

The Post-Enron Era for Stakeholder Theory: A New Look at Corporate Governance and the Coase Theorem

Marianne M. Jennings*
and Stephen Happel**

I. INTRODUCTION

Fallen Enron was the model of corporate social responsibility—a veritable stakeholder theorist’s dream.¹ Its code of ethics touted diversity and philanthropic giving.² Enron’s former CFO, Andrew Fastow, was active in the Houston Art Museum and had been the cornerstone in fundraising for Houston’s Holocaust Museum.³ Clifford

* Professor of Legal and Ethical Studies, Arizona State University College of Business. Brigham Young University (B.S., 1974; J.D., 1977).

** Professor of Economics, Arizona State University College of Business. University of Missouri (B.A., 1969); Duke University (M.A., 1972; Ph.D., 1976).

The Authors are grateful to Pfizer, Inc. for its support of this project and its commitment to the study of corporate governance. The Authors are also grateful to Vincent Curley (J.D., 2000) and James Hardison (M.B.A., 2000) for their research and analysis work on this project.

1. Employees flocked to Enron because of its rankings as one of the top 100 companies to work for in America. Enron broke into the top 100 for the first time in 1999. Shelly Branch, *The 100 Best Companies to Work For in America*, FORTUNE, Jan. 11, 1999, at 118. In 2000, it was ranked #24, and in 2001 it was #22. Robert Levering & Milton Moskowitz, *The 100 Best Companies to Work For in America*, FORTUNE, Jan. 8, 2001, at 148, 152.

2. The Author obtained an Enron code of ethics from e-Bay. It was still sealed upon arrival.

3. One friend who knew Mr. Fastow personally for years and worked with him on community projects said, “The person I know bears absolutely no relation to the person who has been characterized, in some reports, within the walls of Enron.” David Barboza & John Schwartz, *The Finance Wizard Tied to Enron’s Fall*, N.Y. TIMES, Feb. 6, 2002, at

Baxter, an Enron executive vice-president, who would take his own life shortly after leaving the company, was involved in Junior Achievement.⁴ Enron paralleled FINOVA Group, American Continental Corporation (Charles Keating), and WorldCom with regard to philanthropic activity. All of these companies had officers heavily involved in community and philanthropic activity, yet all of their companies imploded from accounting improprieties.⁵ In their minds they were, according to Jeffrey Skilling, Enron's former CEO, "on the side of angels."⁶

Ironically, at the same time Enron, WorldCom, and others were collapsing, so also was Aaron Feuerstein's Malden Mills. Mr. Feuerstein enjoyed the accolades of business ethicists for his decision to continue to pay idle workers when his plant was destroyed by a fire in 1995.⁷ But Malden Mills is in bankruptcy court alongside those companies led by alleged rogues.⁸

Enron followed a model of corporate social responsibility ("CSR") that has long been the ideal in terms of corporate governance, the formula for corporate success. Touted for years in the business ethic literature as theory, it had emerged as a force among government leaders. British Prime Minister Tony Blair appointed the first Minister for Corporate Social Responsibility in 2000. The mandate Blair gave to his appointee was to persuade companies to "give something back" to their communities and convince businesses that "a caring attitude" is good for the bottom line.⁹ Blair's critics were disturbed by the word "encourage" in the mandate, instead expressing preference for legislation to mandate corporate social responsibility.¹⁰

John Howard, Australia's Prime Minister, has encouraged his nation's businesses to follow a similar philosophy: "The spirit of corporate

A1.

4. Jim Yardley & Shaila K. Dewan, *Despite His Qualms, Scandal Engulfed Executive*, N.Y. TIMES, Jan. 27, 2002, at A33.

5. See *supra* notes 3 and 4.

6. Mr. Skilling's full quote was, "We are the good guys. We are on the side of angels." Kurt Eichenwald & Diana B. Henriques, *Enron Buffed Image to a Shine Even as It Rotted From Within*, N.Y. TIMES, Feb. 10, 2002, at A1.

7. Lynnley Browning, *Fire Could Not Stop A Mill, but Debts May*, N.Y. TIMES, Nov. 28, 2001, at C1.

8. *Id.*

9. Stephanie Robertson, *CSR Takes Its Place at the Cabinet Table*, MGMT. ETHICS, Summer 2001, at 5.

10. One critic asked for an unequivocal signal: "The government should put corporate Britain on notice. It should declare that it expects the culture and attitudes inherent in triple bottom line accounting, corporate social responsibility, community investment, ethical practice, and sustainable growth to be embodied universally by the business community within [five] years." *Id.* See also *infra* notes 27-33 and accompanying text.

citizenship suggests that a company that derives profit from the community has an obligation to contribute to its development. . . . [I]t is reasonable to expect the principle of mutual obligation to apply to the business sector.”¹¹

What was once a scholarly debate on the role of the corporation in society advanced rapidly toward governmental mandate. Our European brethren contemplated conditioning the right to engage in commerce on perceived responsiveness to social issues.¹²

As icons of CSR fall, the debate over CSR must be revisited. Is CSR the best—indeed, is it even a suitable method of corporate governance? Economics is a system of resource allocation, and stakeholder theory is touted as a substitute for that system when it comes to business operations and corporate governance. Stakeholder theory, a formula and theory grounded in the notion of structured appeasement, is at the heart of these government proposals and activist groups’ increasing demands for changes in corporate governance. Likewise, stakeholder theory and CSR are at the heart of many of the failures we witness. Companies that followed all the CSR rules ended in shambles—most were a model of shareholder deceit even as stakeholders such as employees and communities enjoyed a fabulous ride as the companies’ share prices escalated beyond market realities. A question that CSR proponents and business ethicists now avoid is whether stakeholder theory and CSR are the best models for corporate governance. An exploration of that question does yield some answers as well as proposals for reform.

In addressing the stakeholder/CSR approach to corporate governance, one must begin with the flaws in the theory. Stakeholder theory, as a means of achieving CSR or even as a means of measuring CSR of corporations, has four fundamental flaws that arise when principles of law and economics are integrated with this management and business ethics theory. Those flaws are: (1) the definition of CSR, which remains nebulous and a bit of a moving target with political underpinnings; (2) the relationship between CSR, as defined by stakeholder accountability, and superior financial performance is a theory advanced and worthy of examination, but to date has not been measured in a manner that can withstand empirical scrutiny; (3) governmental imposition of CSR

11. Michelle Greenwood, *The Importance of Stakeholders According to Business Leaders*, 106 BUS. & SOC’Y REV. 29, 29 (2001) (citing John Howard, *Prime Minister’s Keynote Address* (paper presented at the ACOSS National Congress, Adelaide, Australia, 1998)).

12. A precursor to such a conditional right to do business is the recommendation of the National Council for Volunteer Organizations (“NCVO”), which launched a ten-point program in February 2001 on mandating social responsibility. The program encourages governments to offer lower tax rates to those companies with good CSR records.

requirements ignores fundamental property rights and protections and may serve to remove the incentives such property rights provide in the intricate balance of the marketplace; and (4) government mandates or normatively-imposed CSR are poor substitutes for market forces. It is within this last flaw that the exploration of the work of Ronald Coase is enlightening. There exists a void in the business ethics and corporate governance literature regarding Coase's work. This void is surprising because under the Coase Theorem, companies may already be led economically to those CSR behaviors that maximize benefits with resulting increased shareholder return while also providing societal satisfaction—thus reducing the alleged conflicts between business achievement and social responsibility, a particularly sensitive area among business ethicists and stakeholder theorists.

This Article provides a discussion of these four flaws in light of the once proposed mandatory application of CSR, whether by government body or private pressure, and the astonishing failures of companies following the CSR ideals.¹³ Included within the discussion of these issues are the results of a study in which the financial performance of companies was compared with their devotion to CSR, particularly stakeholder theory. These results are then examined in light of the Coase Theorem and its application in the CSR debate. These quantitative results seem to demonstrate that there is a voluntary interaction between corporations and those who are generally depicted as combatants in the battle for CSR. Companies that advocate CSR voluntarily

13. The demonstrations at the WTO meeting in Seattle, the protests over his Kyoto opposition when President George W. Bush visited Europe in June 2001, and the violence during his July 2001 visit to Genoa are just three examples of the private pressure for CSR, as defined by those applying the pressure. Private pressure is being used to force governmental, business, and nongovernmental organizations ("NGOs") to address issues of social responsibility. Alessandra Stanley & David E. Sanger, *Italian Protester Is Killed By Police at Genoa Meeting*, N.Y. TIMES, July 21, 2001, at A1. President Jacques Chirac of France expressed the resolve of the CSR groups there as follows, "One hundred thousand people don't get upset unless there is a problem in their hearts and spirits." *Id.*

Gillette, Inc.'s experiences provide an individual firm example. Gillette was the target of an intense campaign waged by school-age children who were taught by their teachers that Gillette was using animal testing on its products. One child wrote, "Let this be a warning to you. If you hurt another animal, if I find out, one month from this letter arrives to you, I'll bomb your company. P.S. Watch your back." Barbara Carton, *Gillette Faces Wrath of Children in Testing on Rats and Rabbits*, WALL ST. J., Sept. 5, 1995, at A1. Others sent in their Oral-B toothbrushes, a Gillette product, as a means of protest. The children's activities, however, paled in comparison to adult activists who sent Gillette crates of rabbit carcasses. *Id.* Ironically, Gillette limits its animal testing to that imposed by federal mandates and released an annual report of complete disclosure on its animal testing practices and activities even prior to these activist movements.

reflect financial performances that exceed the performance of those companies identified by CSR advocates as ideal corporate citizens. Coase's Theorem offers both an explanation for the study results as well as a proposed alternative means for achievement of CSR. Mandatory subscription to CSR, whether by government mandate or public relations campaigns waged by special interest groups to ensure corporate submission, is not the best means for achieving CSR goals, and additionally, it presents property and legal issues that may undermine the economic system that generates products, jobs, and earnings. CSR for the sake of CSR is a dangerous façade. The findings of this study and the application of the Coase Theorem suggest that voluntary interaction with stakeholders is not only a means of allocation, but a somewhat more satisfying one in terms of the happiness of those affected by such allocation as well as a more efficient means of allocation than the stakeholder/CSR models proposed to date. It is the economically focused CSR that contributes to business success, while the theoretical and superficial devotion to it appears to have the opposite effect. Sincerity, then, is at the heart of CSR.

Because there has been so little empirical work regarding the impact of CSR, the study reported herein represents one of the first attempts to examine the relationship between CSR and performance.¹⁴ Using the

14. Professors Graves and Waddock presented one of the first studies on CSR (as measured by firms noted in JAMES C. COLLINS & JERRY I. PORRAS, *BUILT TO LAST: SUCCESSFUL HABITS OF VISIONARY COMPANIES* (1994)). Because Collins and Porras categorized their built-to-last firms as "visionary," possessed of self-defined "values," and dedicated to stakeholders, the researchers used these companies as a proxy for stakeholder-based firms or CSR and, comparing several indexes to these firms' performance, concluded that stakeholder firms outperformed nonstakeholder firms. They used the measures of ROE, ROA, ROS, and ten-year returns. They also noted that the firms had lower debt and Betas. The authors' characterization of this group of companies as proxy for CSR and self-labeling the built-to-last firms as possessing the values of integrity, service, helping, humanity, and others that most would find to be acceptable proxies for stakeholderism and as non-CSR ones is a central flaw in the work. For example, Graves and Waddock seemed incredulous that Philip Morris was one of the built-to-last companies. They refer to it as a good company with a repugnant product. Samuel B. Graves & Sandra A. Waddock, *Beyond Built to Last . . . Stakeholder Relations in "Built-to-Last" Companies*, 105 *BUS. & SOC'Y REV.* 393, 395 (2000). Berman, among others, attempts to correlate stakeholder management models with firm financial performance. Their study consists of a comparison of the financial performance of the top 100 of the Fortune 500 firms with the KLD Socrates database, which measures CSR by employee relations, diversity, local communities, the natural environment, and product safety/quality. There are other KLD measures such as operations in South Africa and military contracts sales, but the authors excluded those measures because "the literature has yet to provide strong theoretical arguments for including some of these measures (that is, military contracts) as part of the large set of items that measure a firm's stakeholder responsiveness." Shawn L. Berman et al., *Does*

notion of voluntary management embracement of stakeholder accountability as a proxy for CSR, this study examines the relationship between that unilateral stakeholder commitment and financial performance. However, an unanticipated result of the exercise of analyzing the data and performing the comparison of financial performance of unilaterally committed stakeholder firms ("UCSF") with firms not so committed was the additional insight into the flaws of stakeholder theory and the dangers of the mandatory imposition of CSR.

II. FLAW ONE IN STAKEHOLDER THEORY: THE LACK OF PARAMETERS AND DEFINITION: THE MOVING TARGET AND IMPRECISION

Stakeholder theory suffers from conflicts and imprecision in its definition and role and lack of interdisciplinary analysis. This overview is offered to establish the need for a framework different from the nebulous and somewhat chameleonesque one offered in the fields of management and business ethics and touted as the basis for both government mandates and changes in corporate governance.

A. *What Is Stakeholder Theory, and Who Are Stakeholders?*

Proponents of the CSR and stakeholder models of corporate governance, often used interchangeably, argue that employees, creditors, suppliers, customers, and communities, in addition to shareholders, all contribute to the success of the corporation and that the company directors, therefore, have responsibilities to all of these constituencies.¹⁵

Stakeholder Orientation Matter? The Relationship Between Stakeholder Management Models and Firm Financial Performance, 42 ACAD. MGMT. J. 488, 495 n.1 (1999).

A more recent study also correlated financial performance and corporate social performance ("CSP"). The factors, as a variation of KLD, used to measure CSP were: (1) the hiring of women and minorities; (2) no nuclear power; (3) equity interest and ownership of South African operations; (4) environmentally safe products; (5) no layoffs and the hiring and promotion of those with disabilities; (6) no generation of revenue from weapons production; (7) donations and the use of economically disadvantaged contractors and suppliers; and (8) no product liability. The study found a correlation between financial performance improvement for the two years following a commitment to CSP. Bernadette M. Ruf et al., *An Empirical Investigation of the Relationship Between Change in Corporate Social Performance and Financial Performance: A Stakeholder Theory Perspective*, 32 J. BUS. ETHICS 143 (2001). See *infra* notes 83-87 and accompanying discussion for issues in this study and others. See *infra* notes 81-82 and discussion for more on "repugnant companies," CSR, and the distinctions between these prior studies and the present one.

15. JOSEPH F. JOHNSTON, AN AMERICAN LESSON FOR EUROPEAN COMPANY DIRECTORS: THE EMERGING CONSENSUS IN CORPORATE GOVERNANCE (2000).

This list of stakeholders is not intended to be exhaustive, and both scholars and companies grapple with the definition of “stakeholder.”¹⁶

16. The following are definitions of stakeholder that have appeared in the literature: “Any group or individual who can affect or is affected by the achievement of the organization’s objectives.” R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* 46 (1984).

“[T]hose groups without whose support the organization would cease to exist” with the original list including “shareowners, employees, customers, suppliers, lenders, and society.” Stanford Research Institute internal memo as cited in R. Edward Freeman & David L. Reed, *Stockholders and Stakeholders: A New Perspective on Corporate Governance*, 25 CAL. MGMT. REV. 88, 89 (1983).

“[A]ny identifiable group or individual who can affect the achievement of an organization’s objectives or who is affected by the achievement of an organization’s objectives.” *Id.* at 91. Another definition also included in this work: “[p]ublic interest groups, protest groups, government agencies, trade association, competitors, unions” and the usual “employees, customer segments, shareowners.” *Id.*

“[A]ny identifiable group or individual on which the organization is dependent for its continued survival” (defined to include “[e]mployees, customer segments, certain suppliers, key government agencies, shareowners, certain financial institutions, as well as others”). *Id.*

One scholar has written, “The precise origins of stakeholder theory are impossible to determine.” Fredrick Sturdivant, *Executives and Activists: A Test of Stakeholder Management*, 22 CAL. MGMT. REV. 53, 54 (1979).

While, as we shall see later, “responsibilities” and “objectives” are not synonymous, they have been made one in a “stakeholder theory” of objectives.

This theory maintains that the objectives of the firm should be derived balancing the conflicting claims of various “stakeholders” in the firm: managers, workers, stockholders, suppliers, vendors.

IGOR ANSOFF, *CORPORATE STRATEGY* 33-34 (1965).

“[A]n individual or group that asserts to have one or more . . . stakes in a business.” ARCHIE B. CARROLL, *BUSINESS AND SOCIETY: ETHICS AND STAKEHOLDER MANAGEMENT* 60 (2d ed. 1993).

“[A]ny individual or group who feel that they have a stake in the consequences of management’s decisions and who have the power to influence current or future decisions.” FREDERICK D. STURDIVANT & HEIDI VERNON-WORTZEL, *BUSINESS AND SOCIETY: A MANAGERIAL APPROACH* 58 (4th ed. 1990).

“[A]n individual, a coalition of people, or an organization whose support is essential or whose opposition must be negated if a major strategic change is to be successfully implemented.” IAN C. MACMILLAN & PATRICIA E. JONES, *STRATEGY FORMULATION: POWER AND POLITICS* 65 (2d ed. 1986).

“[P]ersons that have, or claim, ownership, rights, or interests in a corporation and its activities, past, present, or future.” Max B.E. Clarkson, *A Stakeholder Framework for Analyzing and Evaluating Corporate Social Performance*, 20 ACAD. MGMT. REV. 92, 93 (1993).

“[S]takeholders are persons or groups with legitimate interests in procedural and/or substantive aspects of corporate activity.” Thomas Donaldson & Lee E. Preston, *Proceedings of a Workshop on the Stakeholder Theory of the Firm and the Management of Ethics in the Workplace*, U. Toronto (May 20-21, 1993).

The scholarly roots of stakeholder theory and CSR date back to the 1930s when the idea of the central state was prominent and the thought of autonomous corporations seemed to undermine that utilitarian perspective.¹⁷ However, the theory was not advanced as an alternative to corporate governance until it re-emerged in the work of Edward Freeman on strategic management in the 1980s.¹⁸ The work on stakeholder theory since its re-emergence in strategy has focused on its use as an alternative to existing means of corporate governance.¹⁹ Others take the theory further by proposing it as a utilitarian alternative to individual property ownership.²⁰ Still others urge businesses to

17. For a more in-depth analysis of the history and flaws of stakeholder theory, see Marianne M. Jennings, *Teaching Stakeholder Theory: It's For Strategy, Not Business Ethics*, 16 J. LEGAL STUD. EDUC. 203 (1998) and Elaine Sternberg, *The Defects of Stakeholder Theory*, 5 CORP. GOV. INT'L REV. 3 (1997). For a review of the history of corporate governance see PATRICK MINFORD, *MARKETS NOT STAKES: THE TRIUMPH OF CAPITALISM AND THE STAKEHOLDER FALLACY* (1998); Mark E. Van Der Weide, *Against Fiduciary Duties to Corporate Stakeholders*, 21 DEL. J. CORP. L. 27 (1996); Jonathan R. Macey, *Fiduciary Duties as Residual Claims: Obligations to Nonshareholder Constituencies From A Theory of the Firm Perspective*, 84 CORNELL L. REV. 1266 (1999); Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999); and JOSEPH F. JOHNSTON, *NO MAN CAN SERVE TWO MASTERS: SHAREHOLDERS VERSUS STAKEHOLDERS IN THE GOVERNANCE OF COMPANIES* (1998).

18. Freeman's work first appeared in R. EDWARD FREEMAN, *STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH* (1984).

19. For example, H.R. 887, 106th Cong. (1999) (hearings held in October 1999) proposed two changes with regard to corporate charitable contributions: (a) that all contributions be disclosed in the annual proxy, and (b) that shareholders and others would have input on the company's charitable contributions. Testimony in favor of the bills included testimony that such changes would be "a vital and welcome part of a well-functioning corporate governance system." Rev. Jesse Jackson has been involved in his "Wall Street Project Initiative," designed to bring more representative (in a racial sense) investors and customers to businesses. David Barboza, *Toyota Earmarks \$8 Billion for Diversification Efforts*, N.Y. TIMES, Aug. 10, 2001, at C3.

20. For example, there have been increasing restraints on the use of private lands by companies based on objections by environmental groups and others. To illustrate, in *National Mining Ass'n v. U.S. Army Corps of Engineers*, 145 F.3d 1399, 1410 (D.C. Cir. 1998), nonlandowners questioned the movement of soil on private property, and the use was restrained until an appellate court ruled there was no jurisdiction for such restraint under any of the federal environmental laws. See also *Babbitt v. Sweet Home Chapter of Cmty. for a Great Ore.*, 515 U.S. 687 (1995) (permitting two government agencies to halt logging by companies on their land in response to objections by environmental groups).

For more treatment of the property transference notion in corporate governance, see JOHNSTON, *supra* note 15, wherein stakeholder theory is summarized as follows:

From a political standpoint, the contemporary stakeholder movement is, at least in part, a response to the failure of socialism and the rising burdens of the welfare state. Those who favour the goals of the administrative state seek to shift the burden to private businesses by imposing upon them various obligations to

employ stakeholder theory as a means of business self-regulation that avoids government intervention by encouraging social responsibility among businesses as a means of addressing the social problems some believe capitalism creates.²¹

Stakeholder theory is unique because it cuts across the fields of business ethics, management, and corporation law, and while it is one theory, it is used in different ways in these diverse fields.²² The crossover nature of stakeholder theory would seem to indicate a universal concept. However, its use is diverse, its definition variable, and its parameters nebulous.

Varying fields' definitions in stakeholder theory serve to perpetuate its imprecision and may explain its perceived lack of progress in addressing the underlying ethical, social, legal, and management issues that were the original concerns giving rise to stakeholder theory.²³

B. What Is the Role of Stakeholder Theory: The Thorny Issue of Capitalism

While touted as a management tool or a measure of accountability and responsibility, stakeholder theory as it has been used in management, business ethics, and corporation law is more often used as a means of addressing the perceived injustices and dangers of capitalism.²⁴

workers, the society and the environment—obligations that otherwise would have to be addressed by government at taxpayers' expense.

It is argued by stakeholder theorists that corporations, since they employ many people and have a major impact on communities, have a social responsibility. This responsibility, it is said, involves duties to employees, customers, suppliers and communities, as well as to shareholders. Expressed in terms of economic theory, stakeholder advocates contend that various parties make "firm-specific" investments in a company (for example, employees who have acquired specialised skills, or suppliers who have invested in specialised equipment for a particular customer). These firm-specific contributions are assets of the company and the company's directors should be accountable for the maximisation of the value of these assets for the benefit of all contributors, not just the shareholders.

Id. at 8.

21. Those issues are covered in more detail in the property discussion. *See supra* notes 16-20 and accompanying text. *See infra* note 22 and accompanying text.

22. *See, e.g.,* Amitai Etzioni, *A Communitarian Note on Stakeholder Theory*, 8 *BUS. ETHICS Q.* 679 (1998); Robert A. Phillips, *Stakeholder Theory and a Principle of Fairness*, 7 *BUS. ETHICS Q.* 51 (1997); Ronald K. Mitchell et al., *Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts*, 22 *ACAD. MGMT. REV.* 853 (1997); and Sternberg, *supra* note 17.

23. For a discussion of the problems and flaws in stakeholder theory, see Jennings, *supra* note 17.

24. For example, management theory has created two stakeholder models: the direct effects model in which stakeholder relationships and firm strategy work together to

Stakeholder theory cannot be analyzed without discussing its underlying premise and origins in the need for redistribution of wealth as well as control over the activities of companies.²⁵ Beneath the façade of “doing good and doing well,” the mantra of CSR as a key to business success, is intense concern about capitalism and corporations. The discussion of stakeholder theory as a means of governance cannot progress without acknowledging the goals of some of its proponents.

The circular logic of beginning with the presumption that capitalism requires repair is addressed *infra*. However, for the sake of argument, the Authors are willing to assume that there are concomitant evils associated with capitalism. Without surrendering some ground in this field, neither the theory nor empirical work can progress.

In a recent critique of the corporate social responsibility literature, . . . [one scholar] accused Business Ethicists of providing Band-Aid solutions to some of the deep social problems capitalism generates. The ethic of selfishness and greed that underlies capitalist activities creates societies in which “acquisitive individualism [is] manifested as hyperconsumerism, nationalism, racism, sexism, a lack of any particular sense of historical context, and a disinterest in politics.”²⁶

produce the firm’s financial performance, and the moderation model in which a developed firm strategy is moderated by stakeholder relationships to produce the firm’s financial performance. The difference is whether ethics and values drive strategy or whether they simply curb strategies chosen if the stakeholder’s objections are sufficiently strong. Choosing strategies based on values involves such values as corporate philanthropy, community relations, employee practices and relations, and customer satisfaction. In other words, financial performance is but one part of corporate performance and other predefined groups (stakeholders) are awarded an interest in the company and power in governance of that company, despite no investment. Catherine Lerme Bendheim et al., *Determining Best Practice in Corporate-Stakeholder Relations Using Data Envelopment Analysis*, 37 BUS. & SOC’Y 306 (1998). See also Richard S. Marens et al., *Cooperating with the Disempowered*, 38 BUS. & SOC’Y 51 (1999).

25. For example, one of the recent studies reported in the management field begins with the following quote: “The still dominant view that the corporation is a voluntary association of shareholders who own the enterprise and are the only members who really count . . . obscures the realities of corporate power and responsibility [and] . . . is in conflict with . . . taking account of relevant stakeholders, attending to long-run interests, and being sensitive to the operative structure of corporate authority.” Bradley G. Agle et al., *Who Matters to CEOs? An Investigation of Stakeholder Attributes and Salience, Corporate Performance, and CEO Values*, 42 ACAD. MGMT. J. 507, 507 (1999) (quoting P. Selznick, *Institutionalism “Old and New,”* 41 ADM. SCI. Q. 270, 271 (1996)). The piece concludes that there is no connection between salience (i.e., stakeholder strength in role of corporate performance) and financial performance, but then suggests continued emphasis on normative stakeholder theory. *Id.* at 522.

26. Dennis Collins, *Virtuous Individuals, Organizations and Political Economy: A New Age Theological Alternative to Capitalism*, 26 J. BUS. ETHICS 319, 321 (2000) (quoting Marc T. Jones, *Missing the Forest for the Trees: A Critique of the Social Responsibility Concept*

Another scholar commented, "Shareholder primacy is a form of entitlement. And entitlement has no place in a market economy. It is a form of privilege. And privilege accruing to property ownership is a remnant of the aristocratic past."²⁷

In her new series, *Is Maximizing Returns to Shareholders a Legitimate Mandate? The Divine Right of Capital, Part One*,²⁸ BUSINESS ETHICS editor Marjorie Kelly summarizes the stakeholder theorist's view of capitalism as follows:

Why have the rich gotten richer while employee income has stagnated? Because that's the way the corporation is designed. It is designed to pay shareholders as much as possible and to pay employees as little as possible. Why are companies demanding exemption from property taxes and cutting down three-hundred-year-old forests? Because that's the way the corporation is designed. It is designed to internalize all possible gains from the community and to externalize all possible costs onto the community.

A rising tide lifts all boats, the saying goes. The corporation really functions more like a lock-and-dam operation—raising the water level in one compartment by lowering it in another.

The problem is not the free market. This notion—buyers and sellers regulating prices without external guidance—is relatively innocent. This system—private ownership driven by self-interest—is in many ways superbly effective. Certainly, free market capitalism is the most fruitful economic system the world has yet conceived. If we go rummaging through its entire basket of economic ideas—supply and demand, private property, competition, profit, unconscious regulation, wealth creation, and so forth—we will find that most concepts are sturdy, healthy, and well worth keeping. But we will also find one concept that is inconsistent with the others. It is the lever that keeps the lock-and-dam functioning, and it is these four words: maximizing returns to stockholders.

When we pluck this notion out of our basket and turn it over in our hands—really looking at it, as we so rarely do—we will see it is an aristocratic edict. In a competitive free market, it decrees that the interests of one group will be systematically favored over others. In a system devoted to unconscious regulation, it says members of that group will be served regardless of their productivity.

Alexis de Tocqueville described two great ages of human history: the Aristocratic Age and the Democratic Age. In the Twentieth Century,

and Discourse, 35 BUS. & SOC'Y 7, 22 (1996)).

27. MARJORIE KELLY, *THE DIVINE RIGHT OF CAPITAL* 4 (2001). For more information see <http://www.divinerightofcapital.com>.

28. MARJORIE KELLY, *THE DIVINE RIGHT OF CAPITAL* (2001).

governments worldwide have made a great passage from one to the other. In the years just prior to World War I, kings and emperors sat enthroned atop nations of the globe—but they did not, by and large, survive two world wars. After a calamitous interval of dictatorship and communism, a majority of the world's nations had by the 1990s turned to democracy.

We have crossed a great divide in history—from aristocracy to democracy. But we have done so only in government. We have yet to democratize economics.

We think of capitalism as the handmaiden of democracy, but that is only partially true. Free market theory points toward democratic outcomes—in its emphasis on individuals getting what they earn. But corporate governance points toward aristocratic outcomes—in its insistence on stockholder primacy. Corporate governance is antidemocratic, or perhaps, predemocratic.²⁹

In his book, *Business as a Calling*,³⁰ Michael Novak provides a contrary view on the corporation as a means of redistribution of wealth sans government intervention. He institutes a call for an acknowledgment of a common premise on capitalism.

I offer, then, two propositions to whose truth much powerful evidence attests. First, better than the third world economies and better than the socialist economies, capitalism makes it possible for the vast majority of the poor to break out of the prison of poverty; to find opportunity; to discover full scope for their own personal economic initiative; and to rise into the middle class and higher. Watch the crowds on the streets of free nations: they walk the walk of the free-erect and purposeful and quick.

To repeat: Capitalism is better for the poor than is socialism or the traditional third world economy. Sound evidence for this proposition is found in the migration patterns of the poor of the world. From which countries do they emigrate, and to which countries do they go? Overwhelmingly they flee from socialist and third world countries, and they line up at the doors of the capitalist countries, often in long lines curving around the corner like theater-goers queuing for a Broadway hit.

A second way of bringing sound evidence to light is to ask of virtually any audience, in almost any capitalist country, how many generations back in family history they have to go before they reach poverty. For the vast majority of us in the United States, we need go back no further than our parents or our grandparents.³¹

29. *Id.*

30. MICHAEL NOVAK, *BUSINESS AS A CALLING—WORK AND THE EXAMINED LIFE* 85 (1996).

31. *Id.*

Importantly, the unethical activities that dominate the mass media and business ethics literature are not unique to capitalism.³² Such unethical activities were quite common in Greco-Roman times.³³ Anti-capitalist stakeholder theorists such as Kelly ignore the social, environmental, and rights violations of the Roman emperors and the lack of pristine conditions in the former Communist bloc nations. Their analysis ignores the cause and effect issues that may best be addressed through the application of economic theory, which recognizes the motivational impact of property rights in reaching mutually satisfactory solutions. An analysis that recognizes an alternative approach can perhaps be found in the application of the Coase Theorem to the issues of resource allocation in a system of rights and ownership. The drive for stakeholder accountability and CSR is simply an economic function of resource allocation among and between corporations and various constituent groups. Stakeholder theory attempts to reallocate on the basis of a normative contract grounded in what is touted as virtue ethics. The issues are whether such a means of achieving resource allocation is efficient and whether there are alternative means, as offered under the Coase Theorem, for achieving that allocation without destruction of underlying legal rights and incentives.

C. Stakeholder Theory's Voids in Interdisciplinary Analysis and Application

However, assuming arguendo that the capitalistic system is in need of repair, the proposed solution of stakeholder theory is not a fail-proof solution. Indeed, despite abundant discussions in the literature and even alleged empirical studies, the precise execution of shareholder theory remains mysterious and often self-contradictory. Not only is stakeholder theory imprecise in its definition and varying roles, there is further imprecision in recommended actions by which the benefits and glories of being accountable to stakeholders can be achieved. Despite nearly two decades of theory and policy formulations, it remains unclear what steps companies should take to achieve stakeholder theory's goals and benefits.³⁴

32. Denis Collins, *The Ethical Superiority and Inevitability of Participatory Management as an Organizational System*, 8 *ORG. SCI.* 489 (1997).

33. Michael W. Small, *Ethics in Business and Administration: An International and Historical Perspective*, 12 *J. BUS. ETHICS* 293, 296 (1993).

34. Among the questions that remain unanswered in stakeholder theory are: Which of the stakeholders will have a say in corporate decision-making?; What kind of a say or vote will they have?; Is there veto power or is it a majority of stakeholders vote?; What are the grounds for objection?; Who holds the burden of proof on harm?; Are stakeholders a

One problem that arises in the application of stakeholder theory and the exercise of CSR is that stakeholder theory evolved as an isolationist view. Business ethicists and philosophers discuss stakeholder theory without considering the economic implications of their proposals³⁵ or the impact on the legal system.³⁶ Legal scholars isolate the ethical implications in corporate governance; economists ignore both legal issues and ethics in market function discussions; and management scholars isolate law and ethics, speaking only in social responsibility terms.³⁷

predefined or fluid group?; and How are stakeholder disclosures made to shareholders?

An academic discipline may experience resistance when its central term lacks definitional precision and no application model has evolved. For more discussion on the issue of stakeholder governance see MARTIN RICKETTS, *THE MANY WAYS OF GOVERNANCE* (2000).

35. For example, Joseph F. Johnston notes the ultimate economic impact of avoiding downsizing:

The stakeholder argument, if taken seriously, leads to perverse results. In recent years, the debate has usually centered around decisions by management to cut costs by “downsizing” the work force, closing obsolete plants or selling the company to someone who can run it more efficiently. These decisions will be rejected or postponed if management is required to give priority to the interests of non-shareholder constituencies. While incomes of employees and suppliers may be temporarily preserved by postponing surgery on a sick enterprise, the company will be unable to compete effectively and may ultimately fail, with accompanying losses to all constituencies. Insolvency can be avoided by state subsidies, but this is a recipe for continued inefficiency and economic stagnation. The stakeholder model is also misguided because it assigns to business managers the job of allocating resources among competing social groups based on undefined communitarian objectives. This is an essentially political job to which company directors were not elected by the voters, and for which they are ill-suited by temperament and training. Stakeholders may respond to this point by suggesting that government should intervene directly in business decisions. In that event, of course, the decisions will be made based on the politics or the ambitions of government officials, at the expense of efficiency and productivity.

JOHNSTON, *supra* note 17, at 14. For more information on the economic issues in downsizing, see Marianne M. Jennings et al., *The Ethics of Worker Safety Nets for Corporate Change*, 12 J. BUS. ETHICS 459 (1993).

36. The two most obvious issues are stakeholderism’s normative contract foundation in contravention of actual contract relationships such as that of a shareholder with a corporation and the property interests of corporations being managed by those with no ownership interests or possessory rights. For a look at the normative contract foundation of stakeholderism, see Thomas Donaldson & Thomas W. Dunfee, *Toward a Unified Conception of Business Ethics: Integrative Social Contracts Theory*, 19 ACAD. MGMT. REV. 252 (1994). See also *supra* notes 7 and 9 and *infra* note 103 and accompanying text. For a critique of stakeholder theory’s disregard of legal rights and protections, see Jennings, *Teaching Stakeholder Theory*, *supra* note 17.

37. The following excerpt is indicative of the presumptively valid nature of stakeholder theory’s assumed importance despite the lack of data noted earlier:

Prime Minister Blair campaigned on the notion of reforming Britain's economy via stakeholder theory. In 1996, Blair stated in a speech to the Singapore business community, "Successful companies invest, treat their employees fairly, value them as a resource, not just of production but of creative innovation."³⁸

Blair has also noted that a change in ethos is needed, yet without discussing or even recognizing the resulting economic impact of his proposals:

We cannot by legislation guarantee that a company will behave in a way conducive to trust and long-term commitment. But it is surely time to assess how we shift the emphasis in corporate ethos, from the company being a mere vehicle for the capital market, to be traded, bought and sold as a commodity, towards a vision of the company as a community or partnership in which each employee has a stake, and where a company's responsibilities are more clearly delineated.³⁹

Mr. Blair has also noted the following on the general nature of a stakeholder economy:

A stakeholder economy is not about tying companies up in red tape. But it is about changing the culture of our industry, so that we can compete on the basis of quality and not only cost; on the long term as well as the short term; on trust, not simply a quick buck. There is no future for Britain as a low-skill, low-tech, low-wage economy. We need to make our economy strong, by providing opportunity for all in a world of change. To unite our broken society. To give power to the people.⁴⁰

The purpose of the organization, however, can be perceived in a much wider context. Henry Ford has been quoted as saying that: "A business that makes nothing but money is a poor kind of business." Management theorists have supported this concept from Chester Barnard in 1938 through to Henry Mintzberg in 1983. They maintain that while profits may be an essential pursuit of the company, they may also be seen as a means rather than an end. According to Handy the desirable outcome for an organization's pursuits is the continued survival of the business in order to maintain its contract with its various stakeholders, including the wider community. Most commentators now agree that business organizations have some role to play in society, however, opinions vary greatly as to the nature of this responsibility. In the last two decades, the stakeholder perspective has addressed the question of corporate responsibility extensively.

Greenwood, *supra* note 11, at 31.

38. Speech by the Rt. Hon. Tony Blair, MP, to Singapore Business Community, Jan. 8, 1996 (available on file).

39. *Id.*

40. *Id.*

“Power to the people” is a description of taking an economy of private investors and their reliance on their express contracts with corporations to an economy of socialism. Yet absent from Blair’s proposals and theories are discussions of redistribution of wealth. Companies that find themselves as targets of stakeholder battles are advised by public relations experts to explain to the public and activists how they contribute to the economy.⁴¹

This isolationist view of stakeholder theory produces odd results when the purists’ stakeholder theory is applied. Both legal scholars and stakeholder theorists ignored the strange bedfellows they took on when they embraced stakeholder theory as a justification for antitakeover statutes. During the height of the 1980s takeover fervor, legal counsel to corporations warmly embraced stakeholder theory, utilizing its proponents in order to have state legislators pass antitakeover legislation. Under this form of statutory preemption of market function, boards were permitted to consider not only the welfare of the shareholders in the form of the takeover price, but also the impact of the takeover on employees, including officers and communities.⁴² Corporations worked hand-in-hand with labor advocates to ensure that plants and corporations remained in communities as job sources—not understanding that the long-term economic implications of this legislative and lobbying partnership might be a resulting decline in company performance and shareholder returns.

The pairing of these forces is all the more odd because today the proponents of stakeholder theory, in their demand for a say in corporate governance, fundamentally have the subversive effect of taking over

41. ROBERT HALFON, CORPORATE IRRESPONSIBILITY: IS BUSINESS APPEASING ANTI-BUSINESS ACTIVISTS? 7 (2000).

42. For an analysis and review of anti-takeover statutes, see Robert L. Winter & Robert D. Rosenbaum, *Shark Repellants and Golden Parachutes: A Handbook for the Practitioner* (Mark H. Stumpf & L. Stevenson Parker eds., 1989). The drive for constituency statutes still continues. In a recent piece, one scholar argues that constituency statutes allow directors to consider the interests of the corporation’s stakeholders as well as its shareholders. Because employees and customers bear some of the risk resulting from corporate decisions, proponents assert, they too should be entitled to hold directors responsible for violating fiduciary duties. Proponents argue that employment, contract, and other laws do not adequately protect stakeholders. By considering the interests of all the corporation’s stakeholders, the directors will be better able to make decisions for the good of the corporation as a whole and to maximize corporate wealth. The statutes also allow corporations to act in an ethical manner. See generally Edward Adams & John Matheson, *A Statutory Model for Corporate Constituency Concerns*, 49 EMORY L.J. 1085 (2000).

corporations without the economic rents provided to shareholders in a takeover.⁴³

Finding oneself in a ball of twisted logic and confused application is not unusual in stakeholder theory. For example, British holding company, Tomkins, P.L.C., found itself caught in a stakeholder accountability battle when it had been proclaimed a CSR hero for its actions with its subsidiary, Smith & Wesson. Tomkins, attempting to find a buyer for Smith & Wesson, had to make the company as attractive as possible, and consequently, Tomkins had Smith & Wesson's managers enter into a voluntary agreement with the federal government to change the manufacture and distribution of handguns in the United States. Smith & Wesson's incentive for the agreement was its dismissal as a defendant from lawsuits being filed against manufacturers for their liability for medical care for victims of crimes. Philadelphia, Los Angeles, and Atlanta were a few of the cities that had filed lawsuits seeking payment of medical care costs for victims of crimes committed with guns. Given that every index of CSR lists weapon manufacture as a non-CSR trait, Tomkins's attempted execution of CSR and stakeholder theory, in its corporate mind, was flawless.⁴⁴

However, in heeding the call for a weapon-controlled world, Tomkins and Smith & Wesson failed to recognize that stakeholders do include customers, shareholders, and employees of the company. So great was the outrage over the settlement that Smith & Wesson was the victim of a boycott by gun purchasers, a refusal to carry their products by retailers and distributors, and protests springing from the resulting losses and downsizings that occurred because of the stakeholder backlash.⁴⁵ Smith & Wesson was forced to close plants in Maine and

43. One scholar has observed, "This . . . is a natural concomitant of the changed meaning of 'stakeholder.' . . . [S]takeholder theory is intrinsically incompatible both with the specific business objective of maximising long-term owner value, and more generally, with all substantive corporate ends; it undermines both private property and accountability." Elaine Sternberg, *Stakeholding: Betraying the Corporation's Objectives* 20 (1998). See *infra* notes 103-12 and accompanying text for more discussion on the property rights issue.

44. See *infra* notes 68-76 and accompanying discussion for more information on CSR indexes. For more details on the Tomkins/Smith & Wesson situation see Christine M. Westphal & Susan C. Wheeler, When Ethical Decisions Alienate Stakeholders: Smith & Wesson as a Case Study, Paper presented at the Academy of Legal Studies in Business, Albuquerque, New Mexico (Aug. 8-12, 2001) (copy available upon request).

45. Charlton Heston, president of the National Rifle Association summarized the outrage from the stakeholders: "Smith & Wesson is a good company and a fine old American name, but they're owned by the Brits. I don't really relish the idea of the Brits telling us how to deal with one part of our Bill of Rights." *Guardian City Pages*, THE GUARDIAN (LONDON), Aug. 5, 2000, at 24. Edward Shultz, the CEO of Smith & Wesson,

Massachusetts and sales declined dramatically. By the time Tomkins sold Smith & Wesson, its sales had dropped by one-third, and it finished 2001 with a loss of \$57 million.⁴⁶

The reaction from the business and business ethics community was that business ethics creates problems for companies.⁴⁷ What the Tomkins/Smith & Wesson situation actually illustrates is a fundamental flaw in stakeholder theory's circuitous nature. In theory, a company is to consider all groups as it makes decisions. If Tomkins/Smith & Wesson had done so, they would not have entered into the agreement with the federal government because the agreement resulted in plant closings, downsizings, loss of revenues, and near destruction of the company's distribution system. Not entering into the agreement would seem to be the correct answer under stakeholder theory analysis. However, Tomkins, somewhat mistakenly, began with the assumption that underlies all empirical studies to date and remains at the heart of stakeholder theory: there are certain activities that preclude a company from being a CSR company. In order to rise to the definition, those activities must cease. Tomkins simply attempted to make the activity of gun manufacture and distribution more acceptable, and stakeholder proponents touted its decision as ethical even as it destroyed various dependent stakeholders of the company.

Not only is the Tomkins/Smith & Weston example illustrative of stakeholder theory's lack of analysis of the economic impact of a decision, it reveals the political nature of stakeholder theory, an issue discussed in the following section. There is a certain absolutist quality to stakeholder theory that is surprising given its consensus origins and utilitarian goals. The difficulty is, as Tomkins and Smith & Wesson learned, the absolutist goals are not always consistent with the goal of earnings. Additionally, the absolutist goals are not always consistent with the virtue standard of ethics.

D. Stakeholder Theory's Imprecision in Recommended CSR

Stakeholder theory also suffers from the sheer weight of its various nuances, while its tenets and standards for CSR are not explored in a meaningful and quantifiable way. For example, scholars in business

was the recipient of many used tea bags in his mail, a protest from U.S. gun owners and enthusiasts that was reminiscent of the Boston Tea Party.

46. Tomkins sold Smith & Wesson in May 2001 for \$15 million. It had paid \$112 million for the company in 1987. Jess Bravin & Sara Calian, *Smith & Wesson to be Acquired by Arizona Firm*, WALL ST. J., May 15, 2001, at B10.

47. Tish Durkin, *Good Deeds Can Misfire: Consider a Gunmaker's Tumble*, NAT'L J., Apr. 28, 2001, at 1207.

ethics continue to tout The Body Shop as a template for companies interested in maximizing wealth through stakeholder inclusion.⁴⁸

The data on The Body Shop, if examined objectively, demonstrate this company has litigation from shareholders, franchisees, and employees, that its charitable contributions have been less than most corporations (including the U.S. average of one to two percent), and that its products cannot live up to the claims of animal-free testing and no petrochemicals. Further, its financial performance has necessitated the removal of its founder, Anita Roddick, as Chairman and CEO.⁴⁹

Ben & Jerry's is similarly revered as an exemplar for other companies. Ben & Jerry's was recently acquired by Unilever because of a never-ending series of securities, contracts, and management issues leaving it with low earnings and litigation. Yet, the company's position as an icon of CSR never wavers. "Appropriately, socially responsible firms such as Ben & Jerry's and The Body Shop are held up as standards for other companies to emulate."⁵⁰ Part of the problem in using these two exemplars with earnings and litigation issues stems from the previous discussion and examination of stakeholder accountability in isolation from shareholder accountability.⁵¹

Stakeholder theory continues its imprecision and volatility because so little empirical work is available. The body of literature consists of shareholder models and theories, but few measures of efficacy. In the following section, this neglected area of stakeholder scholarship is examined, followed by an analysis of the implications of this study and others that could be undertaken in the interest of refining the role and application of stakeholder theory to businesses and their operations and strategic planning.

48. DAVID WHEELER & MARIA SILLANPAA, *THE STAKEHOLDER CORPORATION: THE BODY SHOP BLUEPRINT FOR MAXIMIZING SHAREHOLDER VALUE* (1997). This decision was made in 1998 despite clear evidence of The Body Shop's declining performance as well as pending litigation by shareholders, franchisees, and former employees.

49. See Marianne M. Jennings & Jon Entine, *Business With a Soul: A Reexamination of What Counts in Business Ethics*, 20 *HAMLINE J. PUB. POL'Y* 1 (1998).

50. COLLINS & PORRAS, *supra* note 14, at 320. For background on the harms befalling both Ben & Jerry's and its stakeholders as well as shareholders, see Jennings & Entine, *supra* note 49, at 45.

51. See *supra* notes 35-39 and accompanying text.

III. THE EMPIRICAL RELATIONSHIP BETWEEN STAKEHOLDER AND CSR: THEORY AND FINANCIAL PERFORMANCE

A. *Existing Standards Used for Identifying Stakeholder/CSR Firms*

“CSR and stakeholder accountability are good for business” is the central theorem of its proponents. Empirically establishing that theorem has proven elusive and is often assumed as a given because proponents of the theorem choose the firms they believe place an emphasis on stakeholder accountability.⁵² Such an approach necessarily relies on the theorists themselves to determine the key assumptions of any stakeholder/CSR study. That is, studies determining whether stakeholderism/CSR results in higher earnings suffer from the inherent flaw that those conducting the study determine for themselves what constitutes CSR and then answer the question whether financial performance improves based on the company’s adoption of their CSR standards and stakeholder theory. Those conducting the study decide which firms to include and why. The criteria for inclusion are entirely within the discretion of the scholar, and that inclusion is dependent upon the imprecision noted in the previous section’s discussion.

For example, as noted earlier, one of the few empirical studies relies on Collins and Porra’s characterization of values among their built-to-last companies as the authors’ basis for categorizing these firms as so-called stakeholder firms.⁵³ Other frameworks rely on quality awards such as the Australian Quality Award (“AQA”), the Malcom Baldrige National Quality Award (“MBNQA”), and the European Quality Award (“EQA”) for establishing standards for social responsibility. Ironically, then the authors find fault with the quality awards’ foci.⁵⁴ The following table represents the list of built-to-last vs. non-built-to-last companies.

52. The literature revealed only specific firm example citations, not a list of criteria for stakeholder accountability. See, e.g., Sandra A. Waddock & Samuel B. Graves, *Quality of Management and Quality of Stakeholders Relations: Are They Synonymous?* 36 BUS. & SOC’Y 250 (1997) (in which the authors used a list of companies developed as “visionary” by Collins and Porras).

53. Further, the study’s authors noted to their chagrin that they were forced to include “repugnant companies,” as they defined “repugnant companies,” which, in their minds, included tobacco companies.

54. See, e.g., Peter Kok et al., *A Corporate Social Responsibility Audit Within a Quality Management Framework*, 31 J. BUS. ETHICS 285 (2001) (wherein the authors fault the MBNQA for its narrow focus on only key stakeholders).

Table 1: Collins and Porra's Visionary and Comparison Companies**Built-to-Last Companies**

3M

American Express

Boeing

Citicorp

Ford

General Electric

Hewlett Packard

IBM

Johnson & Johnson

Marriott

Motorola

Merck

Nordstrom

Philip Morris

Procter and Gamble

Sony

Wal-Mart

Walt Disney

Non-Built-to-Last Companies

Norton

Wells Fargo

McDonnell Douglas

Chase Manhattan

General Motors

Westinghouse

Texas Instruments

Burroughs

Bristol-Myers-Squibb

Howard Johnson

Zenith

Pfizer

Melville

RJR Nabisco

Colgate

Kenwood

Ames

Columbia

A simple cross-comparison of the list reveals the inconsistency with the literature and the arbitrariness of the study's authors' favorable/non-favorable CSR classification system. For example, Marriott Corporation,

a built-to-last company, has been involved in nearly a decade of litigation over its decision to spin-off its hotel management side of the house from its hotel/property ownership division.⁵⁵ The result of that spin-off was that its bondholders were left with property rights in a company whose holdings were ninety percent leveraged. In effect, the bondholders, surely part of the classification of stakeholders, were left with all the debt and no earnings even as shareholders in the management spin-off saw their share values escalate.⁵⁶

Contra, Colgate is a non-built-to-last company that has paid consistent dividends for over a hundred years, manufactures products that improve the health and sanitary conditions for developing nations, and is known for its equitable treatment of its international workers.⁵⁷

Ford faces both its sport utility vehicle ("SUV") carbon dioxide emissions issues and the Explorer/Firestone debate, but nevertheless, it is a built-to-last company.⁵⁸ General Motors is consistently one of the country's most admired companies, but it is a non-built-to-last firm for purposes of these authors' study.⁵⁹ Motorola's stock price is half of what it once was, and the company is going through significant downsizing.⁶⁰ General Electric ("GE") is a defense contractor.⁶¹ IBM

55. Allan Sloan, *Keeping It in the Family*, NEWSWEEK, Mar. 9, 1998, at 44.

56. Alex Berenson, *Marriott Companies in Settlement of Lawsuit Brought by Investors*, N.Y. TIMES, Feb. 25, 2000, at C1. See also Christina Binkley, *Marriott Faces Outcry From 1980s Buyers of Hotel Partnerships*, WALL ST. J., Feb. 13, 1999, at A1 and Edwin McDowell, *Host Marriott to Become REIT and Buy 13 Hotels*, N.Y. TIMES, Apr. 18, 1998, at B1.

57. MARIANNE M. JENNINGS & LOUIS GROSSMAN, BUILDING AND GROWING A BUSINESS IN GOOD TIMES AND BAD: THE STORIES OF 15 COMPANIES EACH WITH 100 YEARS OF CONSECUTIVE DIVIDENDS (2002).

58. For information on the tire issue, see Keith Bradsher, *Firestone to Stop Sales to Ford, Saying It Was Used as Scapegoat*, N.Y. TIMES, May 22, 2001, at A1; David Kiley, *Ford to Replace up to 13 Million Firestone Tires*, USA TODAY, May 22, 2001, at 1A; *Firestone Quits as Tire Supplier to Ford*, WALL ST. J., May 22, 2001, at A3. For information on the Ford Explorer/SUV issue, see Jeffrey Jall & Sholnn Freeman, *A Love Affair That's Hard to Break Up: Americans and Their SUVs*, WALL ST. J., Aug. 25, 2000, at B1.

59. See *supra* notes 14-15 and accompanying text.

60. For complete information see <http://www.motorola.com>. Motorola's price dropped during 2001 from \$37 per share to \$16. It is the defendant in seven lawsuits involving soil, air, and groundwater pollution. One suit resulted in a favorable verdict for Motorola in May 2001. From January 2001 through June 2001, Motorola downsized 16,000 employees.

61. See <http://www.generalelectric.com>. GE sells engines and other forms of equipment to the federal government. Those engines are used in "weapons of war" such as jet fighters, aircraft carriers, and submarines. GE is also the number one manufacturer of generators used in nuclear power plants.

just settled Foreign Corrupt Practices Act⁶² charges for bribing Argentine government officials and has been banished from doing business with the government there.⁶³ Johnson & Johnson faces litigation over its Tylenol product and its connection to liver damage.⁶⁴ Wal-Mart was recently called the most litigious company in America.⁶⁵

The list could go on, but there remains one observation: these classifications of companies for empirical purposes are arbitrary. A question that arises is whether the classifications are arbitrary because the definition of a stakeholder is arbitrary, or whether the goal of stakeholder theory is tied to something other than accountability to more than just shareholders. The definition of stakeholder is revealed as following a prescribed political agenda as the following summary chart from the literature depicts:

62. 15 U.S.C. § 78dd-1 (2000).

63. IBM has entered into a consent decree with the SEC on charges that it engaged in bribery in violation of the FCPA. The charges filed by the SEC alleged that IBM subsidiary, IBM Argentina S.A., was awarded a \$250 million contract for modernizing the systems of Banco de la Nacion Argentina (BNA), a government-owned commercial bank in Argentina. As part of the arrangement, the IBM subsidiary entered into a \$37 million contract to do business with a corporation owned by directors of BNA with the directors receiving \$4.5 million of that \$37 million contract as compensation. Those directors then voted to award IBM the contract.

The consent decree requires IBM to pay a \$300,000 fine. The fine is minimal because IBM did conduct its own internal investigation to uncover what had happened and fired thirteen employees in its subsidiary when the above relationships were uncovered.

BNA revoked the contract after paying IBM \$80 million, and IBM has agreed to reimburse BNA \$34 million of that amount. Other Argentine agencies also revoked their contracts with IBM with the total amount of business lost in the Argentina market estimated to be \$500 million.

IBM has announced a new company policy that prohibits company bids for government projects that are not done in an open bidding process with full public access to documents. In the Matter of International Business Machines Corp., Administrative Proceeding File No. 3-13097, Rel. No. 34-43761 (Dec. 21, 2000).

64. Doug Levy, *Acetaminophen Overuse Can Lead to Liver Damage*, USA TODAY, Dec. 22, 1994, at 1D; Deborah Sharp, *Alcohol-Tylenol Death Goes to Trial in Florida*, USA TODAY, Mar. 24, 1997, at 3A.

65. Wal-Mart was sued once every two hours in 2000. Richard Willing, *Lawsuits Follow Growth Curve of Wal-Mart*, USA TODAY, Aug. 14, 2001, at 1A.

Table II: Aspects of Social Responsibility⁶⁶**External environment:**

- | | |
|--|--|
| 1. Social responsibility and new opportunities: | Contributing to solving or reducing social problems. |
| 2. Community relations: | Extent of openness and support to people around the organization and to (local or national) government, stakeholder groups, action groups, churches, educational institutes, health care institutes, and others. |
| 3. Consumer relations: | Extent of openness towards consumers; recognition of rights of consumers: safety, information, free choice, and to be heard. |
| 4. Supplier relations: | Extent of openness towards suppliers; recognition of rights of suppliers: information, participation in design. |
| 5. Natural environment (e.g., pollution and packaging) and future generations: | Execution of legal requirements, research into current and future technical and environmental developments, environmental issues regarding packaging (recycling).
Respect for biodiversity and needs of future generations. |
| 6. Shareholders relations: | Extent of openness regarding social effects of the activities of the organization (especially with regard to investment decisions). |

Internal environment:

- | | |
|--|--|
| 7. Physical environment: | Safety, health, ergonomic aspects, structure, and culture. |
| 8. Working conditions: | Demands in relation to recruitment, selection, promotion, part-time work, working on Sundays, medical aspects, retirement aspects. |
| 9. Minorities/diversity: | Extent to which attention is given to minorities, diversity, multiculturalism. |
| 10. Organizational structure and management style: | Empowerment, involvement. |
| 11. Communication and transparency: | Top down and bottom up communication, use of information technology, review of information flows: relevance, timeliness, detail, and accuracy. |
| 12. Industrial relations: | Extent to which communication takes place about expectations, needs, values, and norms in society. |

66. Kok, *supra* note 54, at 292.

13. Education and training: Needs of employees, current and future knowledge and skills, review of training budget, personal development, quality assurance of training process, evaluation of training results.

Internally and externally:

14. Ethics awareness: Attention within development and training and communication for ethical subjects and aspects in relation to work and the business; involvement of employees in developing codes of behavior, values, ethical codes, and the way employees are addressed to those aspects; stimulation of broad ethical discussion with all parties.

The lists of stakeholder/CSR firms that would be compiled from the parameters in this figure would be: no defense contract firms, no tobacco firms, no chemical manufacturers, and so on. In other words, the parameters for CSR and stakeholder accountability preclude inclusion of certain categories of firms, regardless of their accountability to stakeholders because of a preconceived notion of political position on the incorrect side of a particular issue.⁶⁷

In designing a study on the efficacy of stakeholder theory in a financial sense, the Authors were left with the fundamental and unanswered question in stakeholder theory—how does one know when a company is stakeholder accountable? For purposes of this study's defined set of stakeholder companies, the Authors undertook an examination of the literature for those stated values that would appear to be recognized as a business approach that placed an emphasis on stakeholders. What are the expectations of theorists on stakeholder-/CSR-oriented firms?

At the outset, a review of the statements of ideals for business behavior that have been drafted over the years was conducted. For many companies, these are aspirational statements. For other companies, they are simply written versions of their own internal codes of ethics. Several documents and statements of social responsibility provide topical guidelines for stakeholder issues. For those in the field of business ethics, they are lists cited frequently as exemplars for behavior and form the basis of the clean yield, Kinder, Lydenburg and

67. When these results and formula for CSR are contrasted with the Smith & Wesson case, the result is nothing less than a maddening lack of logic. Smith & Wesson ignored hordes of stakeholders in its decision to settle with the federal government, but its decision was labeled socially responsible and ethically correct.

Domini (“KLD”) database. Those documents or statements of principle include:

The Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy⁶⁸

The Council on Economic Priorities Accreditation Agency Guidance Document for Social Accountability⁶⁹

The Caux Round Table Principles of Business⁷⁰

Interfaith Center on Corporate Responsibility Principles for Global Corporate Responsibility: Bench Marks for Measuring Business Performance⁷¹

68. Developed by the International Labour Office (“ILO”) and *available at* <http://www.ilo.org>. The ILO statement focuses entirely on labor relations and, among other emphasis in labor practices, requires compliance with the law; working to increase local employment; training multinationals; providing the best wages; benefits; and working conditions (within framework of government policies); ensuring safety and health; and working earnestly with labor organizations.

69. Referred to as Social Accountability (“SA”) 8000, the Council on Economic Priorities (“CEP”) models its standards after International Standards Organization (“ISO”) 9000 and ISO 14000—the two standards for quality control and environmental management systems.

SA 8000 is also an employment-focused stakeholder standard providing guidelines in the following areas: child labor, forced labor, health and safety, freedom of association, discrimination, disciplinary practices, working hours, compensation, and management.

The CEP does offer SA 8000 certification if a company is first audited for compliance. The SA 8000 guidelines are *available at* <http://www.cepa.org>.

70. The Caux Round Table Principles of Business provide a broad look at stakeholder accountability, going beyond labor requirements. The general stakeholder definition in the Principles covers customers, employees, and shareholders and also lists the following as business responsibilities: accountability beyond shareholders; innovation, justice, and respect for the world community; business beyond the letter of the law; respect for rules; support for multilateral trade; respect for the environment; and avoidance of illicit operations. The Principles, *available at* <http://www.cauxroundtable.org>, then establish stakeholder principles such as treating customers with dignity, providing customers with high quality goods, treating customers fairly, improving living conditions for workers, ensuring health and safety of workers while at work, communicating honestly and openly with employees, no discrimination, assisting in training for employees, fair pricing policies, avoiding unnecessary litigation, bringing suppliers into their processes, paying suppliers on time, conserving the environment, opening markets, promote competition, and respect intellectual property. The guidelines do include providing a return to shareholders.

71. These guidelines focus on sixteen areas: ecosystems, national communities, local communities, indigenous communities, the employed, women in the work force, minority groups, persons with disabilities, child labor, forced labor, suppliers, financial integrity, ethical integrity, shareholders, joint ventures and partnerships, and customers and consumers. Each area then has guidelines. The Interfaith Center also publishes an annual report on shareholder proxy proposals (which tend to focus on these sixteen areas) and their fate at annual meetings. The Interfaith Principles also incorporate by reference other shareholder standards such as CERES principles, available through Interfaith Center on

London Institute of Business Ethics, Code of Ethics, and International Business⁷²

The Prince of Wales Business Leaders Forum: Business as Partners in Development⁷³

A comparison of these various codes and principles reveals some uniform topics and traits. First, there is a great deal of reliance on self-description.⁷⁴ Second, there are near-uniform thoughts on stakeholder identification and dedication. While all the codes mention shareholders in passing,⁷⁵ the clear winners in terms of stakeholders are employees, communities, ecosystems, suppliers, and competitors. All the codes

Corporate Responsibility, 475 Riverside Drive, Room 550, NY, NY 10015, (212) 870-2295.

72. The IBE focuses on thirteen areas: political activities, health and safety, gifts, conflicts of interest, insider dealing, equal opportunity and discrimination, alcohol and drug abuse, sexual harassment, disclosure of company information, financial transactions, fair competition, and environment and software copying. The IBE also recommends the Caux Round Table and Interfaith Declaration Standards. The IBE also cites model companies for attention to codes of ethics and principles. The citations are based on the companies' representations in their own documents or in speeches given by the companies' CEOs. The ten companies cited for their implementation of the IBE code are Shell, BP, Texaco, ICI, Caterpillar, Honeywell, Alcan, Standard Chartered Bank, British Airways, and Northern Telecom. The practices of three multinationals (ICI Polyurethanes, ESSO UK plc, and Northern Telecom (Nortel)) are also noted with examples of language from these firms' various documents. For example, Nortel lists its stakeholders as customers, employees, shareholders, suppliers, and community society.

The documentation relied on for determining the exemplary companies in this list consisted of self-descriptive materials. This precedent was noted by the Authors and used as a basis for defining this study's set. See *infra* notes 77-86 and accompanying text.

The IBE code is available at <http://www.ibe.org.uk>.

73. The most general of the various codes, this document simply advocates corporate involvement in public policy and support for philanthropic activities. The guidelines also suggest that companies make socially responsible investments. The partnerships can be with NGOs (nongovernmental entities) such as Conservation International and Intel or CARE International and Starbucks or through international agencies such as the World Bank's support of development programs. The partnership project is explained at <http://www.business-impact.org>.

74. Indeed, favorable citations of The Body Shop and Ben & Jerry's rely on those companies' reports and not original investigations as to actions actually taken. See Jennings & Entine, *supra* note 49 for a discussion. See COLLINS & PORRAS, *supra* note 14 for the assumption of these firms' stakeholder "goodness."

75. However, the passing references almost reflect an embarrassment that they must be there at all, and there is a telling lack of focus on accountability to them. For example, the Caux Principles list four duties to owners and investors, five to customers, ten to employees, six to suppliers, five to competitors, and seven to communities. The ICCR lists shareholders as one of sixteen principles of corporate social responsibility. The IBE addresses shareholder interests with one factor: disclosure of company information. The Prince of Wales Business Leaders Forum addresses *only* stakeholder interests.

address obligations to these groups. Indeed, the model businesses cited employ these terms in their self-descriptive materials.⁷⁶

Given the reliance on self-descriptive materials with little or no audit activities for practices dictated by these codes, as well as the continuing imprecision on who stakeholders are and what their roles should be in corporate governance, the designation of stakeholder firms by unilateral description in this study seems less of a flaw in the research than a flaw grounded in the prevailing but imprecise theory of the field.

B. *The Stakeholder Group Constituted for the Study*

The Authors approached the definition of the research set of companies for this study in CSR/stakeholderism in a unique fashion. While it is true that the KLD database is “the best-researched and most comprehensive” database for corporate social performance, it is subject to the very issues outlined earlier regarding the flaws in stakeholder theory. KLD is a defined political perception of CSR reflected in absolutes, such as no defense contracts, no nuclear power, and other

76. The Clarkson Principles of Stakeholder Management evolved from the intersection of these codes and can be found at <http://www.rotman.Utoronto.ca/CCBE>. The seven Clarkson Principles are as follows:

Principle 1: Managers should *acknowledge* and actively *monitor* the concerns of all legitimate stakeholders and should take their interests appropriately into account in decision-making and operations.

Principle 2: Managers should *listen* to and openly *communicate* with stakeholders about their respective concerns and contributions and about the risks that they assume because of their involvement with the corporation.

Principle 3: Managers should *adopt* processes and modes of behavior that are sensitive to the concerns and capabilities of each stakeholder constituency.

Principle 4: Managers should *recognize the interdependence* of efforts and rewards among stakeholders and should attempt to achieve a fair distribution of the benefits and burdens of corporate activity among them, taking into account their respective risks and vulnerabilities.

Principle 5: Managers should *work cooperatively* with other entities, both public and private, to insure that risks and harms arising from corporate activities are minimized and, where they cannot be avoided, appropriately compensated.

Principle 6: Managers should *avoid altogether* activities that might jeopardize inalienable human rights (e.g., the right to life) or give rise to risks which, if clearly understood, would be patently unacceptable to relevant stakeholders.

Principle 7: Managers should *acknowledge the potential conflicts* between (a) their own role as corporate stakeholders and (b) their legal and moral responsibilities for the interests of stakeholders and should address such conflicts through open communication, appropriate reporting and incentive systems, and where necessary, third party review.

types of social issue screens.⁷⁷ Rather than relying on external evaluations of a company's subscription to stakeholder theory, we chose to rely on a firm's assignment of importance to the notion of stakeholder theory and CSR. While such a method of determination of subscription to stakeholder theory may not be consistent with theorists' views, it is a consistent reflection of a firm's efforts to at least utilize the theory as a public relations tool.⁷⁸

To identify the unilaterally committed stakeholder firms ("UCSF"), we began with a list of the Standard and Poor's ("S&P") 500.⁷⁹ Using self-descriptive materials furnished directly by the companies, found on their websites or supplied pursuant to a survey, the S&P 500 was divided into two groups: those that had stakeholderism as corporate policy and those that did not.⁸⁰ Of the 500 firms, 284 were classified as firms with self-declared stakeholder policies.⁸¹ Those firms are listed in Appendix A.

Furthermore, the mention of "stakeholder" was in the context of a wide range of activities. Table IV provides a list of most of the activities mentioned in the context of the firms' unilateral "stakeholder" declarations.

Table IV—Stakeholder Activities in UCSF

Environment
 Science education
 AIDS awareness programs
 Product contribution programs

77. See *supra* note 14 and accompanying text. For more discussion of the KLD database, see Donna J. Wood & Raymond E. Jones, *Stakeholder Mismatching: A Theoretical Problem in Empirical Research on Corporate Social Performance*, 3 INT'L J. ORGANIZATIONAL ANALYSIS 229 (1995).

78. Further, as the subsequent discussion of the Coase Theorem will note, such a self-description may be something more than public relations outreach. See *infra* notes 105-38 and accompanying discussion.

79. The S&P 500 for 1999 was used for the study. Some reclassifications, although minor, have occurred since the time of the examination.

80. Each company has a summary sheet or sheets that explains the determination, and those sheets are available from the Authors. For example, companies with youth programs, philanthropic donations, and community outreach programs were deemed to be self-declared stakeholder firms. The typical types of activities for self-declared stakeholder firms were sponsorships of childhood immunization programs, AIDS prevention in teens programs, children's television programming, software gifts, diversity programs, sponsorship of Martin Luther King Day activities, Drug-Free America, and museum and zoo sponsorships.

81. The information was all self-reported and no attempt was made to verify actual practice versus words of commitment. Of the 500 surveys mailed to various levels of the S&P 500, only eleven were returned. The low response rate forced observations from materials only. As an aside, the eleven firms that returned the survey were all heavily immersed in stakeholder policy in their materials.

Philanthropy
Volunteer support
Community investment
Grants
Diversity commitment
Women in the workplace
Education and training for employees
Health care for employees
Care for kids
Hispanic outreach
Drug education
Food Safety education
Program sponsorships
Scholarships for women in science and engineering
Resource conservation
Support of arts and culture
Programs on aging
Matching tuition grants
Black History education support
Equipment donation
Habitat conservation
Eco-friendly research and development
Pollution prevention
Financial independence training programs
Scholarships
Senior & Disabled programs
Youth club sponsorship
Boy Scouts
Habitat for Humanity
United Way
Recycling
Conservation
Wildlife preservation
University partnerships
African-American Awareness
Hispanic awareness
Civil rights museum
Combating hunger
Breast cancer awareness
Health
Hospital work and fundraising
Walkathons
Diabetes

Teacher education
Education
Housing
Girl Scouts
Minority Business Development
Minority scholarships
Support of Ronald McDonald House
Literacy

There are several pertinent observations about the list. First, it is often obvious which stakeholder activities go with which companies because the companies have made an effort to tie concerns about their businesses with stakeholder activities. For example, Albertson's sponsors food safety education programs, and nearly all pharmaceutical firms have free product programs designed to help those without resources and insurance obtain prescription drugs.⁸² These firms have a stake in the outcome of the community projects, and there are clear enhancements to their reputations for their involvement in areas related to their primary businesses.

C. The Cross-Check of Externally Generated Lists of Stakeholder Firms

To attempt to provide some form of external check for the self-perceived stakeholder policy adherents, honor lists were used as a check of the self-descriptive nature of the classifications and as measures of adherence to stakeholder policy. These honor lists are discussed in detail below and represent selections by both the business communities and those groups touting stakeholderism, particularly in the context of social responsibility.

For example, the Council on Economic Priorities conducts audits for compliance with its Social Accountability ("SA") 8000 and also names its corporate honor roll each year for those firms exhibiting the highest levels of corporate social responsibility. Firms in the S&P 500 earning that recognition (twenty-five in total) were also used as a subset for

82. Other examples include software manufacturers furnishing computers and hardware to schools; lumber companies supporting Habitat for Humanity; Avon and other firms with predominantly female customers supporting breast cancer screening and education; Alcoa, a mining company, supporting environmental preservation and research; and engineering firms supporting scholarships for women in science and engineering.

purposes of testing the hypothesis.⁸³ (See Appendix B for the CEP Honor Roll companies that were also part of the S&P).

To double check for a focus on social responsibility, yet another list from a stakeholder proponent was examined—that of the rankings in the magazine, *Business Ethics*. Each year *Business Ethics* publishes its “100 Best Corporate Citizens,” a list of America’s “most profitable and socially responsible public companies.”⁸⁴ Because this list begins with the CEP list, it was not used as a comparative value.

Within the business community there are a number of lists of top performers. However, to keep the study in line with the notion of what constitutes a stakeholder, the results of a business press ranking were also used. Each year *Fortune* magazine publishes its list of the “100 Best Companies to Work For,” as determined by various criteria⁸⁵ and, perhaps most importantly, through surveys of employees.⁸⁶ (See

83. To the extent there are any flaws in the study’s identification of stakeholder firms, the testing of those firms recognized by those organizations touting stakeholder corporate policy as a subset should provide a form of checks and balances.

84. *Business Ethics* begins its honor roll process by taking names of companies from CEP (see Appendix B) and social responsibility investment firms (Clean Yield, Kinder, Lydenburg and Domini, a/k/a KLD) and from *Fortune*’s list of the 100 best companies to work for in America. These firms are then surveyed and asked for proxy statements, 10Ks 10Qs, and an annual report. “About five hundred” companies responded to the survey. The companies are then screened using ten factors (those with three or less are dropped), but the ten factors were not revealed in the 1996 survey except in an introductory and informal sense: women and minorities on the board, treatment of gay men and lesbians, charitable contributions, presence of an ethics credo or code of ethics, environmental issues, earnings growth, and other factors were never revealed. Dale Kurschner, *The 100 Best Corporate Citizens*, BUS. ETHICS, May/June 1996, at 24.

In the 2000 survey (covering 1996-1998), the 100 Best Corporate Citizens were ranked according to “service to four key stakeholder groups (stockholders, employees, customers and the community)” (see Appendix C). Tom Klusmann, *The 100 Best Corporate Citizens*, BUS. ETHICS Mar./Apr. 2000, at 12, 13. No methodology was given, except for reliance on KLD again; however, the article discussion seems to focus on company literature and self-description such as by Southwest Airlines (one in *Fortune* survey, fourteen in this BUSINESS ETHICS list), “Individualism is cherished. People are going to work harder if they don’t have to be somebody they’re not, if they’re valued for who they are.” *Id.* at 13.

85. Robert Lerering & Milton Moskowitz, *The 100 Best Companies to Work for in America*, FORTUNE, Jan. 12, 1998, at 84. Fortune screens 1,000 companies and chooses 238 as the “most viable candidates.” See Appendix D. No indication is given on the initial methodology for this screening process, except all companies must be in business for 10 years and have at least 500 employees. For 1998 (the year used in this study), 161 of the 238 agreed to participate. Hewitt Associates (on the list of Best 100 in previous years, but opted out due to conflict for 1998) surveyed 20,000 employees with a 29 page questionnaire. With a 58% return rate, the results were tabulated on a 175 point scale.

86. The surveys had 8,000 written comments on them. Because all stakeholder models emphasize employee fairness and treatment, their perception is clearly relevant in determining a firm’s dedication to its stakeholders. Only 37 of the Best 100 Companies to

Appendix C). Two other lists from business publications were also used as variables, including *Forbes*'s "100 Best Big Companies"⁸⁷ (See Appendix D) and *Fortune*'s "Most Admired Companies."⁸⁸ (See Appendix E).

D. Measuring UCSF Success: Does Stakeholder Attention Increase Financial Performance?

The following formal hypothesis was the focus of this comparative study:

Hypothesis #1: Unilaterally-committed stakeholder firms record higher net income than shareholder (i.e., non-UCSF) firms.

Measurement of firm value, growth, and profitability has been as varied in the work to date on so-called stakeholder firms as the means used for identifying stakeholder versus non-stakeholder firms. For example, some authors have used return on equity, return on sales, and growth in sales as their measures of comparison for corporate social performance ("CSP").⁸⁹ Their selection of growth in sales was justified by their perception that sales and sales forecasts play a critical role in firm valuation. Return on equity is the most widely used profitability measure.⁹⁰

However, studies to date have not recognized the refinements in the financial literature and research methodologies that are available in terms of controls for random effects. A comparison of sales growth for a group of non-KLD firms with a group of KLD firms is, quite simply, arbitrary because of the number of variables including industry and firm size.⁹¹ The possible explanations for changes in sales growth are not limited to the variables run in these models.

work for are also on the S&P 500.

87. *Forbes*' study is a measure of profitability only, including ROI, profits, PE ratios, and sales growth. Pfizer was ranked first in this survey. Pfizer provided research support for this project. See Appendix D.

88. *Fortune*'s list is a survey of business executives on business performance. GE has topped this list for a number of years. See Appendix E.

89. Ruf, *supra* note 14, at 147. The Authors use the KLD database as their measure for CSP/stakeholder firms.

90. DAVID F. HAWKINS, CORPORATE FINANCIAL REPORTING AND ANALYSIS: TEXT AND CASES (4th ed. 1998).

91. Such a comparison is even more problematic when the data set covers only a two-year period, the first year of which was the alleged commitment to CSR. See Ruf, *supra* note 14.

For these reasons, the Authors used a random effects panel model to compare the firms' profitability (for the years 1994-1998) with the variables of stakeholderism,⁹² the CEP Honor Roll,⁹³ the *Fortune* "100 Best Companies to Work For,"⁹⁴ the *Forbes* "Platinum Companies,"⁹⁵ and *Fortune's* "Most Admired Companies."⁹⁶ Financial data for the companies were obtained from COMPUSTAT. The random effects panel model examines firm profitability as a function of capital, labor, leverage, quality of management, and any other variable introduced, which in this study was one of the following variables: stakeholderism, as self-identified and discussed earlier, the two *Fortune* lists, the *Forbes* list, and the CEP Honor Roll. The *Fortune* "Most Admired Companies" list proved to be too small of a set for any meaningful analysis and so is not present in the tables below as a variable.

The empirical model used for the study included the following variables reported in the tables:

PPE	= Price/earnings ratio
LEV	= Debt leverage
PTB	= Market to book value
CP	= UCSF
HR	= Council on Economic Priorities Honor Roll
PLAT	= <i>Forbes</i> 100 Best Big Companies
BEST	= <i>Fortune</i> 100 Best Companies to Work For
MA	= <i>Fortune</i> Most Admired Companies

Table V Results of Random Effects Model Application to UDSF⁹⁷

Variable	Coefficient	Standard Error	b/St. Er.	P{ Z z}Mean
1994				
PPE	.9320440062E0-01	.25661715E	36.320	.0000 -3511.6
LEV	.9075301230	.20351372	4.459	.0000 -10.652
PTB	.95487196E-01	.17477075	0.546	.5848 -16.660
CP	180.1749213	33.487642	5.380	.0000 0.572
CONSTANT	89.56314436	25.534795	3.507	.0005

92. As determined by analysis of self-description for the firms as of 1998 and limited surveys. Again, there were 238 of the S&P 500 that included self-descriptive evidence of some adherence to stakeholderism.

93. The variable was simple: the firm either was or was not on the CEP Honor Roll for 1998.

94. See *supra* notes 84 and 85 and accompanying text for more information.

95. The *Forbes* ranking here is simply a financial ranking coupled with an admiration factor that remains unclear in its origins.

96. See *supra* note 87 and accompanying text.

97. For the years 1994 and 1995, the various rankings for *Forbes* were not available.

Variable	Coefficient	Standard Error	b/St. Er.	P{[Z] z}	Mean
1995					
PPE	.871748605E-01	.42227141	20.644	.0000	3511.6500
LEV	.5560183149E-01	.177791471	3.125	.0018	10.652491
PTB	.4581584774E-01	.14709470	0.311	.7554	-16.66082
CP	195.6447913	60.550977	3.231	.0012	0.5720000
CONSTANT	106.6256433	46.120629	2.312	.0208	
1996					
PPE	.9258667375	.25689335	36.041	.0000	.3511.6509
LEV	.8937500637	.20215276	4.421	.0000	-10.652491
PTB	.1081674192	.17367476	0.623	.5334	-16.660825
HR	-18.59739795	123.41082	-0.151	.8802	-799.19000
PLAT	383.1739468	73.226221	5.233	.0000	-799.13000
BEST	-368.1961178	119.30490	-3.086	.0020	-799.1860
CP	182.1780131	33.293273	5.472	.0000	0.57200
CONSTANT	-129.7799141	51.495295	-2.520	.0117	
1997					
PPE	.8914240816E	.40402302E	22.064	.0000	3511.65
LEV	.6153898258	.19199299	3.205	.0013	-10.6524
PTB	.7007823840E	.15960600	0.439	.6606	-16.6608
HR	-37.31098612	98.153919	-0.38	.7039	-799.190
PLAT	255.3902211	58.231199	4.386	.0000	-799.130
BEST	-219.4971169	94.932948	-2.312	.0208	-799.186
CP	193.2543285	56.276481	3.434	.0006	0.572000
CONSTANT	-17.39251636	54.768935	-0.318	.7508	
1998					
PPE	.9320440062E-01	.256661715E	36.320	.0000	3511.65
LEV	.9075301230	.20351372	4.459	.0000	-10.65249
PTB	.9548781968E-01	.17477075	0.546	.5848	16.660825
CP	180.1749213	33.487642	5.380	.0000	.572000
CONSTANT	89.56314436	29.534795	3.507	.0005	

Stakeholder firms, as identified in this study, recorded higher net income than non-stakeholder or shareholder firms, *ceteris parabis*. A statistical novice's glance at the data reflected in Table V reveals that the numbers are so diverse that a secondary hypothesis becomes obvious:

Hypothesis #1: There is no correlation between lists of CSR firms, from whatever source, using whatever standards, and financial performance.

There are no correlations between net income and the CEP's Honor Roll or the *Fortune* or *Forbes* lists.⁹⁸ Again, while these third-party identifications of CSR firms are widely publicized and used as a standard for "doing good means doing well," there is apparently no correlation between outsiders' identification and recognition of a CSR/stakeholder company and its financial performance. However, those firms that include a focus, as defined above, on stakeholders through self-declaration do have better financial performance than those firms without such declaration.⁹⁹

E. Study Analysis and the Application and Implications: Conclusions About the Benefits of Stakeholderism

While the facile conclusion from the study's findings would be that an emphasis on stakeholderism produces a positive impact on net income, the results cannot be so broadly interpreted. Indeed, there is no doubt that many proponents of stakeholderism will cite this work for such a proposition. Such a conclusion and citation would be in error for there are several caveats in the finding.

Caveat one is that the label of "stakeholder" to companies within the study was gleaned entirely from self-generated materials. There was a very elementary screen applied, which was whether the S&P 500 company mentioned "stakeholder" in their public materials.¹⁰⁰

Second, there was somewhat of a disconnect between the tenets of stakeholderism and the recognition of such by outside groups. For example, Chevron is included in the *Business Ethics* honor roll,¹⁰¹ but Shell, often cited as an exemplary company, is not included. Microsoft, although not an S&P company, made the honor roll despite its competi-

98. Before drawing the conclusion that attention to stakeholders, particularly employees and their needs, does not produce increased earnings, further refinement of this data and work are necessary. However, this finding early on in the study led to the question of whether firms might experience lower employment litigation rates because of their attention to employees as stakeholders. Using EEOC litigation data from 1994-1998 (as collected by reported case opinions because the EEOC would not permit access to complaints filed citing FOIA privacy constraints and the enforcement exemption), we could find no positive impact, in terms of stakeholderism, in the reduction of EEOC litigation. The analysis was done after adjustments for size of the employer's work force. Such work deserves further study and explorations for variables beyond the two compared. Further, the Authors acknowledge that the data gathered include only those cases actually litigated, not those that were brought and dismissed or those that were brought and settled.

99. Interestingly, neither Enron nor WorldCom is a stakeholder company.

100. Public materials included their web sites, annual reports, and any materials sent in response to the survey. While only eleven firms completed the survey, sixty-two responded by sending brochures, pamphlets, and various annual reports.

101. See *supra* note 84.

tors' litigation for unfair competition in contravention of the stakeholder model of fairness to competitors and a court's conclusion that it has engaged in monopolistic behavior.¹⁰² Amgen is consistently ranked as one of the 100 best companies to work for, recognized by CSR proponents because of its wide-ranging philanthropic programs that provide everything from scholarship programs to environmental commitments and support for community arts and projects. But Amgen uses animal testing for development of its pharmaceuticals. Amgen could not, therefore, survive the initial screening conducted by social investment firms that employ the following topic screens for investment: no tobacco, no animal testing, no nuclear energy, and no defense contracts.¹⁰³ Amgen could not be part of the KLD group.

Stakeholder theory represents an imposed set of criteria largely derived from political views on issues that cannot apply uniformly to all businesses. A shampoo firm is not more accountable to its stakeholders because it does not manufacture weapons. Likewise, a weapons manufacturer is not less accountable because it cannot drop shampoo bottles as weapons.¹⁰⁴ The danger in these criteria is that when governments begin imposing regulations or creating incentives based upon such standards, the result is a disadvantage to certain firms because of perceived ills. The concern is that such arbitrary standards may produce disincentives for investment in necessary businesses and industries.¹⁰⁵

An external application of accountability appears to have little economic benefit. However, there appear to be benefits in terms of financial performance when companies practice a self-adherence to stakeholder accountability. Each firm, within the parameters of its market and economic role, defining its own stakeholder accountability, apparently has an impact on net income. The exercise of self-defined emphasis appears to contribute to the shareholder in terms of better financial performance. However, that advantage is not a new development. Existing economic theory provides a theoretical explanation for the study's empirical results.

102. See *United States v. Microsoft*, 253 F.3d 34, 46 (D.C. Cir. 2001).

103. See Jennings & Entine, *supra* note 49. Note also that the Collins and Porras list includes companies with operations and practices in violation of several of these screens.

104. Jon Entine is thought to have originally advanced this shampoo bottle analogy frequently noted in stakeholder debates and panels.

105. Weapons manufacturers or defense contractors may be abhorrent lines of businesses on all CSR indexes, but both types of businesses were necessary in the rescue of Kuwait and the ousting of Milosovich.

IV. INTEGRATION OF STAKEHOLDER THEORY ACROSS LAW, BUSINESS,
AND PHILOSOPHY—THE STUDY'S PROPERTY OWNERSHIP AND ECONOMIC
CONNECTION AND COASE

The Coase Theorem,¹⁰⁶ rarely discussed and barely understood, has been too long ignored in the stakeholder debate. It is a theorem related to social costs, which is at the heart of stakeholder premises and is the most contentious issue in corporate governance as groups vie for the allocation of limited resources.

Simply stated, the Coase Theorem provides that “the initial allocation of legal entitlements does not matter from an efficiency perspective so long as they can be freely exchanged.”¹⁰⁷ In other words, “misallocation of legal entitlements by law will be cured in the market by free exchange.”¹⁰⁸

The Coase Theorem's application to stakeholderism is best understood through Coase's infamous example of the wood and coal burning locomotives that emit sparks as they travel along the tracks. The sparks, from time to time, set fire to the farmers' fields that line the tracks. The railroad can reduce the farmers' damages by installing spark arresters, using different fuel to power the engines, or by running fewer trains. The farmers, on the other hand, can plant crops farther back from the tracks and not store items or build facilities near the tracks.

The legal remedy for the farmers in terms of the damages to their land and crops lies within the law of nuisance. The farmers bring suit for damages as well as for an injunction enjoining the operation of the trains on the track.¹⁰⁹ Legal entitlements seem to govern the situation, and one side will win; the railroad operates with impunity, resulting in damage to the land, or the farmers enjoin the railroad operation and have flawless harvests but no transportation for those crops.¹¹⁰

106. Ronald Coase, *The Problem of Social Cost*, 3 J. LAW & ECON. 1 (1960).

107. *Id.*

108. This is the Coase Theorem as restated by Robert D. Cooter in *The Coase Theorem*, WORLD OF ECONOMICS 51 (1970).

109. The legal issues are never as simplistic as assumed by economists. Whether an injunction lies for the use of the tracks is dependent upon the court's analysis of the balancing of the need for the trains, track, and transportation, and the farmers' rights to the fields, flora, and fauna. For an explanation of the legal issues in nuisance, see MARIANNE M. JENNINGS, REAL ESTATE LAW 35-37 (6th ed. 2002).

110. In the words of Shakespeare, “All are punished,” in some fashion regardless of the turn the legal system takes. WILLIAM SHAKESPEARE, ROMEO & JULIET act 5, sc. 3.

But, the initial allocations, as described here, brought about through legal entitlements are not definitive or final because such allocations ignore issues of efficiency and avoid the inevitable disgruntlement that comes from an allocation that is not a win-win result. Market forces still can provide a resolution.

According to the Coase Theorem, these appearances are misleading because while the law creates the initial allocation of entitlements, the market determines the final allocation. To illustrate, if farmers have a right to enjoin the railroad, they can sell this right. Specifically, the railroad could pay a sum of money to the farmers in exchange for a legally binding promise not to enjoin the railroad. Conversely, if the railroad has the right to emit sparks with impunity, it can sell this right. Specifically, farmers could pay a sum of money to the railroad in exchange for a legally binding promise to reduce spark emissions.

Whatever the initial allocation of rights, the farmer and the railroad have an incentive to continue trading entitlements so long as there are potential gains from trade. As with ordinary goods, the gains from trading legal entitlements are not exhausted until each entitlement is held by the party who values it the most. To illustrate, if farmers have a right to be free from sparks, and if the entitlement to emit sparks is worth more to the railroad than the right to be free from sparks is worth to farmers, both parties will benefit from the farmers selling their rights to the railroad. The potential gains from trade are exhausted when entitlements are allocated efficiently. Thus, when the market works, the equilibrium allocation of legal entitlements will be efficient.¹¹¹

Stakeholder theory can be seen as a response to perceived injustices by legal entitlements. There is disgruntlement about the very creation of a legal creature known as a corporation.¹¹² Further, the perceived superiority of shareholders' legal entitlements has produced demands for accountability beyond that owed legally to shareholders. The desire is to impose another legal structure over the existing one so that nonshareholders would have rights in the outcome.¹¹³

111. Cooter, *supra* note 108, at 54.

112. The concerns about the corporation (along with responses to those concerns) can be found in MICHAEL NOVAK, *THE FIRE OF INVENTION* (1997).

113. The Coase train example does break down a bit in drawing the analogy to stakeholder theory. For example, employees would be the victims of sparks (downsizings, safety, pensions) and may or may not be protected by legal entitlements. In an employment-at-will state, for example, employees terminated have little, if any, recourse. On safety issues, they may have both state and federal laws that could enjoin the company's unsafe activities and fine it as well. Further, in some situations, such as in international markets, the employees themselves are not objecting, but stakeholder theorists who stand on the sidelines incite the employees to demand more (when they are

One critical point in the Coase Theorem as well as in the equation of stakeholders with the farmers is the very heart of the theorem, which is that stakeholders already do have legal entitlements in the form of nuisance actions. Understanding that the law on nuisance can entitle a property owner to obtain an injunction means that the railroad and its shareholders must balance the interests according to their costs of fuel, costs of spark arresters, and perhaps even alternative routes. The question for corporations and shareholders, faced with their legal entitlements as well as the potential conflicting entitlements of those affected by their conduct is, once again, the economic costs of their choices. Economically speaking, the railroad's most efficient solution may very well be to provide a remedy for the stakeholder/farmers.

Despite the obvious nature of the legal rights and the economic realities of balancing interests and costs, neither corporations and their shareholders nor various stakeholder groups have been particularly efficient or proficient in understanding or executing their positions of entitlement under law. Indeed, there appears to be evolving sympathy for *ultra vires* legal intervention atop existing legal entitlements. Stakeholders and proponents of stakeholder theory are not content to permit market efficiencies to run their course, and corporations and shareholders, oddly, seem all too unwilling to recognize the economic costs of not addressing the issues and concerns of the stakeholder/farmer. The railroads are waiting too long to act, and the farmers are impatient and not cognizant of their bargaining position under current legal entitlements.

There is a rogue's gallery, amply noted in the literature, of firms that have paid significantly for postponing the inevitable renegotiation of legal entitlements.¹¹⁴ Johns-Manville's asbestos product was an excellent insulator that provided the company with a near monopoly position. However, the company waited over thirty years after learning of the ill health effects of asbestos to take steps to protect employees and customers. The costs of litigation forced the company into Chapter 11 bankruptcy. The alternate cost was that the firm had to pay twenty-five percent of its net income to a trust fund used to cover personal and property damages caused by asbestos. Enron's complex corporate structure, with its resulting off the books debt, was an attempt by management to maximize share price, something that benefited not just

downsized) or less (fewer) (when there are safety violations). The equilibrium Coase describes cannot be achieved when one side does not play by rational market choices, but rather, by emotionally and politically charged ones.

114. See MARIANNE M. JENNINGS, BUSINESS ETHICS: CASE STUDIES AND SELECTED READINGS (4th ed. 2003) for examples.

shareholders but employees who had an interest in that share price through their retirement plans.¹¹⁵ So long as the share price remained constant or higher, the delicate and complex balance of the gigantic web of special purpose entities (SPEs) carrying the bulk of Enron debt could continue.¹¹⁶ If, however, the share price dropped or too many of the SPE investors demanded the return of their investment, there was no net for the fall, and the collapse of Enron was rapid following the post September 11, 2001 attacks and market free fall.¹¹⁷ Enron's structure and lapses were more complex, but, ultimately, all who had a stake in the company, including shareholders, were unable to bargain effectively for legal rights because information about the nature of the business was less than forthcoming.

While Dow Corning's silicone implants were not the health hazard the initial litigation alleged, the bankrupting scenario could have been avoided had Dow Corning simply been more forthcoming about the risks of implants.

These firms and others pay extraordinary costs when they ignore small legal entitlements or pass on the opportunity to establish an entitlement equilibrium. Not addressing issues from the time of their revelation proves more costly for companies.

While the Coase Theorem would seem to provide a solution for the balancing of stakeholder and shareholder interests, there are several caveats. The first caveat is that the balancing must be permitted to work within the confines of market structure. Enron, WorldCom, and

115. Mr. Fastow was honored in 1999 *CFO Magazine* for his innovative financing structures. He told the interviewer for the magazine that he was able to keep Enron's credit rating high by keeping debts off the balance sheet. Barboza & Schwartz, *supra* note 3, at A1.

116. Enron created hedge-fund operations in 1996 through an Enron subsidiary called ECT Investments ("ECT"). The hedge fund brought a twenty percent return and provided Enron with free rein in a regulatory no-man's land. It was not energy trading; it was not commodities trading; and it was all private placement, so there was no SEC regulation. The result was the ECT could bet high with leveraged funds and with little disclosure required. Gregory Zuckerman, *Enron Quietly Ran a Risky Hedge Fund That Did Well*, WALL ST. J., Apr. 11, 2002, at C1. In recent years ECT was responsible for as much as eight percent of Enron's earnings. *Id.* However, Enron was hedging things such as the price of power, the weather, and, ergo, the price of its stock because that was tied to both weather and energy prices.

117. Between the beginning of 1998 and beginning of 2000, Enron's stock price tripled from \$20 to over \$60 per share. On January 14, 2001, Enron's share price was \$83 per share. *The Rise and Fall of Enron*, N.Y. TIMES, Nov. 29, 2001, at C6. By October 2001, the share price had dropped seventy-eight percent. Floyd Norris, *Enron Tries to Dismiss Finance Doubts*, N.Y. TIMES, Oct. 24, 2001, at C1. On January 14, 2002, it was \$0.67 per share. [Http://www.enron.com](http://www.enron.com) (site last visited on June 1, 2002).

Adelphia did not function within the confines of market structure. That is, they did not honor the investment contracts that provided shareholders rights by law. They fundamentally changed the nature of their shareholders' investments without full disclosure. There are those who are interested in highly leveraged hedge funds, but they are not the same pool of investors Enron attracted. This balancing of interests and rights is dependent upon the vested interests of the parties. Legal entitlements exist because there are such rights as property ownership and free market exchanges. Many of the proposed normative contracts and stakeholder applications award rights and interests to those who are not tied to the market's efficiencies through investment, risk, and incentives.

Such a lack of a financial stake is itself a disincentive for efficient market bartering in those circumstances when the corporation's activities affect others. The farmers have the investment, risk, and incentives for disposition of the sparks issue. Farmers' rights activists do not have those financial stakes in the claim. With little downside risk, their resolution of the railroad spark problem may well be one that removes the railroad because they would fail to recognize, as farmers would, that crops need transportation to market. Bargaining cannot occur when one side has nothing to lose by demanding its resolution. In effect, stakeholder theory removes one party from the deliberations (the company). That party has its best advocacy tools removed from it.

Under circumstances in which concerned stakeholders versus invested stakeholders are at the bargaining table, the outcomes would create uncertainty for the company and result in uncertainty in the capital markets. Raising capital for businesses and growth would quickly turn into an unknown, for which there would be few takers if the legal parameters of stakeholders and their input could not be adequately explained in investment documents.

A second caveat for reliance upon the Coase Theorem is that for efficient exchanges to take place that resolve conflicting legal entitlements, there must be enforceable contracts. To the extent that stakeholder interests are given the power to override commercial and shareholder obligations, the natural market efficiencies and allocations are lost. The Coase Theorem has an underlying assumption that legal entitlements exist in various settings and to various degrees. An unwillingness to recognize those contractual and other rights results in a loss of the principles of market exchange. One must explore the Coase Theorem proposition convinced of the wisdom of enforceable contracts and the need for examining legal rights in the context of stakeholder

interests.¹¹⁸ The Coase Theorem proposition thus assumes that the heart of stakeholder theory—that there should be obligations beyond law—is incorrect. While there may be efficiencies beyond the law, the creation of nonlegal obligations or even legal obligations in derogation of property rights deprives companies of the opportunities for market-based realignments.

Finally, there is the caveat that this study provides: Firms that self-describe themselves as accountable to stakeholders are performing better financially, providing evidence that the Coase Theorem is at work in the area of corporate social responsibility. The market, much maligned as being in need of reallocation and legal action by stakeholderism, has actually begun its process of allocation. The self-dedication to stakeholders and the apparent, proud description of this process is some evidence that companies recognize the economic forces at play. They have weighed the costs of addressing the concerns, or at least appear to be addressing the concerns, of stakeholders and are concluding that it is in their economic best interest to serve as railroads accommodating farmers rather than damaging them.

The firms that self-describe their social responsibility and stakeholder commitment have established responses to groups, with and without legal rights, who express concerns about corporate products, operations, and conduct. These companies have determined the costs of such backlash as well as the potential costs should the current system of corporate legal entitlements be overridden. It is clear that these firms are social responsibility realists. They understand that stakeholder theory evokes sympathy and that stakeholders who perceive that their positions go unheeded pursue the balance of legal entitlements by changing the law rather than negotiating for their interests within the parameters of current legal entitlements. The result of this corporate realization and the bargaining power of stakeholder groups derived from political activism, as well as from potential legal entitlements, is that corporations have determined what they are willing to pay for their current legal position and have begun paying that cost via stakeholder activity and interaction.

Some argue that the costs extracted from corporations for this purpose constitute extortion¹¹⁹ and are not a wise *modus operandi* for busi-

118. To understand the theorists' commitment to normative as opposed to actual contract rights, see Phillips, *supra* note 22 and Donaldson & Dunfee, *supra* note 36.

119. See, e.g., ROBERT HALFON, IN CORPORATE IRRESPONSIBILITY: IS BUSINESS APPEASING ANTI-BUSINESS ACTIVISTS? (1998). Robert Halfon notes:

The problem in today's era of corporate pseudo-ethics is that the pendulum has shifted too far. From genuine philanthropy, as described above, "corporate

ness.¹²⁰ Such a reaction ignores the role of market forces in the reallocation of legal entitlements. Perhaps the questions businesses should be analyzing with regard to these demands from a stakeholder perspective are: (1) What is it worth for us to not have these imposed new legal entitlements? and (2) What is it worth for stakeholderists to have them? There are market forces afoot in stakeholder theory, and businesses continue to respond as if the issue is one of political extremism or one that can be handled through public relations.

responsibility” has mutated into a dangerous form of political correctness. The enlightened, entrepreneurial philanthropy of old has, through activist agitation, become the burden of today’s so-called “corporate responsibility.” At least four distinct trends are in evidence here: the rise of single issue activist groups; the targeting of companies with dealings in specific countries or specific industries; a rise in public sympathy for such actions; and a seal of approval guaranteed by many Western governments today.

Corporations have an obligation to anticipate and deal with these threats. This can be done in a number of ways. First, every important commercial activity should be rigorously assessed for its political risk. This means the risks or threats a business may face (from pressure groups, governments, *et al.*) when undertaking a particular activity. Business needs to inform itself at the highest level of the political environment in which it operates. As one commentator on these matters argues without hesitation:

The lessons that need to be understood are simple. It does not matter where you are, or how big you are, if you are not prepared, pressure groups have the ability to make your company a member of the endangered species. You cannot respond effectively in six minutes to a campaign that has probably taken six months to organize. . . . Our first option is to ignore the increasing threat of pressure groups and lose everything. Our second option is to fight back, challenge and probably win. We have the opportunity to deliver results by promoting morality; challenging credibility; setting policy and practices; offering solutions and advice.

Once the political risks are evaluated, then two actions are required: first, for businesses to mount an efficient public relations campaign, arguing the case for corporate capitalism and stressing how their activities are benefiting the national- or global-economy in which they operate. All businesses, forewarned, should be proactive, not reactive. They must be prepared to fight fire with fire and, if necessary, should be prepared to take their case all the way to the courts. Secondly, companies across the spectrum must band together and act in unison to limit the unaccountable, undemocratic, and often extra-legal activities of the activist groups they are up against.

Id. at 36-37 n.114.

120. Viscount Leverhulme wrote the following prescient passage in 1918: “There could be no worse friend to labour than the benevolent, philanthropic employer who carries on his business in a loose, lax manner . . . his so-called kindness and benevolence and lack of business principles [means] that sooner or later he will be compelled to close.” *Id.* at 37 n.115 (quoting VISCOUNT LEVERHULME, *THE SIX HOUR DAY & OTHER INDUSTRIAL QUESTIONS* (1918)).

The answer to the second question is that there is very little, in terms of capital, that stakeholder theorists are willing to advance for their causes. For example, when the Clean Air Act¹²¹ provided a system and market for allocation of emissions permits, anyone could purchase emission rights on the free market. This system was a governmental response to environmental concerns, a reallocation of legal entitlements via the market. Environmental groups own only ten percent of those permits.¹²² The commitment to no more emissions was not sufficiently strong to garner the resources to purchase more.¹²³ Likewise, the commitment by businesses has not been sufficient to have them ante up the price or negotiate terms that would permit them to purchase those permits from environmental groups.

Yet two other issues arise in the notion that businesses can cope with stakeholderism by legal entitlement reallocation. The first is that an efficient market presumes full information on both sides. The railroad might know of spark prevention technology while the farmer does not, and the true value of reallocation cannot be known without such complete information.

In today's atmosphere of stakeholderism, the parties may not be laboring under a lack of information but rather misinformation. This problem of misinformation affects the ability of companies to negotiate for a reallocation.

For example, no animal testing is a typical social responsibility screen and ousts many companies from the honor rolls for ethical companies. Currently, animal testing is legal, but various stakeholders and theorists object.¹²⁴ The companies employing animal testing labor with the emotional baggage that social responsibility groups have attached to them. The full information that would affect the value of the legal entitlement to use animal testing such as its saving of lives, the firm's ability to save the animals, and their willingness to disclose their processes and take input and feedback are lost in the emotional public debate. Hence, the value of the legal entitlement prohibiting animal testing is much greater than it should be.

121. 42 U.S.C. §§ 7401-7671q (2000).

122. MARIANNE M. JENNINGS, *BUSINESS: ITS LEGAL, ETHICAL & GLOBAL ENVIRONMENT* 459 (6th ed. 2003).

123. Coase did address this issue by noting that transaction costs can be prohibitive and hence interfere with the efficient reallocation of legal entitlements. For example, individual farmers might not negotiate as effectively with the railroad as an organized group of farmers could. Further, the cost of negotiations spread among many farmers is cheaper.

124. *See supra* note 13.

Dow Corning settled its silicone implant suit for over \$3 billion—a high cost for a legal product with no greater side effects than many prescription drugs—because the only information available at the time of the litigation was one study now known to be junk science. The legal right to sell the product was lost because of perceived costs, absent full information.¹²⁵

Currently, auto manufacturers face the Coase dilemma of a legal product, the SUV, and its popular sales versus the media barrage regarding the vehicles' safety, emissions, and role in accidents.¹²⁶ In an emotionally charged debate, the auto manufacturers cope with misinformation about the SUVs and the resulting emotionally charged demands.¹²⁷ The stakeholder focus is on the environment in this debate, and there has been a successful demonization of SUVs and their drivers.¹²⁸

Likewise, prescription drug manufacturers faced demonization in election year 2000 because of prescription drug prices and the impact on retired seniors and their budgets. Full information about drug development, product liability, and the programs pharmaceutical manufacturers provide for low-cost drugs for seniors has not made its way into the emotionally charged debate.¹²⁹

However, also evident in debates such as those involving SUVs and prescription drugs is the final caveat to businesses coping with stakeholderism through legal entitlement reallocation. There is a pattern of those seeking legal entitlement reallocation not to utilize the market for such a change, but to persuade regulators to change the allocation for them or to pursue legal remedies via civil actions or suits brought by various law enforcement agencies such as state attorneys

125. MARIANNE M. JENNINGS, BUSINESS ETHICS: CASE STUDIES AND READINGS 194-204 (4th ed. 2003).

126. For an example, see James R. Healey, *Deaths by the Gallon*, USA TODAY, July 2, 1999, at 1B, which provides a discussion on the myths surrounding SUV emissions, mileage, and accident rates.

127. SUVs were involved in just 132 of 10,000 accidents, yet they are referred to as above, *Death by the Gallon*. The debate on safety and gas savings has been around for some time. Laurie McGinley, *Gas Savings vs. Safety Stirs Debate*, WALL ST. J. Sept. 6, 1990, at B1.

128. Part of the reallocation of legal entitlement includes class action litigation, particularly targeting SUVs. Gary Stoller, *Popularity of SUVs Likely to Mean More Lawsuits*, USA TODAY, July 17, 2000, at 3B.

129. In cases such as those involving stakeholder claims surrounding SUVs and prescription drugs, the widely accepted beliefs of the public run in direct contravention of the facts. However, once the emotional charge begins, it is difficult for companies to draw back the debate unless they have grass roots contact with the various stakeholder activists on the issue. See *infra* note 130 and accompanying text.

general. Product recall regulators can tinker with new emission standards, new fuel efficiency standards, and even vehicle weights so that legal entitlements are reallocated without regard to market forces. If the sales of SUVs cannot be halted or slowed, then the emission and fuel efficiency standards can be changed so that they can no longer be manufactured. The result is the power of stakeholders to take a product through demonization to elimination, regardless of the underlying facts.¹³⁰ To the dismay of Friedman and others, regulation can move faster than free markets. The Sarbanes-Oxley legislation,¹³¹ which now imposes additional requirements on companies in terms of disclosure and additional penalties, as well as constraints on conduct, is evidence of the rapidity of regulation when market participants fail to honor the basic legal entitlements of their balancing role.

V. STUDY IMPLICATIONS AND RECOMMENDATIONS FOR COMPANIES

To manage the time lag between regulation and the realignment of legal entitlements among stakeholders, companies should pattern their activities after the firms in this study. Attention to stakeholder groups at all times is critical—not just at times of crisis. Those relationships should be built through more than public relations outreach, but with interaction with the stakeholders and serious discussions about their concerns. The fall out from Enron has demonstrated that public accounting firms have lost touch with one group of stakeholders—the users of certified financial statements. Interaction with that group would have illuminated the disconnect between auditors' perceptions on materiality and those of users of their financial statements.¹³² Like-

130. A classic illustration adopted without full information and largely due to demonization of auto manufacturers was the passive safety devices in autos. Air bags or some form of passive restraint were mandated despite concerns by auto manufacturers that "short passengers" were in jeopardy should airbags be mandatory. It was not until the decapitation deaths of several children via airbags that the federal agency took steps to, oddly, require warnings regarding its mandatory safety device. See *Motor Vehicles Mfs. Ass'n v. State Farm Mut. Ins. Co.*, 463 U.S. 29 (1983). Interestingly, Elizabeth Dole, as head of the Department of Transportation at the time of the passive safety device rule promulgation, did halt the rule's promulgation, but was effectively stopped in her withdrawal of the rule by litigation brought by a stakeholder in the presence of more safety devices in autos, an insurance company.

131. Sarbanes-Oxley Act of 2002, Pub. L. No. 107-204, 116 Stat. 745 (codified in scattered sections of 11, 15, 18, 28, and 29 U.S.C.).

132. Marianne M. Jennings et al., *A Source of Insecurity: A Discussion and an Empirical Examination of Standards of Disclosure and Levels of Materiality in Financial Statements*, 10 J. CORP. L. 639 (1985). This piece is the beginning of a body of work that illustrated that the users' view of financial statements was very different from the auditors' view and that the disclosure standards were inadequate. Former SEC chairman Arthur

wise, analysts failed to reconcile the conflicts between their roles as underwriters and investment advisers, with the regulatory fallout being complete restructuring of companies and industries.¹³³ There was a clear disconnect, a lack of meaningful communications on parties' rights and expectations, and the sacrifice of one group of stakeholders in what these firms assumed was the best interest of their shareholders and owners. However, the disregard of stakeholders is destructive. The long-term costs are regulation, if not destruction.

This post-Enron world reveals that stakeholder theory does involve more than just political views on issues. Stakeholder theory still encompasses a set of moral absolutes, including honesty in dealing with shareholders and customers. A company may be an ideal corporate citizen in terms of diversity and philanthropy, as Enron was. In fact, many socially responsible funds had invested in Enron.¹³⁴ However, their screens did not detect the fundamental moral flaws in the company's operations, perhaps because those screens were focused on measures not terribly revealing.

Further, this post-Enron world teaches that stakeholder theory is not as facile as company platitudes about environmentalism or diversity. Its execution requires more effort than the collapsed companies devoted. The Coase Theorem demands a free market exchange with all stakeholders, with the free market requirements of full information and the honor of legal entitlements. The Coase Theorem demands, and this study's

Levitt noted,

While the problem of earnings management is not new, it has swelled in a market that is unforgiving of companies that miss their estimates. I recently read of one major US company, that failed to meet its so-called "numbers" by one penny, and lost more than six percent of its stock value in one day.

Securities and Exchange Commission Chairman Arthur Levitt, Address at the New York University Center for Law and Business (Sept. 28, 1998); see also Elizabeth MacDonald, *Accounting Gets Two-Sided Overhaul*, WALL ST. J., Sept. 8, 1999, at A2.

133. Patrick McGeehan, *Merrill Chief is Apologetic Over Analysts; One Dismissed*, N.Y. TIMES, Apr. 27, 2002, at C1. Henry Blodget, Merrill Lynch's Internet analyst issued "buy" recommendations publicly on certain internet stocks of Merrill clients. In e-mails obtained by New York's Attorney General, Eliot Spitzer, Mr. Blodget described those same stocks as "dog" or "crap." In July 2000, one Merrill analyst called InfoSpace stock "a piece of junk" to friends even though he had given it the firm's highest rating publicly. *Merrill Lynch Deal Won't Restore Investors' Trust*, USA TODAY, May 23, 2002, at 10A. Shortly after one client followed an analyst's recommendation to buy InfoSpace because the stock would reach a target of \$100 per share, the stock dove to \$1.45 per share. Charles Gasparino, *New York Attorney General Turns Up Heat on Wall Street*, WALL ST. J., Apr. 10, 2002, at C1.

134. The Calvert Social Index fund invested in Enron. The Pax High Yield Fund invested in Adelphia. Bridget O'Brian, *Socially Responsible Funds Get Nicked, Too*, WALL ST. J., Aug. 9, 2002, at C1.

results support, the notion that voluntary embrace of those with an interest in the company is a fundamental key to financial success.

Historically, there have been other examples in which the fallout has not been as severe as those witnessed in this past year of financial collapses, but have, nonetheless, been costly to the companies involved. For example, at the time of the confrontation between environmentalists and the logging, paper, and lumber industries in the Pacific Northwest, there seemed little hope that the economic interests and legal entitlements of the businesses involved in the dispute over logging rights would be protected. There was a U.S. Supreme Court halt to logging, a Congressional override, and emotional protests covered at length by the media.¹³⁵

Today, however, logging proceeds without judicial or Congressional oversight or interference. The Sustainable Forestry Initiative, adopted by two hundred members of the American Forest and Paper Association, achieved that result. The Initiative supports ecofriendly logging and has the full support of the Nature Conservancy.¹³⁶ The interests of both sides are satisfied with the initiative, with logging proceeding, but in a fashion that satisfies the concerns of stakeholder environmental groups.¹³⁷ Such a result is not possible without grass roots interaction with stakeholders, the sharing of accurate information about logging activities, and an understanding of the concerns of the stakeholders as well as the economic costs of losing the legal entitlement of logging. Ecofriendly logging is the Coase Theorem resolution of the stakeholders' claims and concerns about destruction of forests.

The logging initiative was an example of an industry effort. That initiative provides a current example of a company working directly with

135. See *Babbitt v. Sweet Home Chapter of Cmty. for a Great Or.*, 515 U.S. 687 (1995). See also *supra* note 20 and accompanying text.

136. MARIANNE M. JENNINGS, *BUSINESS: ITS LEGAL, ETHICAL AND GLOBAL ENVIRONMENT* 473 (6th ed. 2003).

137. Interestingly, even the Coase Theorem cannot result in happiness on all sides. In the fall of 2001, ExxonMobil Corp. will drill gas wells on a 2,263-acre preserve in Texas City, Texas, home to the endangered Attwater prairie chicken. Interestingly, the preserve is owned by The Nature Conservancy, an environmental group. The Nature Conservancy owns the land as a result of its gift from Mobil. Additionally, ExxonMobil has paid \$5 million so far for the gas-drilling rights. Kierán Suckling of the Center for Biological Diversity notes, "I used to say that the only things not allowed on Nature Conservancy reserves were mining and slavery, and I wasn't sure about the latter. Now I may have to withdraw the former as well." Nature Conservancy has a reputation for "haggling" with corporations, a fact that irritates other environmentalists. However, its CEO defends its sale of preserves and cooperation with companies, "This method is likely to produce far more lasting results than trying to oppose human wants and needs." Monte Burke, *Eco-Pragmatists*, FORBES, Sept. 3, 2001, at 63.

its stakeholders to develop a resolution of issues that requires a balancing of legal entitlements. This company has utilized the Coase Theorem in developing a solution for satisfying market demand, customers, and shareholders while still being accountable to the highly publicized concerns and sometimes demands of stakeholders. Ford Motor Company, in its announcement that it would increase the fuel efficiency of its SUVs by twenty-five percent, accomplished several things under the Coase Theorem:

(1) Rightly or wrongly, customers have been influenced by the SUV misinformation and indicated to Ford that they are willing to take lighter SUVs.¹³⁸

(2) Ford is willing to pay the costs of redesign because it has examined the potential costs should the vehicles experience additional regulation or perhaps a ban.

(3) Stakeholders are willing to relinquish some of their legal entitlement to demand the elimination of the vehicle because of voluntary action undertaken by Ford.

(4) Prior to the revision of the legal entitlements (i.e., litigation begins just because of the very nature of SUVs and not necessarily because of product liability issues), Ford has taken steps to control the type of litigation that stakeholders have used to increase their bargaining power in the redistribution of legal entitlements.

The SUV example is a micro look at what businesses have done in the macro economy in response to stakeholderism, and the current study bears this transformation out. Using the reality of the marketplace and occasional surrender of some legal entitlements, companies are able to manage for shareholders because they address the issues raised by nonshareholders affected by their conduct. Some members of the business community have expressed resistance at surrendering rights that the law affords. However, this spirit of cooperation with stakeholders not only has a calming effect on the particular issue du jour, but it apparently results in better performing companies. These companies have learned that by paying smaller costs in the form of reallocation of legal entitlements in dealing with stakeholders, they avoid the ultimate reallocation and resultant loss of legal rights from shareholder corporate governance to stakeholder control. Occasionally, those small costs are

138. Keith Bradsher, *Ford Says Research Inspired New Push for Fuel Economy*, N.Y. TIMES, July 28, 2000, at C3. Before this decision, Ford issued a special report on social responsibility (along with its annual report) called *Connecting with Society* (2000).

the costs of disclosure or the elimination of conflicts, as the post-Enron revelations have taught.

Stakeholder accountability and interaction recognize that resistance and, ultimately, regulation come from those whose needs in the system of allocation are not addressed adequately. Companies that voluntarily undertake the tasks of interacting with and addressing the needs of *all* stakeholders apparently serve not only society, in the sense of CSR accountability, they serve their shareholders with not just survival, but survival with higher net incomes.

Appendix A

Unilaterally Committed Stakeholder Firms (UCSF)

S&P 500 Companies

Description/Ticker Symbol	D-web site
Abbott Laboratories (ABT)	1
Adobe Systems (ADBE)	1
Advanced Micro Dev (AMD)	0
Aeroquip-Vickers Inc (ANV)	0
AES Corp (AES)	0
Aetna Inc (AET)	1
Air Products & Chem (APD)	0
AirTouch Communications (ATI)	0
Alberto-Culver CI'B' (ACV)	1
Albertson's, Inc (ABS)	1
Alcan Aluminium Ltd (AL)	1
Alcoa Inc (AA)	1
Allegheny Teledyne (ALT)	0
Allergan, Inc (AGN)	0
AlliedSignal Inc (ALD)	1
Allstate Corp (ALL)	1
ALLTEL Corp (AT)	0
ALZA Corp (AZA)	1
Amer Electric Pwr (AEP)	1
Amer Express (AXP)	1
Amer General (AGC)	0
Amer Greetings CI'A' (AM)	0
Amer Home Products (AHP)	0
Amer Intl Group (AIG)	0
Amer Stores (ASC)	0
Amerada Hess (AHC)	0
Ameren Corp (AEE)	1
America Online (AOL)	1
Ameritech Corp (AIT)	1
Amgen Inc (AMGN)	1
AMP Inc (AMP)	1
AMR Corp (AMR)	1
Anadarko Petroleum (APC)	1
Andrew Corp (ANDW)	0
Anheuser-Busch Cos (BUD)	1
Aon Corp (AOC)	0

Apache Corp (APA)	0
Apple Computer (AAPL)	0
Applied Materials (AMAT)	1
Archer-Daniels-Midland (ADM)	1
Armstrong World Indus (ACK)	0
ASARCO Inc (AR)	1
Ascend Communications (ASND)	0
Ashland Inc (ASH)	1
Associates First Capital'A' (AFS)	1
AT&T Corp (T)	1
Atlantic Richfield (ARC)	0
Autodesk, Inc (ADSK)	0
Automatic Data Proc (AUD)	0
AutoZone Inc (AZO)	1
Avery Dennison Corp (AVY)	0
Avon Products (AVP)	1
Baker Hughes Inc (BHI)	1
Ball Corp (BLL)	1
Baltimore Gas & El (BGE)	1
Bank of New York (BK)	0
Bank One Corp (ONE)	1
BankAmerica Corp (BAC)	1
BankBoston Corp (BKB)	1
Bankers Trust (BT)	1
Bard (C.R.) (BCR)	1
Barrick Gold (ABX)	1
Battle Mtn Gold (BMG)	0
Bausch & Lomb (BOL)	0
Baxter International (BAX)	1
BB&T Corp (BBT)	1
Bear Stearns Cos (BSC)	0
Becton, Dickinson (BDX)	1
Bell Atlantic Corp (BEL)	1
BellSouth Corp (BLS)	1
Bemis Co (BMS)	0
Bestfoods (BFO)	1
Bethlehem Steel (BS)	1
Biomet, Inc (BMET)	0
Black & Decker Corp (BDK)	0
Block (H & R) (HRB)	1
BMC Software (BMCS)	0
Boeing Co (BA)	1
Boise Cascade (BCC)	1

Boston Scientific (BSX)	0
Briggs & Stratton (BGG)	1
Bristol-Myers Squibb (BMY)	1
Brown-Forman Cl'B' (BF.B)	0
Browning-Ferris Indus (BFI)	1
Brunswick Corp (BC)	0
Burlington Northn Santa Fe (BNI)	0
Burlington Resources (BR)	0
Cabletron Systems (CS)	0
Campbell Soup (CPB)	0
Capital One Financial (COF)	1
Cardinal Health (CAH)	0
Carnival Corp (CCL)	0
Carolina Pwr & Lt (CPL)	1
Case Corp (CSE)	0
Caterpillar Inc (CAT)	0
CBS Corp (CBS)	0
Cendant Corp (CD)	0
Centex Corp (CTX)	0
Central & So. West (CSR)	1
Ceridian Corp (CEN)	1
Champion Intl (CHA)	1
Chase Manhattan (CMB)	1
Chevron Corp (CHV)	1
Chubb Corp (CB)	0
CIGNA Corp (CI)	1
Cincinnati Financial (CINF)	0
CINergy Corp (CIN)	1
Circuit City Strs-CrctCtyGrp (CC)	0
Cisco Systems (CSCO)	1
Citigroup Inc (C)	1
Clear Channel Commun (CCU)	0
Clorox Co (CLX)	1
Coastal Corp (CGP)	1
Coca-Cola Co (KO)	1
Coca-Cola Enterprises (CCE)	1
Colgate-Palmolive (CL)	0
Columbia Energy Group (CG)	0
Columbia/HCA Hlthcare (COL)	0
Comcast Cl'A'Spl(non-vtg) (CMCSK)	1
Comerica Inc (CMA)	1
Compaq Computer (CPQ)	1
Computer Assoc Intl (CA)	1

Computer Sciences (CSC)	0
Compuware Corp (CPWR)	0
ConAgra Inc (CAG)	1
Conseco Inc (CNC)	1
Consolidated Edison (ED)	1
Consolidated Nat Gas (CNG)	1
Consolidated Stores (CNS)	0
Cooper Indus (CBE)	1
Cooper Tire & Rubber (CTB)	0
Coors (Adolph)CIB' (ACCOB)	0
Corning Inc (GLW)	0
Costco Cos (COST)	0
Countrywide Credit Indus (CCR)	0
Crane Co (CR)	0
Crown Cork & Seal (CCK)	0
CSX Corp (CSX)	1
Cummins Engine (CUM)	0
CVS Corp (CVS)	0
Cyprus Amax Minerals (CYM)	1
Dana Corp (DCN)	0
Danaher Corp (DHR)	0
Darden Restaurants (DRI)	0
Data General (DGN)	0
Dayton Hudson (DH)	1
Deere & Co (DE)	1
Dell Computer Corp (DELL)	1
Delta Air Lines (DAL)	1
Deluxe Corp (DLX)	1
Dillard's Inc'A' (DDS)	1
Disney (Walt) Co (DIS)	0
Dollar General (DG)	1
Dominion Resources (D)	0
Donnelley(RR)& Sons (DNY)	1
Dover Corp (DOV)	0
Dow Chemical (DOW)	1
Dow Jones & Co (DJ)	0
DTE Energy (DTE)	1
Duke Energy (DUK)	1
Dun & Bradstreet (DNB)	0
duPont(EI)deNemours (DD)	1
Eastern Enterprises (EFU)	0
Eastman Chemical (EMN)	1
Eastman Kodak (EK)	1

Eaton Corp (ETN)	1
Ecolab Inc (ECL)	0
Edison Intl (EIX)	1
EG&G Inc (EGG)	0
Electronic Data Systems (EDS)	1
EMC Corp (EMC)	0
Emerson Electric (EMR)	0
Engelhard Corp (EC)	0
Enron Corp (ENE)	0
Entergy Corp (ETR)	1
Equifax Inc (EFX)	0
Exxon Corp (XON)	1
FDX Corp (FDX)	0
Federal Home Loan (FRE)	1
Federal Natl Mtge (FNM)	1
Federated Dept Stores (FD)	1
Fifth Third Bancorp (FITB)	0
First Data (FDC)	0
First Union Corp (FTU)	1
Firststar Corp (FSR)	1
FirstEnergy Corp (FE)	1
Fleet Financial Group (FLT)	1
Fleetwood Enterpr (FLE)	0
Fluor Corp (FLR)	1
FMC Corp (FMC)	1
Ford Motor (F)	1
Fort James (FJ)	1
Fortune Brands (FO)	0
Foster Wheeler (FWC)	0
FPL Group (FPL)	1
Franklin Resources (BEN)	0
Freeport McMoRan Copper & Gold 'B' (FCX)	0
Frontier Corp (FRO)	1
Fruit of The Loom 'A' (FTL)	1
Gannett Co (GCI)	1
Gap Inc (GPS)	1
Gateway 2000 (GTW)	1
Genl Dynamics (GD)	0
Genl Electric (GE)	1
Genl Instrument (GIC)	0
Genl Mills (GIS)	1
Genl Motors (GM)	1
Genuine Parts (GPC)	0

Georgia-Pacific (Ga-Pac Grp) (GP)	1
Gillette Co (G)	1
Golden West Finl (GDW)	0
Goodrich (B.F.) (GR)	0
Goodyear Tire & Rub (GT)	1
GPU Inc (GPU)	1
Grace (W.R.) & Co (GRA)	0
Grainger (W.W.) (GWW)	0
Great Atl & Pac Tea (GAP)	1
Great Lakes Chemical (GLK)	0
GTE Corp (GTE)	1
Guidant Corp (GDT)	1
Halliburton Co (HAL)	1
Harcourt General (H)	0
Harnischfeger Indus (HPH)	0
Harrah's Entertainment (HET)	1
Harris Corp (HRS)	0
Hartford Finl Svcs Gp (HIG)	1
Hasbro Inc (HAS)	0
HCR Manor Care (HCR)	0
HEALTHSOUTH Corp (HRC)	0
Heinz (H.J.) (HNZ)	1
Helmerich & Payne (HP)	0
Hercules, Inc (HPC)	1
Hershey Foods (HSY)	1
Hewlett-Packard (HWP)	1
Hilton Hotels (HLT)	1
Home Depot (HD)	1
Homestake Mining (HM)	0
Honeywell, Inc (HON)	1
Household Intl (HI)	1
Humana Inc (HUM)	1
Huntington Bancshares (HBAN)	1
Ikon Office Solutions (IKN)	0
Illinois Tool Works (ITW)	0
IMS Health (RX)	0
Inco Ltd (N)	1
Ingersoll-Rand (IR)	0
Intel Corp (INTC)	1
Interpublic Grp Cos (IPG)	0
Intl Bus. Machines (IBM)	1
Intl Flavors/Fragr (IFF)	0
Intl Paper (IP)	1

ITT Industries (IIN)	1
Jefferson-Pilot (JP)	0
Johnson & Johnson (JNJ)	1
Johnson Controls (JCI)	0
Jostens Inc (JOS)	1
K mart (KM)	0
Kaufman & Broad Home (KBH)	0
Kellogg Co (K)	0
Kerr-McGee (KMG)	0
KeyCorp (KEY)	0
Kimberly-Clark (KMB)	1
King World Prod'ns (KWP)	0
KLA-Tencor Corp (KLAC)	0
Knight-Ridder Inc (KRI)	0
Kohl's Corp (KSS)	0
Kroger Co (KR)	0
Laidlaw Inc (LDW)	1
Lehman Br Holdings (LEH)	1
Lilly (Eli) (LLY)	1
Limited Inc (LTD)	1
Lincoln Natl Corp (LNC)	1
Liz Claiborne (LIZ)	1
Lockheed Martin (LMT)	1
Loews Corp (LTR)	1
Longs Drug Stores (LDG)	1
Louisiana Pacific (LPX)	1
Lowe's Cos (LOW)	1
LSI Logic (LSI)	1
Lucent Technologies (LU)	1
Mallinckrodt Inc (MKG)	1
Marriott Intl 'A' (MAR)	1
Marsh & McLennan (MMC)	0
Masco Corp (MAS)	0
Mattel, Inc (MAT)	0
May Dept Stores (MAY)	0
Maytag Corp (MYG)	1
MBIA Inc (MBI)	0
MBNA Corp (KRB)	1
McDermott Intl (MDR)	1
McDonald's Corp (MCD)	1
McGraw-Hill Companies (MHP)	1
MCI WorldCom (WCOM)	0
McKesson HBOC (MCK)	1

Mead Corp (MEA)	1
MediaOne Group (UMG)	0
Medtronic, Inc (MDT)	1
Mellon Bank Corp (MEL)	1
Mercantile Bancorp (MTL)	1
Merck & Co (MRK)	1
Meredith Corp (MDP)	0
Merrill Lynch (MER)	1
Meyer (Fred) Inc (FMY)	1
MGIC Investment (MTG)	0
Micron Technology (MU)	1
Microsoft Corp (MSFT)	1
Milacron Inc (MZ)	0
Millipore Corp (MIL)	1
Minnesota Min'g/Mfg (MMM)	1
Mirage Resorts (MIR)	0
Mobil Corp (MOB)	1
Monsanto Co (MTC)	0
Moore Corp Ltd (MCL)	1
Morgan J.P. (JPM)	1
Morgan Stan Dean Witter (MWD)	0
Morton International (MII)	1
Motorola, Inc (MOT)	1
NACCO Indus Cl'A' (NC)	0
Nalco Chemical (NLC)	1
Natl City Corp (NCC)	1
Natl Semiconductor (NSM)	1
Natl Service Indus (NSI)	0
Navistar Intl (NAV)	0
New Century Energies (NCE)	1
New York Times Cl'A' (NYT)	0
Newell Co (NWL)	0
Newmont Mining (NEM)	0
NEXTEL Communic'ns'A' (NXTL)	0
Niagara Mohawk Pwr (NMK)	1
NICOR Inc (GAS)	0
NIKE, Inc Cl'B' (NKE)	1
Nordstrom, Inc (NOBE)	1
Norfolk Southern (NSC)	0
Northern States Pwr (NSP)	1
Northern Telcm Ltd (NT)	0
Northern Trust (NTRS)	0
Northrop Grumman (NOC)	0

Novell Inc (NOVL)	1
Nucor Corp (NUE)	0
Occidental Petrol'm (OXY)	0
Omnicom Group (OMC)	0
ONEOK Inc (OKE)	0
Oracle Corp (ORCL)	1
Owens-Corning (OWC)	1
Owens-Illinois (OI)	0
PACCAR Inc (PCAR)	0
PacifiCorp (PPW)	1
Pall Corp (PLL)	1
Parametric Technology (PMTC)	0
Parker-Hannifin (PH)	0
Paychex Inc (PAYX)	0
PECO Energy (PE)	1
Penney (J.C.) (JCP)	1
Peoples Energy (PGL)	0
PeopleSoft Inc (PSFT)	0
Pep Boys-Man,Mo,Ja (PBY)	1
PepsiCo Inc (PEP)	1
Perkin-Elmer (PKN)	1
Pfizer, Inc (PFE)	1
PG&E Corp (PCG)	1
Pharmacia & Upjohn (PNU)	0
Phelps Dodge (PD)	1
Philip Morris Cos (MO)	0
Phillips Petroleum (P)	1
Pioneer Hi-Bred Intl (PHB)	1
Pitney Bowes (PBI)	1
Placer Dome Inc (PDG)	0
PNC Bank Corp (PNC)	0
Polaroid Corp (PRD)	1
Potlatch Corp (PCH)	0
PP&L Resources (PPL)	0
PPG Indus (PPG)	1
Praxair Inc (PX)	1
Procter & Gamble (PG)	1
Progressive Corp,Ohio (PGR)	0
Provident Companies (PVT)	0
Providian Financial (PVN)	1
Public Svc Enterpr (PEG)	0
Pulte Corp (PHM)	0
Quaker Oats (OAT)	1

Ralston-Purina Group (RAL)	1
Raychem Corp (RYC)	0
Raytheon Co'B' (RTN.B)	1
Reebok Intl (RBK)	1
Regions Financial (RGBK)	0
Reliant Energy (REI)	0
Republic New York (RNB)	1
Reynolds Metals (RLM)	1
Rite Aid (RAD)	1
RJR Nabisco Holdings (RN)	0
Rockwell Intl (ROK)	1
Rohm & Haas (ROH)	1
Rowan Cos (RDC)	0
Royal Dutch Petrol (RD)	0
Rubbermaid, Inc (RBD)	0
Russell Corp (RML)	1
Ryder System (R)	1
SAFECO Corp (SAFC)	1
Safeway Inc (SWY)	0
Sara Lee Corp (SLE)	1
SBC Communications (SBC)	1
Schering-Plough (SGP)	1
Schlumberger Ltd (SLB)	1
Schwab(Charles)Corp (SCH)	0
Scientific-Atlanta (SFA)	0
Seagate Technology (SEG)	0
Seagram Co. Ltd (VO)	1
Sealed Air (SEE)	1
Sears,Roebuck (S)	1
Sempra Energy (SRE)	1
Service Corp Intl (SRV)	0
Shared Medical Sys (SMS)	0
Sherwin-Williams (SHW)	1
Sigma-Aldrich (SIAL)	0
Silicon Graphics (SGI)	1
SLM Holding (SLM)	1
Snap-On Inc (SNA)	1
Solectron Corp (SLR)	1
Sonat, Inc (SNT)	1
Southern Co (SO)	1
SouthTrust Corp. (SOTR)	0
Southwest Airlines (LUV)	1
Springs Industries'A' (SMI)	1

Sprint Corp(FON Group) (FON)	1
Sprint Corp(PCS Grp) (PCS)	1
St. Jude Medical (STJ)	1
St. Paul Cos (SPC)	1
Stanley Works (SWK)	0
Staples Inc (SPLS)	0
State Street Corp (STT)	1
Summit Bancorp (SUB)	1
Sun Microsystems (SUNW)	1
Sunoco Inc (SUN)	1
SunTrust Banks (STI)	0
Supervalu Inc (SVU)	0
Synovus Financial (SNV)	1
Sysco Corp (SYY)	0
3Com Corp (COMS)	1
Tandy Corp (TAN)	0
Tektronix Inc (TEK)	0
Tele-Communic'ATCI Group (TCOMA)	0
Tellabs, Inc (TLAB)	0
Temple-Inland (TIN)	0
Tenet Healthcare (THC)	1
Tenneco Inc (TEN)	0
Texaco Inc (TX)	1
Texas Instruments (TXN)	1
Texas Utilities (TXU)	1
Textron, Inc (TXT)	1
Thermo Electron (TMO)	0
Thomas & Betts (TNB)	0
Time Warner Inc (TWX)	0
Times Mirror 'A' (TMC)	0
Timken Co (TKR)	0
TJX Companies (TJX)	0
Torchmark Corp (TMK)	0
Toys R Us (TOY)	0
Transamerica Corp (TA)	0
Tribune Co. (TRB)	1
Tricon Global Restaurants (YUM)	1
TRW Inc (TRW)	1
Tupperware Corp (TUP)	1
Tyco International (TYC)	0
U S West (USW)	1
U.S. Bancorp (USB)	1
Unicom Corp (UCM)	1

Unilever N.V. (UN)	1
Union Camp (UCC)	1
Union Carbide (UK)	1
Union Pacific (UNP)	0
Union Pacific Resources Group (UPR)	0
Union Planters (UPC)	0
Unisys Corp (UIS)	1
United Healthcare (UNH)	0
United Technologies (UTX)	1
Unocal Corp (UCL)	1
UNUM Corp (UNM)	1
US Airways Group (U)	0
UST Inc (UST)	0
USX-Marathon Grp (MRO)	1
USX-U.S. Steel Group (X)	1
V.F. Corp (VFC)	0
Viacom Inc Cl'B' (VIA.B)	1
Wachovia Corp (WB)	0
Wal-Mart Stores (WMT)	1
Walgreen Co (WAG)	1
Warner-Lambert (WLA)	0
Washington Mutual (WM)	1
Waste Management (WMI)	1
Wells Fargo (WFC)	1
Wendy's Intl (WEN)	1
Westvaco Corp (W)	1
Weyerhaeuser Co (WY)	1
Whirlpool Corp (WHR)	1
Willamette Indus (WLL)	1
Williams Cos (WMB)	1
Winn-Dixie Stores (WIN)	1
Worthington Indus (WTHG)	0
Wrigley, (Wm) Jr (WWY)	1
Xerox Corp (XRX)	1

284

The number "1" indicates a self-identified stakeholder company.

Appendix B
CEP Honor Roll

Anheuser-Busch Co.
Avon Products
BankAmerica Corp.
BankBoston Corp.
Baxter International
Bristol-Myers Squibb
Chevron Corp
Citigroup, Inc.
Coca-Cola Co.
Colgate-Palmolive
Corning, Inc.
Deluxe Corp.
Gannett Co.
Hewlett-Packard, Inc.
International Business Machines
Johnson & Johnson, Inc.
Kellogg Co., Inc.
McGraw-Hill Companies, Inc.
Merck & Co.
PacificCorp, Inc.
PepsiCo, Inc.
Pfizer, Inc.
Polaroid Corp.
UNUM Corp.
Xerox Corp.

Appendix C
Fortune's 100 Best Companies to Work For

Allied Signal, Inc.
Amgen, Inc.
Applied Materials, Inc.
Autodesk, Inc.
BMC Software
Capital One Financial
Cisco Systems, Inc.
Computer Associates, Int'l
Compuware Corp.
Corning, Inc.
Enron Corp.
FDX Corp.
Grainger, Inc.
Guidant Corp.
Hewlett-Packard
Intel Corp.
Johnson & Johnson
Lucent Technologies
Marriott International
MBNA Corporation
Medtronic, Inc.
Merck & Co.
Merrill Lynch
Microsoft
3M
Nordstrom, Inc.
PeopleSoft, Inc.
Southwest Airlines
Sun Microsystems
Synovus Financial
3Com Corp.
Union Pacific Resources Group
Wal-Mart Stores
Worthington Industries

Appendix D
Forbes' 100 Best Big Companies

Allied-Signal, Inc.
Allstate Corp.
America Online
Avon Products
Bank of New York
BankBoston Corp.
BB&T Corp.
Dell Computer
First Union Corp.
Firststar Corp.
General Dynamics, Inc.
General Electric
Halliburton Co.
Hewlett-Packard, Inc.
Mellon Bank Corp.
Mercantile Bancorp
Northern Trust
Pioneer Hi-Bred Int'l
Regions Financial
Southtrust Corp
State Street
Summit Bancorp
Synovus Financial
U.S. West
United Technologies
Warner Lambert
Wells Fargo

Appendix E
Fortune's Most Admired Companies

Coca-Cola, Co.
Disney Co.
General Electric
Hewlett Packard
Intel Corp.
Johnson & Johnson
Merck & Co.
Microsoft Corp.
Southwest Airlines