
Foreword

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Corporate activity and influence have grown to unprecedented levels within nations and across borders, with many consequences for human wellbeing. Among the consequences are harms to health, safety and the environment which were foreseeable and avoidable. In addition, campaigns to advance human rights and ensure sustainable use of natural resources for the benefit of future generations are frustrated by corporate indifference. Yet another form of harm has reached great proportions in recent years: breach of public trust as evidenced by revelations of corporate corruption, bribery, misuse of public funds, and other criminal practices undertaken with disregard for law and ethical principles.

As a result, there is widespread concern and expression of outrage about corporate culture and behaviour, which in turn causes many to question the adequacy of our laws and other means of social control over corporate enterprise. And ultimately, questions are raised about the moral sense of our society, which shapes our laws and their means of implementation.

These harms and concerns motivate this book, a remarkable collection of informed perspectives on corporate legal responsibility, expert analyses of what the law is, and thoughtful arguments on what the law ought to be. Unlike traditional treatments which dwell on corporate responsibility to those who have a direct financial stake in its business activities as shareholders, the focus herein is on corporate responsibility for preventing harm to workers, consumers, the public and the environment, for enhancing human rights, for accomplishing sustainable development, and for restoring and keeping public trust.

Although the chapters address diverse topics and issues, common themes lead to a coherent and compelling view of what is wrong, why and what needs to be done. Ample evidence is provided about harms caused by corporate negligence, ignorance, indifference, and knowing disregard for law and foreseeable risk. Thoughtful analyses of legal theories, laws and regulations which comprise the legal framework for corporate governance and accountability in various nations are cogently presented and illuminate the types of reforms needed. And appeals are made for adopting enlightened concepts of human wellbeing and corporate governance into law in a manner which ensures their infusion into corporate culture.

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In this undertaking, the authors have had to confront unresolved issues and ambiguities, deeply rooted in western nations, regarding the status and role of the corporation in society, and individual and organisational accountability. They respond to the well-known eighteenth-century lament that the corporate wrongdoer ‘has no soul to be damned, and no body to be kicked’ (attributed to Edward, Baron Thurlow (1731–1806), Lord Chancellor of England, in Coffee, 1981, p. 386). They contest the narrow thesis of the law and economics school that ‘there is one and only one social responsibility of business – to use its resources and engage in activities designed to increase its profits so long as it engages in open and free competition’ (Friedman, 1962: 133–6). And they choose the progressive view that ‘it is absurd to regard the corporation simply as an enterprise established for the sole purpose of allowing profit making . . . Every corporation should be thought of as a social enterprise whose existence and decisions can be justified only insofar as they serve public or social purposes’ (Dahl, 1975: 18–19).

In their analyses and recommendations, the authors have also pragmatically considered competing national policies which frequently have the effect of diluting laws intended to promote corporate social responsibility. In the real world, progressive nations are not monotheistic. They worship economic growth and the rapid advance of risky new technologies and business ventures while at the same time espouse and try to improve environmental quality, business ethics and human wellbeing. Too often, in legislative, judicial and regulatory forums, primacy is given to the former and its corporate agents, thereby weakening constraints on corporate behaviour and encouraging corporate excess. It is to the credit of the authors that consideration of these dysfunctional circumstances has increased the value and utility of their analyses of self-regulatory systems, corporate law, civil and criminal liability doctrines, diverse types of regulation and enforcement mandates, and international resolutions.

Thus, an important agenda for legal research and law reform is provided, and the cause of advancing the standards of corporate behaviour for societal benefit is well served, by this book.

References

- Coffee, J. (1981), ‘No soul to damn: no body to kick: an unscandalized inquiry into the problem of corporate punishment’, *Michigan Law Review*, **79**, 386–459.
- Dahl, R. (1975), ‘A prelude to corporate reform’, in R. Heilbroner and P. London (eds), *Corporate Social Policy*, Reading, MA: Addison-Wesley.
- Friedman, Milton (1962), *Capitalism and Freedom*, Chicago: University of Chicago Press.