Sch.: Working Knowledge (May 14, 2018), <https://hbswk.hbs.edu/item/amazon-vs-whole-foods-when-cultures-collide> [<https://perma.cc/NRF2-AJ9B>]; Steve Banker & Chris Cunnane, *How Amazon Changed Whole Foods*, *Forbes* (June 25, 2019), <https://www.forbes.com/sites/stevebanker/2019/06/25/how-amazon-changed-whole-foods/?sh=616d4e2b78dd> [<https://perma.cc/4SSU-D2FG>].