

## Appendix E Civil Corporations and Associations

*I see in the near future a crisis approaching that unnerves me and causes me to tremble for the safety of my country. Corporations have been enthroned and an era of corruption in high places will follow, and the money power of the country will endeavor to prolong its reign by working upon the prejudices of the people until all wealth is aggregated in a few hands and the Republic is destroyed.*

President Abraham Lincoln, in a letter written to a Col. William Elkins on November 21, 1864.

Socrates spoke about the “good life” in the marketplace and Aristotle spoke about expressing virtue in the economy. For both of these philosophers, these concepts had a personal aspect – clarity of thought and awareness, for instance – and a social aspect, a sense of responsibility toward the polis. These personal and the social aspects were linked, so that rational, truthful, philosophical thought lead to virtue in both arenas. Would these Greek philosophers have anything to say about the good life in the market and virtue in the economy today? Let’s see.

Socrates said we should question everything, that the good life is based on self-awareness and the refinement of our understanding about the nature of things. Everyone can foster the good life by cultivating an active and inquiring mind. Aristotle wrote of achieving happiness (eudemonia) in a household economy, through a combination of “being well” and “doing well” at the same time. He said that prosperity could happen with eudemonia, but only by applying principles of knowledge in science and art.

In this Greek tradition, the study and application of high principles advances virtue, happiness and the good life in the individual and the culture.<sup>1</sup>

The marketplace in Ancient Greece was the Agora, which was also a political, cultural and religious center. All the main administrative buildings, temples, public services and courts of law were there. Athenians gathered in the market on a daily basis not just to buy and sell goods, but to learn the news, criticize the government, talk about great ideas, and gossip. The Agora was a place to socialize and philosophize about decisions in everyday life.<sup>2</sup>

The Agora and the dialogues that took place there are a fitting background for us to examine the principles governing social life in the market today. People in markets live with principles that are drawn from all orders of society. Buyers and sellers in the market include governments, churches, mosques and temples, nonprofit organizations, the professions and the sciences. The modern Agora is what we call the general economy.<sup>3</sup>

The discussion of individual virtues is particularly relevant in the modern market because American corporations have been defined by the U.S. Supreme Court as “persons” with human rights. To paraphrase Socrates, the unexamined corporation is not worth living.

When Abraham Lincoln wrote his letter to Col. William Elkins in 1864 (see above), he was concerned that corporations could “buy

legislatures and courts.” Corporations were more powerful than individual persons even in his day. Lincoln saw them as a corrupt power growing outside government. He said this is exactly what the colonists had feared most before the American Revolution.

Their fears were justified. Corporations kept growing in power after the Civil War until the courts came to view them as citizens with equal rights. The U.S. Supreme Court authorized those personal rights for corporations on May 10, 1886 in a case titled *County of Santa Clara v. Southern Pacific Railroad Company* (118 U.S. 394). The legal definition ignores certain fundamental issues in the nature of corporations, which makes their “personhood” problematic.

Civil society advocates say that the Supreme Court decision makes a mockery of the idea of “person.” The word “person” means someone who is a human being, a “mortal” with sense of self, and some say, with a soul. Civil advocates like those in the Program on Corporations, Law, and Democracy (POCLAD) speak of how the corporation, by the court’s definition, is “immortal,” but without a soul. The corporation can be in several places at once and continue working and living forever, like a machine.

Other critics of this Supreme Court decision have looked at the diagnostic criteria that psychiatrists (and the World Health Organization) use for detecting a psychopath. They find that the corporation fits this description of a psychopath perfectly, based on professional criteria. The “operational principles of the corporation” show it to be as

...self-interested, inherently amoral, callous and deceitful; it breaches social and legal standards to get its way; it does not suffer from guilt, yet it can mimic the human qualities of empathy, caring and altruism.<sup>4</sup>

Their studies document how it does “harm to workers, human health, animals and the biosphere.” And it operates without a conscience.<sup>5</sup>

In this appendix we work with the contradiction between the ideal and the real with regard to the “personhood” of corporations, where personhood is understood as the capacity for self examination and the development of virtue. While this concept is not currently realized in most businesses, we think that there could be an ideal hidden within the real. CEOs talk about virtue and the ideal of “excellence,” for example, and some corporations – Working Assets, for instance – have consciously chosen to operate in a principled manner. We will look at what excellence, virtue and the good life could mean for corporations, and whether these ideals could, in reality,

guide the actions of more than just a few companies. We will also consider the role of associations in the development of corporate virtue.

Corporations and their associations are like political parties in government. They must advance ideals and resolve conflicting interests at some point in order to make the market system work. Corporations compete for profit and are members of associations, often within the same field, that compete for power. Many businesses have a hierarchy of associations in dominant and subdominant positions. But these associations may have ideals that go beyond this political reality, ideals with links to the deeper social values of the community.<sup>6</sup>

So, we will look at corporations and associations as having values that suggest a conscience. In fact, the contradiction between their ideals and their behavior gives them a kind of human duality or double life: they are both civil and corrupt; liberal and illiberal; they have virtues and vices at the same time. But while we disagree with the idea that corporations are psychopathic, we agree that their power and immortality has seriously limited their self restraint, resulting in behavior that often appears to be immoral. The corporate tension between the real and idea, between corrupt behavior and idealistic values, urgently needs resolution. Our question is how civil

planners can help the corporation move toward the good life through civil associations.

We take this idea of a double life both seriously and in good humor. The legal concept of the corporation as a person rests far behind reality, but corporations may “develop” an ideal in a changing market; they could mature over time through their associations. Our theme is about the changes that can be made through an associated market, a comment on how this market system could have some saving virtue.

First, we propose that a capitalist corporation can develop virtue by building civil associations. We contend that “corporate persons” can develop legal rights for citizenship when they become publicly accountable. They become corporate citizens when they solve market problems (e.g. negative externalities like pollution) through civil (accountable) associations. Civil associations would then help them develop and sustain those classic Greek virtues.<sup>7</sup>

Second, we will argue that members of corporations should engage in self-studies. Socrates said that citizens must do some self-examination, to look at who they are. Some corporations are beginning to do this through “action learning,” as we shall see. Aristotle said that the good life is found in

an economy where people develop virtue and wealth at the same time. We take off from there.

Third, we will argue that governments can establish a legal foundation to affirm that corporations be accountable to stakeholders. Corporations can then be chartered to become responsible to them. Stakeholders are groups of people upon whom corporations have a strong impact – government, owners, employees, customers, and communities. When corporations fulfill their stakeholder responsibilities, they develop civility, virtue and citizenship.

The notion of a civil corporation is appearing in business literature. Simon Zadek in his book The Civil Corporation explores how far we should expect corporations to improve their social and environmental performance, how best to realize their civil potential. He argues hopefully that corporate citizenship is an outcome of the dynamics of a new economy that includes NGOs as watchdogs and regulators. He suggests that civil governance in corporations should develop in a web of local, national and global private–public partnerships.<sup>8</sup>

So, the development of corporations and associations with legal responsibilities and rights should be on the government's agenda. Government leaders should dialogue about how corporations generate social

and environmental problems, and how the problems should be solved. Stakeholders have no mediating associations, no market mechanisms to solve these problems.

Conflicts can involve local interests vs. national interests, national interests vs. global interests, and self-interest vs. the public interest. Socrates would call for a dialogue in the Agora about how these different interests could be resolved in the economy.

Aristotle's economy was composed of two types: one based on "good householding" and the other one based on "material acquisition" (chrematistica). The modern economy stands in the tension of these opposite ideal types. The differences must then be settled in the modern Agora.<sup>9</sup>

### **I Corporations: Working in the Tension of Opposites**

Dialectic in philosophy is (formally) an exchange of propositions and counter-propositions that results in a synthesis of each opposing assertion. But such a synthesis is not easy in practice because it involves a qualitative change of thought and feeling in its participants. Considerable conversation is usually required to change viewpoints. Socrates cross-examined people in the Agora and it took time for citizens to see that they were living in the tension of opposites.

Business scholars today do not view the business corporation as working in any such dialectic. Indeed, many see the culture of the corporation to be the same as the culture of the market. The internal life of a firm, scholars say, carries the same attributes as the external life of the market – profit making, competition, efficiency, and productivity. Management writer William Halal, for example, promotes these attributes as virtues, something to encourage inside corporations.

Halal says that business corporations have “internal market economies.” These corporations, he says, should be designed like “external market economies.” Indeed, CEOs have for some time been modeling their firms after the market to avoid becoming bloated and bureaucratic. David Packard, CEO at Hewlett-Packard, said, “We had too damn many committees.” Hewlett-Packard looked to the market model to help avoid “the bureaucracy that swamped IBM.”<sup>10</sup>

But should the macrocosm be the basis for developing “virtue”?

The capitalist market emphasizes *competition* over *cooperation*. But competition is not the key to virtue. The two processes (above) should work in a complementary fashion. Analytically, the market works in a culture of contradictory principles. A theorist should think dialectically about them.<sup>11</sup>

The culture itself works dialectically, slowly, posing and resolving contrary principles. Great contrary principles like competition and cooperation must work in a complementary fashion, each advancing the virtue of the other. Great contrary principles like justice (i.e. attributes like equity, fairness, impartiality, and standards) vs. freedom (i.e. attributes like options, choice, variety, and autonomy) do not come together quickly in a market. A student of markets, however, should study these contrasts and ask: Could the attributes of justice enhance the attributes of freedom?

The ancient Greeks were aware of these issues. Justice was the principle guiding Plato and his books on The Republic.<sup>12</sup> Aristotle might ask: Could extreme principles (e.g. freedom vs. order) be resolved in a Golden Mean? Could great philosophical differences join in some higher order of thought and practice? Could there be a middle-path, perhaps a synthesis? Could the market develop a civil order of freedom with a civil order of justice?<sup>13</sup>

The answer is yes, but there are a lot of details.

It is a fact that the corporation operates in a culture of contradictions in which the principles of freedom and order are at play. It follows that good citizenship in “justice-oriented free markets” can be a goal. The goal can be set forth through civil associations.

## Corporations and Associations

Aristotle says that excellence can be cultivated in any craft or profession. This suggests that managing a corporation is a craft and that excellence can be developed in the process. Every legal person can act rightly as a habit by linking competing interests through higher levels of cooperation for the common good.

Excellence is an art won by training and habituation. We do not act rightly because we have virtue or excellence, but we rather have those because we have acted rightly. We are what we repeatedly do. Excellence, then, is not an act but a habit. – Aristotle

The best managers do judge their craft on the basis of excellence and trade associations advertise their products for their excellence. But to achieve excellence in the Greek tradition of virtue, something more must happen. While the Supreme Court makes a mockery of reality by proposing that the corporation is a person, nonprofit associations could create the basis for that ideal to develop. They could promote excellence in this associated market.

Let's start with the concept of corporate excellence and work toward the ideal of excellence developed through market associations.

## Excellence in the Firm

A quick survey of what corporations say to the public reveals how “excellence” designates business goals. The Melyx Corporation says that it is committed to excellence in serving “the computer software, hardware and service needs of healthcare professionals.” The Polytron Corporation (a contract manufacturer of microprocessor-based controls for industrial applications) says it is committed to excellence and high quality products. Liberty Financial Corporation (a home mortgage broker) says it is committed to excellence in its services. Corporations are competing for excellence along with profit.

CEOs today see “excellence” as a virtue, which is not far from the rhetoric of Aristotle. Aristotle saw "virtue" (arete) as excellence in the fulfillment of a particular function. He spoke of the well being (eudaimonia) that comes with the realization of that function. Excellence is achieved by applying the principles of "science" ("knowledge," or episteme). This was the ideal in the Agora of Greece and is claimed today as an ideal in the marketplace.

The market is a place in which people live with both the real and the ideal in a tension of differences. How could an ideal of Aristotelian excellence be accomplished today in the market today?<sup>14</sup>

The Golden Mean

For Aristotle, the good life is achieved by creating a path between extremes. He called this path the “golden mean” in which each individual should meet life’s challenges by applying principles of knowledge. This will help determine the right path.<sup>15</sup>

Here are some examples of the golden mean taken from Aristotle's Nicomachean Ethics (Book II).

<b>VICE (Defect)</b>	<b>VIRTUE (Mean)</b>	<b>VICE (Excess)</b>
Cowardice	Courage	Rashness
Insensibility	Temperance	Self-indulgence
Meanness	Liberality	Prodigality
Undue Humility	Proper Pride	Empty Vanity
Inirascibility	Good Temper	Irascible
Shamelessness	Modesty	Bashfulness
Surliness	Friendliness	Flattery

Could corporations develop behavior based primarily on virtue rather than vice? Aristotle might say to the corporation as a person: “Create a Golden Mean, find a middle path.” What might this mean today?

For managers, a golden mean is sought between corporate self-interest and the public interest, between competition and cooperation, privacy and transparency, decentralization and centralization. In finding the golden mean, the corporation works on excellence in the context of associations.<sup>16</sup>

## Finding the Middle Path

Socrates would argue that corporate persons should engage in self-examination. This proposal for corporations is not just pie in the sky.

Indeed, a self-inquiry process called action learning has begun in corporations. “Action learning,” business consultants say, is a “prime vehicle” for developing corporate teams. It means "jump starting" organizational wisdom, promoting leadership development and even “transforming an organization's culture.” This process is finding its way into corporations and institutions of higher learning.<sup>17</sup>

And this is not just a program for CEOs, but for all employees. The best CEOs that I know are aware of its value, let me add. If a member in their corporation sees a problem and cannot talk or do anything about it, the problem festers. But when employees join in groups and dialogue about issues, the criticisms of one person becomes a common problem for the group to solve. A good self-inquiring group can build a business structure that responds effectively to potential whistleblowers, eliminating the need for internal critics to resort to legal action that might destroy the business. This self-inquiry saves money.

In sum, the development of excellence begins through self-study committees. Following the Aristotelian path means dialoguing about the

mean between extremes. The dialogue is constant because the extremes are many – order vs. freedom, corporate-interest vs. national interest, privacy vs. transparency, profit making vs. standard making, anarchy vs. authority, and equality vs. hierarchy.<sup>18</sup>

How do we take the middle path between extremes? We cannot describe this middle path in detail but we can illustrate the direction.

### Becoming a Civil Corporation

In 1991, Levi Strauss was accused of using an unethical sub-contractor on the Chinese island of Saipan. The sub-contractor was charged with treating some workers like slaves. Wages were below the island's legal minimum, and working conditions were dangerous and miserable. Levi Strauss fired the sub-contractor and formed a committee of senior managers to review future procedures for hiring sub-contractors.

Levi Strauss was among the first global corporations to create extensive, moral guidelines for its sub-contractors. These guidelines cover the treatment of workers and the impact of production on the natural environment. Levi Strauss now sends inspectors to audit the work and safety conditions of all its sub-contractors, and will cancel a contract if deficiencies are not corrected promptly. Because of social pressure, top managers at this major corporation examined their practices and subsequently changed their

company's norms, values, and social organization. This corporation was developing like a civil association.<sup>19</sup>

Corporations like Levi Strauss stand between extremes, like anarchy and authoritarianism, and centralization vs. decentralization. Levi Strauss is working on a golden mean.

We call that golden mean “self-management”. The principle of self management means “not too centralized” and “not too decentralized.” It does not indicate excessive authority at the top or the bottom. But there is more. It is based on middle path principle called “mutual (self) interest.” Developing the golden mean for corporations involves creating greater measures of equity among stakeholders, a long, arduous and ongoing process of outside consultation and development.

#### Equality vs. Hierarchy: Equity

Equity is not the same as equality. Equality connotes making everything the same. It can suggest putting all things together on the same level. In some cases this is advisable, when creating “equal opportunities” for jobs or “equal pay” for men and women, for instance. But it can become problematic when applied too rigidly. Equality in the extreme is called egalitarianism. Real equality cannot be created by mandate from above or below. If equality is coercively enacted, it becomes its opposite, inequality.<sup>20</sup>

Equity is little different. It is another middle principle, a golden mean. It describes a condition of fairness and impartiality.

As a legal term, equity refers to a system of jurisprudence that is forms the basis for common law and statutory law. Equity means fair play. In this sense, equity is a middle path between strict command hierarchy and strict equality for everyone. Inequity develops when bodies of statutory law are inadequate for the attainment of fairness, or they fail at impartiality.

How could greater equity develop in a corporation?

Here is one example. Shareholders today complain that executive salaries are unfairly out of proportion with wages in the workforce. CEO salaries are (by one measure) at least 282 times the average worker's pay. This is an issue for shareholders (who are stakeholders) today, and it makes magazine headlines. CEO pay keeps rising, deep executive pay cuts are not on the horizon, and there are no signs of a downshift in corner-office perks.<sup>21</sup>

What to do? The quick answer: initiate a process of self-examination.

One way in which a middle path is found is by studying the principles of employee self-management and worker ownership. This is not easy to study much less to put into practice. Aristotle's principles of knowledge today would be found in self-management. Self-study means finding

equitable modes and levels of employee ownership and participation in management.

The Employee Stock Ownership Plan (ESOP) Association provides the scientific details on those principles of development. The Association might satisfy Aristotle's criteria. It documents the relationship between the increase in stock equity for a corporation's employees and the resulting reduction in salary ratios (i.e. a decrease in extreme differences in employee income).<sup>22</sup>

There are, of course, a hundred equity issues in ESOPs. We cannot review them all here but we can say that establishing equity in principle has to do with making sure that employees are trained to participate in management at different levels. It means that a corporation should have tribunals to settle labor-management problems. It means that a firm should have proper channels for communication. A firm should have employee insurance from outside sources, in case the company fails. This story about developing equity in corporations, making them more civil, more excellent, is discussed elsewhere.<sup>23</sup>

But the push for greater salary equity is regularly a market-system problem. Pension funds and social investors are concerned about salary ratios by industry. Shareholder resolutions are aimed at curbing CEO pay,

which tripled in 2004 (from 106 to 324 times the average worker's salary). Institutional investors are in a dialogue with corporate boards about the salary gaps. Shareholders have pressured for equity through resolutions to corporate boards.<sup>24</sup>

Institutional investors say that managerial compensation should be linked to corporate performance. The chief executive and chief counsel of a corporation now meet with pension fund investors to dialogue about revising the corporation's managerial compensation structure.<sup>25</sup>

All corporations live in this tension between the real and the ideal. The best CEOs today aim for a golden mean, i.e. creating equity with employee responsibility. They look for the ideal in the real and it is like finding a golden mean.

The best CEOs know that equity goes with responsible decentralization and the cultivation of self-authority in the hierarchy. A corporation cannot be based on too much idealism (equalitarianism) or too much realism (economism). It cannot be based on too much order (corporatism) or too much freedom (anarchism).

### **Corporate Social Responsibility: Moving Toward the Mean**

A movement to advance social responsibility began in the 1960s and has continued ever since. Throughout this time, business scholars have wanted to create a civil corporation.

William Frederick, Professor Emeritus at the Katz School and past President of the Society for Business Ethics, was a key figure in this movement. He argued for corporate social responsibility (CSR) for 30 years. (The concept of CSR took different names, such as corporate social responsiveness and corporate accountability.) He asked for a broader understanding of companies through scientific and ethical studies.<sup>26</sup>

This business management movement for social responsibility continued through the 1970s with scholars who worked for business schools. Writers developed a framework to explain corporate social performance that linked principles, processes, and outcomes. The framework outlined corporate responsibility and performance grounded in social theory. In other words, business scholars and practitioners came to study the policies, processes, and performance arenas that evaluated the social responsibility of corporations. They were working with principles of knowledge, as suggested in the Aristotelian tradition.

In 1992 companies that were practicing "socially responsible ideals" (e.g., Stride Rite, Stonyfield Farm, Working Assets, and the Calvert Group)

started a trade association, Business for Social Responsibility (BSR). Fifty-four company leaders launched BSR at a meeting of the Social Venture Network (SVN), a group of business leaders, nonprofits, academics, and political leaders. SVN was an "internal group" that dealt with civil issues only within its own membership, but their mandate in organizing BSR was to give a public voice to the role of business in social development. It has now emerged as a national coalition with members across the United States.

Management scholars have also studied the problems. They have looked at the conflicting interests (e.g. economizing and ecologizing) and the power-seeking motives in business, both the negative outcomes and positive benefits.<sup>27</sup>

The notion of a civil corporation is developing within a business tradition. It is a broad scheme of thought promoted today in management schools, but it cannot develop further without a consideration of how this "corporate person" behaves in civil association with others.

A civil corporation for our purposes is a body of people who engage in Socratic dialogue (action inquiry) and resolve the conflicts (paradoxes) in corporate life. Labor and management work at best toward a golden mean that is a synthesis of opposites, like self-interest vs. the public interest.

What is different about the method we are describing? This “action inquiry” must take place through the corporate associations as well as the corporations themselves.

### The Civil Association

Associations can be alliances, coalitions, partnerships, combinations, unions, confederations, and federations. They are defined by the fact that they cultivate mutual self-interest beyond corporate self-interest. They promote the core ideals of society within the reality of a market.

We mention these associations because we think that the good life is found through their attempts to resolve conflicts. The good life is found in that higher fusion of competing interests.<sup>28</sup>

“Civil association” is an axial concept in socioeconomic development. It means that markets work competitively through them toward a common good. How does this happen?

The resolution of competing interests begins inside the corporation (e.g. through building codes of ethics) and then spreads to higher associations (e.g. by building systems of public accountability). The associated market includes these unions, scientific associations, and trade and professional associations.<sup>29</sup>

The association works toward the same goals as its member corporations. (See the model we posed in A CIVIL REPUBLIC, chapter 5). It works toward becoming *public*, that is, it develops *transparency* within a proprietary system. It encourages members to become *profitable, self-managed, efficient, decentralized, productive, self-reliant* and *publicly accountable*.

Each ideal has its own strategy, as we shall see below. Competitors learn how to *decentralize* large operations to become part of an associated market. This means moving from a system based on corporate self-interest alone to a system based on mutual (self) interest, as in civil federations, confederations, partnerships, and alliances.

The principle of decentralizing applies to both corporations and associations. It does not mean that a higher authority disappears or that management headquarters vanishes. It does not involve a loss of upper level authority, but it does indicate a shift from command authority toward a system of mutual (self) authority. Many big firms today have sought to decentralize their operations while keeping a higher center of authority. But it is not easy. Let us illustrate how this happens by the principle of subsidiarity. In this case, the corporation becomes like an association.

The Principle of Subsidiarity: Finding the Golden Mean

When a business becomes a bureaucracy, the best CEOs make "subsidiarity" their principle for "restructuring." The principle of subsidiarity is applicable to all corporations, including those nonprofits in education, religion and government. A "corporation" can be a nonprofit that is chartered as a church, a temple, a university, a sports team, a hospital, a museum, a school, a law firm, all of which have a purpose beyond business and government. But they all belong to associations and work toward the ideal of mutual self-interest.

"Subsidiarity" began as a principle in the Roman Catholic Church, as a way to deal with its large size and bureaucracy. The Church coined the idea as a moral principle, and restated it in a papal encyclical, "Quadragesimo Anno," in 1941. The encyclical said, "It is an injustice, a grave evil and a disturbance of right order for a large and higher organization to arrogate to itself functions which can be performed efficiently by smaller and lower bodies..."<sup>30</sup>

The subsidiarity principle was also applied in the Tenth Amendment to the U.S. Constitution, which established states' rights. Today it is a principle of good management as it applies equally to all big organizations in the economy.

For thirty years, management consultant and author Peter Drucker advocated "decentralized federalism" to business executives. He recommended that they decentralize their multinational firms into autonomous divisions. Each corporate division should have more responsibility for performance as "profit centers" which would become mini-enterprises themselves. Each unit would have its own management, with its own board of directors.

Federal decentralization, Drucker said, has great clarity and considerable economy. It is easy for members of an autonomous business to understand their own task and to understand the task of the whole business. It has high stability and yet is adaptable.<sup>31</sup>

Many CEOs recognize this issue. Hewlett Packard has described itself as too centralized and bureaucratic. The ideal of decentralization is often programmed into development. If the board wants the corporation to operate efficiently, smoothly, and effectively, it puts more power and responsibility into the hands of employees.

At the end of the twentieth century, business analyst John Naisbett saw a "federal structure" emerging in the operations of global firms. He noted that a strict command system was not practical at international levels,

in contrast to a federal (decentralized) structure that increases organizational effectiveness. He called this "the global paradox." Naisbitt writes:

Huge companies like IBM, Philips, and GM must break up to become confederations of small, autonomous, entrepreneurial, companies if they are to survive.... As the power and reach of the communications infrastructure expands, the tools needed to harness that capability shrink. They will become smaller, cheaper, lighter, and more portable. As we all become part of the greater global economy, the most efficient and effective economic unit becomes the individual.<sup>32</sup>

As information technology advances, Naisbitt prophesized, so will "decentralization in the global economy." He predicted optimistically that global firms would decentralize into confederations, led by the information infrastructure. It has happened, but so has the process of centralization, leaving much to be done by governments.

Charles Handy, a Fellow of the London Business School, agrees with Naisbitt. He explains, "Federalism is an age-old device for keeping the proper balance between large and small."

Subsidiarity is the idea at the core of federalism; it is the key element in learning; change, if it is to be effective, depends upon it; the work of teams requires it as does any attempt to make individuals take more responsibility for themselves.<sup>33</sup>

Handy says the word "subsidiarity" means decentralizing power to the lowest level of hierarchy possible to make an organization more effective. It spreads power around and down, giving those who are nearer to the action a sense of involvement and ownership. However, subsidiarity is not easy to practice because it requires "tough management." It is not the same as "empowerment," which implies that someone on high is giving away power to those below. Subsidiarity takes place when people create power where it properly belongs. Handy writes: "You take it away as a last resort. Those in the center are the servants of the parts."<sup>34</sup>

In effect, decentralization requires combining financial accountability and social accountability. These two types of accountability enhance self-governing power in the organization.<sup>35</sup>

Thus, subsidiarity is both a "top-down" and "down-up process", based upon mutual trust, for profit and nonprofit organizations. People at lower levels of an organization learn new skills, self-confidence, and choose responsibility. Subsidiarity means building a system of mutual governance.<sup>36</sup>

Chaos can result when "decentralization" occurs too rapidly without trust and mutual confidence. When there is distrust, managers create bureaucracy; they write all sorts of manuals and books of procedures, hire inspectors, and require performance numbers and countersignatures. All

programs built in the midst of distrust slow down the system, and turn out to be very costly to everyone.<sup>37</sup>

William Halal, the professor of management at George Washington University (mentioned above) puts a positive spin on the federalizing phenomenon. He says that it requires “flexible management,” not out of line with subsidiarity.

To survive a world of constant change, massive diversity, and intense competition, monolithic corporations are dissolving into fluid collections of entrepreneurial units. This need to cope with a difficult era should bring the power of enterprise to fruition as organizations melt even further into a churning sea of “internal markets,” connected by information networks into a near-perfect global economy – I call it “the flowering of enterprise.”<sup>38</sup>

Microsoft is an example of a corporation that grew too big too quickly. It had revenues and profits that rose at a 30% clip. The company bought 92 companies in five years, and still had \$22 billion in cash, but faced trouble in “bureaucratic management.” The company had 30,000 employees, 183 different products, and at least five layers of management, and staffers rebelled against all the red tape. Many employees felt that this company had grown too quickly into a bureaucracy.

At Microsoft, employees faced the problem that Max Weber warned about – an iron cage. A many-layered bureaucracy can be the death of any organization, hence, Microsoft managers began to consider the “subsidiarity” principle, or how to decentralize authority as so many other successful businesses had done.<sup>39</sup>

Some business corporations are democratic cooperatives. They are built like a civil association as they compete in a system of command corporations. Economic sociologists should examine how they sustain decentralized management in the midst of global competition. Below is an example of Ocean Spray, which should be studied.<sup>40</sup>

#### **Box 1 The Ocean Spray Co-op**

Ocean Spray Cranberries Inc. is a democratic cooperative. It is made up of some 750 cranberry growers and 150 grapefruit growers. It is democratic corporation in a capitalist market and it has a hard time raising capital and making quick decisions. It has made decisions within its own ranks to downsize its board of directors to make it more nimble and fix its oversupply problems. The US Department of Agriculture has helped to negotiate disputes but its issues are all about subsidiarity and the civil development of a business.

Ocean Spray is in a battle for survival. It considered selling out to Coca Cola because of financial losses but its members voted to sustain its democratic tradition and fight to the end. Its problem is this: farmer owners independently raise cranberries and are not told by upper management how much to produce when demand is low. This low demand and lack of control over production generated a surplus and a loss in market price. With its surplus of cranberries, management needed to control its production and deal with the problem of consumer demand.

In the year 2000 it urged the federal government to restrict how much

fruit that growers can bring to market. But the question was whether Ocean Spray had actually caused its own problem of surplus cranberries, i.e. whether it encouraged its growers in Wisconsin and Canada to devote more acreage to cranberry production than was needed in the market. Ocean Spray argued that the surplus was an industry-wide problem, but some competitors disagreed. Ocean Spray is the industry's biggest competitor with annual sales of \$1.48 billion, dropping to \$1.36 billion largely due to oversupply. This oversupply sent cranberry prices plummeting. The price could fall to \$25 a barrel, but most growers needed to make around \$40 a barrel to break even. Should growers be restricted to bringing in only 90 percent of their annual crop averages to market? Should it be 80 percent? This is a "political decision" in this private sector, hotly debated.

In Massachusetts, cranberry growing is usually a small operation with bogs of 20 acres or fewer, but in Wisconsin, New Jersey, and British Columbia, cranberry growing is on a larger scale. The decision to downsize its operations could tilt Ocean Spray in favor of larger out-of-state operations at the expense of small growers. A rival of Ocean Spray, Decas, argues that the growth in supply is due to more barrels collected in Wisconsin's wide-open spaces, compared to small spaces in Massachusetts.

Now it is competing against big companies like Coca Cola that have billions of dollars to spend and are managed in a strict command system. In the summer of 2004 some 925 growers who own Ocean Spray gave their CEO a mandate to become competitive with big firms like Coca-Cola Co. and Pepsi-Cola Co., which are moving full scale into noncarbonated drinks, selling everything from water to fruit smoothies.

In 2004, Ocean Spray CEO Randy Papadellis in the year 2004 says his management team is going to develop "partnerships" and "alliances" with other companies. And these new associations for the company "will not give up equity in the company." Ocean Spray is now on a new path of inter-organizational development, and going global. Its cranberries can be found in everything from granola bars to blueberry muffins. It is building a new distribution network focusing on the single-serve market, like convenience stores, vending machines, the fountain drink market in cafeterias, restaurant and fast food chains. It is now going quickly into international markets. Papadellis struck a deal with a beverage company in Japan and with another in the United Kingdom. And CEO Papadellis says that the expansion of this farmer's co-op is just beginning.

In sum, decentralization is important in principle but not easy to follow in practice. It involves what sociologist Diane Vaughn calls “uncoupling,” where relationships are sustained while each party moves into a different way of life. Codes of conduct are critical to this uncoupling, but it means finding a new center.<sup>41</sup>

Now let us pause for a moment.

We can have a decentralized large corporation with good management but with negative externalities. Cranberry bogs in Massachusetts, for example, accounted for 35% of the world’s production 5,500 jobs, and \$2 million in payroll to residents but it has negative externalities. It uses a large amount of pesticides in close proximity to water sources. The evidence shows a 6.7% fold increase risk of astrocytoma brain cancer among people living within 1/2 mile of a cranberry bog. Studies found an increased risk ratio among farmers for brain cancers. Most bogs are separated from streams and ponds but about 10% to 15% of bogs have a stream flowing through them making it difficult to retain pesticides. What to do?

Codes of conduct are developing for big corporations like this and as we shall see shortly, these codes can be applied also across industries. The

government has taken a role in this cranberry case. Cranberry growers are beginning to abandon bad bogs because the Department of Agriculture (USDA) has funds that will pay for them to be restored to wetlands. Farmers can get paid for lost land value and revenue.<sup>42</sup>

## **II Corporate Self-Examination: Codes of Conduct**

An action inquiry with a self-monitoring committee is important to this development. CEOs know that it is better for a corporation to monitor its own conduct than to be open to damaging lawsuits from unhappy customers and the government. Companies that have codes of conduct and monitor themselves receive more lenient treatment from prosecutors than do those less watchful. The establishment of codes of conduct goes parallel with decentralizing and establishing public standards in corporate markets.

The most effective tool to self-policing in business is a “compliance program.” A compliance program holds internal audits, surprise inspections, and becomes an outlet for whistleblowers. It is known to provide a quick and effective solution to ethical breakdowns. Fifteen of sixteen state attorney general offices surveyed by the Wall Street Journal said that companies with compliance programs are more likely to receive lighter penalties for a wide range of environmental, antitrust, securities, and public health law violations.<sup>43</sup>

Cummins Engine builds diesel engines for trucks and takes social responsibility seriously. Its code of conduct applies to all employees with simple principles like “obey the law,” be “honest,” “fair,” “concerned,” and “courageous.” The code goes on to say, “Cummins neither practices nor condones any activity that will not stand the most rigorous public ethical examination.”<sup>44</sup>

A decentralizing corporation creates procedures for whistle blowing. Whistle blowing – a warning issued by a member (or former member) of an organization – begins at best in the self-examining committee of the corporation. In a civil corporation, the whistleblower utilizes all appropriate channels within the organization before he/she goes on television or talks to newspaper reporters.

Whistleblowers are often professionals and scientists who are members of learned societies and see their own standards violated in corporate operations. Let’s look at this phenomenon.

### The Whistle Blower Role

In 1996, Barry Adams, a registered nurse (RN) was working on a sub-acute care unit in a New England hospital. On the basis of professional training, he blew the whistle on unsafe health care practices that he observed in his work setting. He became concerned about the quality, safety, and

dignity of patient care as the hospital implemented staffing cuts and cost containment measures. He documented unsafe practices and correlated the problem with inadequate staffing and a lack of adequate supervision of inexperienced nurses.<sup>45</sup> There was an increased incidence of patient falls, instances where patients were left to lie in their own urine and feces, treatments not being completed, and serious medication errors. These incidents resulted from a substantial increase in the nurses' patient assignments. For three months, Adams and other nurses followed precisely the process outlined by the organization to communicate concerns to hospital administrators. But Adams soon realized that the administrators were not interested in using the information he provided to correct the situation. Indeed, he was harshly criticized for collecting this information. So, he took his case to court and won. This is a case of professional norms conflicting with business norms.<sup>46</sup>

To build whistle blowing and self-policing procedures, and to decentralize a big corporation into an association of members, that is, into divisions and localities where people have greater authority, is not trouble-free. The process depends on the degree to which people are able to cultivate responsible leadership in lower ranks. A civil (decentralizing) corporation becomes effective to that degree in which employees establish codes of

conduct and monitor standards in the workplace. It is based on this principle called subsidiarity, which Aristotle would have called a “prudent” policy.

More on the Whistleblower

Larry Jones, a former Coca-Cola manager, founded a Committee for Corporate Justice and did more than blow a whistle. He set up a Website called CorporateJustice.org. He posted his complaint about alleged discrimination by the company for the whole world to see, detailing his issues with the corporation. The site included a list of the number of senior management positions held by blacks as well as information on employees’ salaries over a three-year period, grouped by skin color. The company reportedly settled with black employees for \$192.5 million.

Another site called boycottCOKE.com also criticized the company. It featured articles about various transgressions by Coca-Cola worldwide. Here a worldwide audience could find news about everything from Mexico launching a probe of “alleged monopolistic practices” to a report from Jordan about Coke cans contaminated by petroleum products. The Web site claims 20,000 visitors daily. The Internet is where employees now go public with their private concerns.<sup>47</sup>

In sum, any individual working within a corporation who intends to practice Aristotle’s good life would build a civil association. A civil

association is a consensus-minded group that generates cooperation for the common good in a competitive context. An individual takes some portion of justice (e.g. fairness, accountability) in its philosophical meaning and transfers it into the workplace, then, thinking outwardly, puts it into the life of the corporation and its trade association. This follows Aristotle's sense of virtue, keeping those qualities of prudence and courage together, and extending them into wider levels of corporate life into the marketplace.<sup>48</sup>

This is all about bringing forth a latent ideal within a market reality. People inevitably fail at some point because they are working in a market filled with pitfalls. Employees who choose a union may discover to their dismay that some authoritarian leader rules it; not all unions are democratic. CEOs who want to develop employee ownership can encounter problems, including the ESOP law itself. Aristotle would say that achieving perfection in excellence is less important than the effort to do it with courage, modesty and prudence.

When Americans make an effort to advance the good life, they face a capitalist market. It is not Aristotle's well-managed household. Aristotle was living in an ancient society, but his pursuit of excellence remains an inspiration. He never thought about how a golden mean might develop for business corporations who work with short-range profit making.

## Long Range Planning

Hewlett Packard decentralized its operations to enhance profitability and move into guidance management. But in this practice of decentralizing, it still faces the problem of developing a civil association.

Warren Buffett took over Berkshire Hathaway in 1965 when it was trading at \$18 per share. Then, using Hathaway as a vehicle for purchasing and investing in other companies, he guided it to the level where it is at the time of this writing, trading at \$70,000 per share and yielding an annual return of 28 percent. It has been going up steadily in both share price and equity per share. His corporation encourages a great deal of self-governance among its members. This is a trend toward “decentralization.” But it is just a small part of the story of development.

There is a danger here. Major corporations like General Electric (GE) have decentralized to the point that they look like “holding companies.” GE owns its business units, while it encourages a high degree of self-governance among its divisions. However, GE also produced great environmental problems. Jack Welch at GE headquarters was strong on excellence in top management and he provided great leeway for division chiefs to create their own path at their level of authority. But his policy, based on maximizing profits, was not designed with equal concern for cultivating public standards

with outside monitoring and judicial processes, and certainly was not based on the advanced principles of a civil association.

The capitalist manner of decentralizing operations and encouraging self governance among workers is only the first step toward creating a civil corporation. A civil corporation has long range plans to work with higher associations to set public standards. It keeps “development” alive; it builds standards through trade, professional, educational, and science associations. It builds its own codes of conduct, but then joins with others to make industry-wide codes in the larger market.

#### From Corporate Codes to Industry Codes

General Electric, under pressure from Third Sector associations, developed its codes of conduct and then later issued a global code called "Integrity: The Spirit and The Letter of Our Commitment." Every GE employee is required to sign it worldwide. The global code was an advance which included issues related to employment practices, but it failed to include Third Sector associations.

For instance, it failed to recognize international labor standards set by the International Labour Organization (ILO). The ILO is a tripartite body founded in 1919 and made up of representatives of business, government

and labor. (See Appendix D, Mapping Markets.) It works on industry-wide standards.

To work with the ILO would be the next step for GE. It is essential for a global company to include international labor standards and human rights standards as guiding corporate policies. Companies should assure shareholders that its employees are treated fairly and paid a sustainable living wage in the global economy. General Electric would then strengthen its code by making sure that its suppliers comply with its company's standards. (See Appendix D, Mapping Markets and HOCHTIEF's subcontractors.)

Ensuring compliance to standards requires independent monitors composed of respected local human rights, religious and other non-governmental organizations that know the local culture. Improving the quality of life for employees and their communities leads to increased productivity and enhances profit making for the company.

Below is a set of ILO principles.

1. All workers have the right to form and join trade unions and to bargain collectively. (ILO Conventions 87 and 98)
2. Workers representatives shall not be the subject of discrimination and shall have access to all workplaces necessary to enable them to carry out their representation functions. (ILO Convention 135)

3. There shall be no discrimination or intimidation in employment. Equality of opportunity and treatment shall be provided regardless of race, color, sex, religion, political opinion, age, nationality, social origin or other distinguishing characteristics. (ILO Convention 100 and 111)
4. Employment shall be freely chosen. There shall be no use of force, including bonded or prison labor. (ILO Convention 29 and 105)
5. There shall be no use of child labor. (ILO Convention 138)

Corporate codes of conduct are a precedent for industrial codes, that is, for creating public standards in higher associations. Corporate codes are based on principles of knowledge and ethics in the Aristotelian tradition, but they need enforcement procedures inside and outside of individual corporations.

The goal of a civil corporation is to balance profit making against the larger common good. In the language of Aristotle, it means applying the principles of knowledge through associations that set enforceable standards for all members. Every market sector – agriculture, foods, machinery, autos, coal, steel, and computers – has standards, but in the complexities of a global market, there are always more to be developed.

### The Global Market

Agriculture and food products have always been globalized (e.g. the old spice trade) but the scope of world trade broadened and increased

substantially in the last century. Let us look at different perspectives on standards for corporations in this increasingly globalized economy.<sup>49</sup>

Critics view standards as instruments of “neoliberal structural adjustment policies.” Standardization is an expression of ongoing trade liberalization. Others see standards as a way to reduce transaction costs and build trust. But this is not what we are talking about.

We are talking about how difficult problems such as food hazards (like *Listeria*, a food borne pathogen that can cause serious, potentially fatal infection) can be avoided through the development of standards to coordinate complex food systems. And beyond the purposes of standards are specific questions about how standards should be created and enforced.

Market forces under the theme of competition cannot do it. Industries should cooperate in worldwide standard setting and enforcing bodies. But they cannot do it in the business sector alone. The Third Sector must play a role.

Science associations have a role in standards setting. Business needs to know, for example, what percentage and type of bacteria are safe in a food product. Competing corporations require the facts to make ethical decisions related to public risk. What level of risk is acceptable in a given

product or process? How is risk to be fairly distributed? Here they need science.<sup>50</sup>

In *A CIVIL REPUBLIC* (chapter 8) we talked about the Apparel Industry Partnership (AIP) Workplace Code of Conduct and the effort to address domestic and international sweatshop labor. The code addresses workplace rights issues through the Fair Labor Association, an organization for accrediting monitoring organizations and certifying compliance with the AIP's code of conduct.

But there are many others in the making. The Keidanren Charter for Good Corporate Behavior and the Keidanren Global Environment Charter, adopted by the Japan Federation of Economic Organization, are declarations offering guidelines for business behavior. They have U.S. and U.N. support to move further with neutral monitors and compliance procedures.

In a general economy, all sectors – business, government, and the Third Sector – are all involved in the development of standards. Governments play a role in the beginning by chartering corporations and their nonprofit associations. Let us look at this role for states in the United States.

### **III A Legal Foundation for Corporations**

There is no legal foundation for corporations to act as responsible persons, like citizens. How could such a legal foundation be created? How could an ideal become real?

There is a lot to say here but we can make only a few points.

First, there is a legal problem in the structure of corporate boards. Second, there is a legal problem of charters for corporations.

#### Corporate Boards

We begin with the fact that boards of corporations do not have independent members. There are no real outside (public) monitors. Corporations do not have a basis for critical self-examination. When a CEO and other board members handpick their board members they stay together like friends. They become a club of acquaintances that would promote the corporation and themselves together. They are not there to promote the public good.

For example, Enron had a majority of “outside board members,” including a senator’s wife, Wendy Gramm, the former head of the Commodities Futures Trading Commission. She joined Enron’s board just weeks after pushing through a measure that exempted the company’s energy derivatives contracts from federal oversight. Another friendly appointee was the Dean of the Stanford Business School, the chair of the company’s audit

committee, who did not bother to examine the work of CFO Andy Fastow's illegal bookkeeping. None of Ken Lay friends on the board would stop him from cashing out stocks while telling employees the stock was still a good buy.

The problem of board structure is so serious that experts in securities law are beginning to think about the problem as though they were sociologists. They view the failure of Enron's lawyers as part of a social system problem. Columbia University Law School's John Coffee was one of the first to see the key to the epidemic of corporate fraud and abuse as the result of a series of court decisions and tort "reform" laws such as the Private Securities Litigation Reform Act (PSLRA) of 1995. The PSLRA imposed steep barriers against investors who might want to take the accountants, lawyers and bankers—the market system's "gatekeepers"—to court for failure to perform their duty and even (in some cases) "aiding and abetting" the fraud itself.<sup>51</sup>

Enron had paid no taxes in four of the five years before filing for bankruptcy. But Enron was just one example of a systemic problem in the market. Most big U.S. multinationals have converted their tax and accounting departments into high-pressure profit centers aiming to develop intricate strategies to outfox the tax code. According to a GAO report

released in June, over half of U.S.-based corporations and more than 71 percent of foreign-based firms operating in the United States paid no income tax between 1996 and 2000. And that was before the latest progressive series of corporate tax cuts by the U.S. Congress.

In a deeper way, there is the problem of inter-institutional power. Big corporations work closely with government. The Enron Corporation had the support of highly placed government friends and professionals in accounting and law. From tax breaks to board members in powerful positions to auditing loopholes, friends supported Enron's wrongful actions. Enron cost investors \$60 billion, and government has still not figured out what to do about it. There is no corrective legislation to stop corporations in the future from doing exactly the same thing.<sup>52</sup>

### Chartering

State and federal courts favor business. One way that states favor business is by providing corporate charters that allow for neglect and unethical behavior on the part of CEOs and board members. Legal scholars argue for a new charter for corporations.

Federal chartering has been popular among civil society advocates but has never been implemented. Federal chartering was popular in the 1800s

but it never succeeded. It was advanced again in the 1970s by Ralph Nader but failed to win support in the U.S. Congress.<sup>53</sup>

Now legal scholars believe it is time to review again the charter question. Law professor Kent Greenfield argues that Congressional leaders should protect the public interest by requiring federal charters for big corporations. He says we can no longer leave the states in charge of corporate chartering. The only way out of “this mess,” he says, is to bring corporate law under federal control, and for Congress or the SEC to define the obligations of managers and directors of big corporations.

Federal chartering, he goes on to say, ought to be the ultimate solution for the very big corporations, but the most workable first step would be good state chartering for all corporations. The chances of passage among individual states are higher, and the chance of getting a law people really want is greater at the state level. Grassroots groups in states led by Minnesota have begun efforts to change state chartering law.

This is new. State law defines the director’s duties as maximizing profits for shareholders. In other words, charter law dictates that directors must act in the best interests of the corporation and its shareholders. But some state legislators are changing that charter mandate.

Attorney Robert Hinkley drafted a model “Code for Corporate Responsibility Act.” It says, in effect, that directors cannot pursue shareholder gain at the expense of employees, the community, and the environment. If affected parties can demonstrate harm, they would have a right to sue under the proposed law. Such a law, if enacted widely, would change the purpose of business corporations. Corporations under this charter would be required to take account of stakeholders, not just stockholders.

Here’s the problem. In the United States, the charter rules about the governance of corporations come from the states. And most people do not know that corporations are not required to incorporate where a firm is headquartered, or even where it employs the most people. Managers can go shopping for the most advantageous set of laws, since getting a corporate charter is easier than getting a driver’s license.

As a result, some 60 percent of the Fortune 500 companies are incorporated in Delaware, which is very protective of management interests. Managers can then go back to any state or nation around the world and act as if nothing is odd about running a firm with a charter issued by a state having no relation to the property, employees, or work done by the company.

Why does this happen? States compete to issue these corporate charters. Incorporation fees fatten lean state budgets. It is no coincidence

that Delaware has won this competition with its laissez faire attitude toward directorial oversight of everything – including outlandish managerial compensation. If corporations fail to take their responsibilities seriously, this charter allows companies to include provisions that limit directors' liability. Delaware has refused to pass a 'stakeholder statute,' which would allow directors to consider the interests of employees and other stakeholders when important decisions are made.

Delaware courts have been reluctant to disturb any decision of corporate boards, which legal scholars argue are causing social problems. Directors become lax and inattentive to accounting problems that occur among companies like Global Crossing, Enron, Adelphia, and Worldcom.

How long will it take to develop a civil (associated) system? How many billions must it cost stakeholders before governments notice that there is a problem at the deep levels of law? <sup>54</sup>

#### **IV Conclusion**

Aristotle proposed that people should pay attention to "principles of knowledge" and set a golden mean between extremes. The corporation is deemed a legal person today but has not assumed the appropriate responsibility. We have argued that a corporation that is a legal person cannot develop virtue without codes of conduct at all levels of association. It

develops virtue through associations that carry principles and public standards into the economy.

A general economy is like the ancient Agora. It is where a dialogue takes place about a household economy *versus* a speculative economy. People are in corporations from every order of society: businesses, churches, temples, universities, and professions. They buy and sell, but still need to talk about corporate principles and politics, about the human condition.

Socrates talked about the good life in the market and Aristotle talked about principles in the economy. Scholars in management and law have begun to apply principles to the capitalist system, but there is a long way to go. We have argued that corporations become civil through civic-minded associations and stakeholder participation. Corporations become civil when they organize associations that hold members accountable to public standards.

A corporation starts with a code of ethics and self-enforcement mechanisms inside the firm but it must then go on to higher levels to establish true excellence. It must build industry codes of fairness into wider circles of association. When trade associations carry ethical principles and organize whole markets with self-enforcement mechanisms, the capitalist market changes. Corporations develop a competitive mutually self-governed

market. The market is then based upon principles of knowledge not profit and competition alone.

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<sup>1</sup> I have special reasons for making this comparison between the ancient (Agora) market and the modern (capitalist) market. For me, it is a matter of balancing principles. Socrates and Aristotle emphasized justice in the marketplace, while today people talk of freedom. In ancient times, the market was based on order, while the capitalist market is based on change. These are very different societies with contradictory themes but, as Aristotle would say, philosophical principles remain relevant to building a good life.

<sup>2</sup> Today's ethical principles go back to the time of the Greeks. In the 5th century BC, the city-state of Athens was the center of the western world's intellectual life. The "Golden Age of Pericles" occurred during this period, epitomizing the height of Athenian culture and democracy. The plays of Sophocles and Euripides were written; the Parthenon was built. In this world Socrates came into the market (Agora), talking to people about virtue.

<sup>3</sup> The archaeological site of the Agora is at the foot of the Acropolis in Athens. In ancient Greece, philosophy arose out of the dialectics of Plato and Aristotle, which attempted to make sense out of the "welter of opinion"

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forming around the contradictions in everyday life. These two philosophers struggled with the Sophists to clarify the line between “knowledge” and “opinion,” and fought to separate the true from the false. They tried to convert “right opinion” into knowledge by making it evident to reason. A similar rational discourse is needed today. The work was conceived as dialectical even when Aristotle later connected it with science. For more on the dialectic and “moral reasoning,” see the work of Mortimer J. Adler, A Dialectic of Morals, <http://www.radicalacademy.com/adlerdialectic1.htm>.

<sup>4</sup> The “documentation” was put into a film called The Corporation, produced by Big Picture Media Corporation MMIII.[\*\*year?]

<sup>5</sup> The idea of a person also developed as an idealistic philosophy called “personalism.” This philosophy places “human relations” at the center of all theory and practice. It has roots in 19th-century thought and reaches into the 20th century. The German philosopher, theologian, and theorist of hermeneutics, Schleiermacher, used the term 'Personalismus' in 1799 in his Discourses. Some philosophers see personalism as plain idealism. We think that the court’s determination of the corporation as a person reflects a similar sense of idealism.

<sup>6</sup> This dominance and sub dominance of players has yet to be studied by political scientists and economic sociologists. Food industry associations, for

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example, are in a system of dominance and sub dominance. One set of examples is the American Meat Institute, National Meat Association, National Cattlemen's Beef Association, and National Pork Producers Council. They have different positions of power and they battle with one another. And yet at some point they must find a common ground to sustain the market. To see how these associations debate standards and market rules, see <http://meatnews.com/>.

<sup>7</sup> A civic movement for corporate social responsibility began in the last decades of the 20<sup>th</sup> century. Now we argue that the movement should focus on the responsibility of trade associations. Trade associations can, easily, become monopolies. We will argue that the corporation should link with associations that carry ethical codes and a system of public accountability.

<sup>8</sup> Simon Zadek, The Civil Corporation, (London, Earthscan Publications Ltd.) 2003.

<sup>9</sup> Aristotle made a distinction between economics (oikonomia) and purely speculative activity that produces nothing of real value. He called the latter set of activities "chrematistics," which can be defined as "the branch of political economy relating to the manipulation of property and wealth so as to maximize short-term monetary exchange value to the owner." The

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contradiction between these two types of economic activities remains with us today.

We mentioned in appendix D that sociologist Daniel Bell discussed some cultural contradictions but in a very different manner. Bell's thesis was that the social structure today is ruled by the principle of economic rationality, defined in terms of efficiency in the allocation of resources. The American culture, in contrast, is characterized more by an antirational, anti-intellectual temper. The character structure inherited from the nineteenth century – based on self-discipline, delayed gratification, restraint – is still relevant to the social structure but it clashes sharply with the culture, where Bell says bourgeois values have been completely rejected partly because of the workings of the capitalist system itself. There is much to criticize here but suffice it to say that Bell's thesis is not the same as our thesis. Daniel Bell, The Cultural Contradictions of Capitalism (N.Y.: HarperCollins, 1996).

<sup>10</sup> Halal also examines how to balance principles for good management.

William Halal, The New Management (San Francisco, CA: Berrett-Koehler, 1996) p. 48.

<sup>11</sup> There are different types of principles. The economist Alfred Marshall wrote a book called Principles of Economics (London: Macmillan and Co., Ltd., 1920 [1890]), saying “Political Economy or Economics is a study of

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mankind in the ordinary business of life; it examines that part of individual and social action which is most closely connected with the attainment and with the use of the material requisites of wellbeing.” He described economics as on the one side “a study of wealth” and on the other side a part of “the study of humankind.” We might call him an Aristotelian economist.

Here is another example of “principles.” In 2003, the sociologist Richard Swedberg published Principles of Economic Sociology (Princeton, NJ: Princeton University Press, 2003). His intent was to combine an analysis of economic interests with an analysis of social relations. These principles represent a scientific orientation but also represent the concern that Aristotle had about applying principles to understanding the economy.

<sup>12</sup> The word "republic" comes from Latin: Res publica, which means "public matters" or "the state." In Greek, the title was the Politeia, which means the Constitution. But The Republic does not start out about politics. It is initially a Socratic dialogue about justice, just as the Euthyphro is about piety and the Meno is about virtue. The Republic is divided into ten Books.

<sup>13</sup> There is more to this dialectic. In a CIVIL REPUBLIC we noted how the capitalist market is based on economic principles like efficiency, productivity and competition. We asked: could this market develop with social principles like transparency, cooperation, and self-regulation? We

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asked: could the joining of contrary principles produce a civil (post-capitalist) market?

<sup>14</sup> Notice differences between ancient and modern society. First, government leaders think that the “good” is developed by an increase in the Gross Domestic Product (GDP). Aristotle, on the other hand said that achieving the good involves fulfilling human nature; living the good life is a civic duty. It is more than just an “ordering of one’s aspirations and trying to stir the heart to win admiration.” The goal is self-realization.

Could the goal of self-realization be part of the goal of the economy? Could increasing the level of self-management at the workplace be a start here? Could a group “self” be linked with the corporation? Could it be linked with an association? We are proposing a larger sense of “self” at levels of association. A higher good is cultivated within a community, not within an individual alone.

<sup>15</sup> For Aristotle, the right path means cultivating personal attributes: courage, temperance, and prudence. Good judgment requires that one find the mean between extremes. In the classification of psychologists, this could be a mature individual, as opposed to the psychopathic and the neurotic personality.

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<sup>16</sup> Notice how extremes can coexist in all corporations, whether profit and nonprofit. A business corporation, for example, may advertise high principles of excellence but then engage in profiteering and greed. A church corporation may talk about its high principles like forgiveness and compassion and then condemn heretics to hell. A university may speak of its high principles like enlightenment and intelligence and then build impersonal dormitories that are dens for drug use. These contradictions should be identified and resolved by all corporations, profit and nonprofit.

<sup>17</sup> Bill Torbert, Action Inquiry (San Francisco: Berrett-Koehler, 2004) and John Robert Eggen, (editor) Create the Business Breakthrough You Want (Palo Alto, CA: Mission, 2004).

<sup>18</sup> Notice. The opposing ends of these poles, when pursued in isolation, become identified with an “ism.” The ideal becomes idealism and the real becomes realism. An overemphasis on the individual becomes individualism and a misplaced emphasis on community becomes communism. But the contrasting principles themselves, and the societal requirement to choose or mediate between them, are present in every social structure.

The golden mean requires synthesizing the elements of extremes into a new path, transcending contradictions. The right path is the “mean”

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between the “extreme” and our proposal is that it can be achieved the process of dialogue in market structures called “civil associations.”

While there is no easy path to excellence, it begins in the workplace, goes on through departments and the whole corporation, and ultimately enters into the larger associated market system. This is called development toward the good life in the economy.

The good life, sociologically speaking, is based on mutual self-governance. People working with this goal then co-determine principles that advance their common development. They establish codes of conduct and public standards; they agree on due process procedures that allow them to judge what is right and wrong by impartial juries.

<sup>19</sup> To examine details on code guidelines for overseas contracting, see John Jackson, Roger Miller, and Shawn Miller, Business and Society Today (Boston: West Publishing Co., 1997) p. 180. Today, a good corporate "image" is worth lots of money. Companies are sensitive to public opinion. When the U.S. Company Levi Strauss emphasizes social responsibility in its programs and public relations, it is for profit purposes as well as for social (conscientious) purposes. People question this purpose in terms of management's integrity but executives may see an overall (higher) purpose in combining financial and moral values together.

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<sup>20</sup> If employees from below or CEOs from above demand this principle of equality, it can lead to chaos and become another repressive authority.

Demanding full equality for everyone has produced authoritarian regimes in corporations and nations.

<sup>21</sup> A 2003 Business Week survey found that the average compensation of 365 top CEOs fell 33 percent to \$7.4 million, the same level as in 1996. But that also reflects the decline in the value of stock options because of the weak stock market.

<sup>22</sup> The ESOP Association finds that the greater the amount of equity (stock) that employees own across the workforce, the smaller the ratio of salary difference between CEOs and the lowest paid employees.

<sup>23</sup> For more, see Severyn T. Bruyn, A Future for the American Economy (Stanford, CA: Stanford University Press, 1991) chapter 3.

<sup>24</sup> Institutional investors, such as pension-fund managers, seek restraint on the cost of CEO compensation as part of the drive to find greater pay equity. They act in the interest of their shareholders.

At the aluminum company Alcoa, 65 percent of shareholders backed a resolution taking aim at "golden parachutes," urging the board to submit to a shareholder vote any future severance arrangements that provide for benefits exceeding 2.99 times an executive's salary plus bonus. Corporate boards are

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not required by law to follow such resolutions, but they may nonetheless impact board decisions.

<sup>25</sup> Jay C. Hartzell and Laura T. Starks, “Institutional Investors and Executive Compensation,” January 2002. Electronic document. University of Texas at Austin - Department of Finance, Date posted to database: September 6, 2000

<sup>26</sup> For example, see S. P. Sethi, & C.M Falbe, (eds.), Business and Society (Lexington, MA: Lexington Books, 1987) and W. C. Frederick, Values, Nature, and Culture in the American Corporation (New York: Oxford University Press, 1995).

<sup>27</sup> Diane Swanson, for example, argued for “an integration of both normative and descriptive” studies of business. She proposed concepts of “value neglect” (emphasizing the problems of lack of integration) and “value attunement” to bring the responsibility and responsiveness streams of thought together. She wanted to overcome what business writers call the separation thesis: the disconnection between ethics and business practice. See Diane L. Swanson, “Toward an Integrative Theory of Business and Society: A Research Strategy for Corporate Social Performance,” *Academy of Management Review*, June 24, 1999 (3): 406-522,

<sup>28</sup> There are many different types of associations in which corporations collaborate in competition. An “alliance” connotes a treaty between

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governments but it also refers to how corporations join for a common cause. A “partnership” can occur between corporations in business but also among civic nonprofits. A “coalition” often describes the union of political parties, but it also describes grassroots organizations that join for a common purpose. A “union” could refer to the organization of separate states into one (e.g. the European Union), but it also refers to organizations in the private sector, such as labor unions. And so the types of association are many. This is an economy that is building an inter-organizational structure, a basis for a new public policy that seeks the public good.

<sup>29</sup> “Civil development” includes “ethical action” but it has a larger purpose to change the market structure. Ethical action usually refers to “personal conduct” and at best brings codes of conduct into corporations. But corporations are part of a larger market that is a jungle. Ethically minded firms are bound into it regardless of their corporate codes.

<sup>30</sup> Ex Corde Ecclesiae Implementation Document Draft, October 1998.

Roman Catholic Church leaders know that the principle of subsidiarity is abstract. It needs to be defined in each organizational context.

<sup>31</sup> Peter Drucker, Management (NY: Harper & Row, 1973) p. 574

<sup>32</sup> “In the global economic network of the 21st century, information technology will drive change just as surely as manufacturing drove change

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in the industrial era." John Naisbett, Global Paradox (N.Y.: Avon Books, 1994) 6, 65.

<sup>33</sup> Charles Handy, The Age of Paradox (Boston, Ma.: Harvard Business School Press, 1995) 133-34.

<sup>34</sup> Ibid. p.146.

<sup>35</sup> The principle of self-management is complex. It points to a process by which authority is centralized (sustained) and decentralized (changed) at the same time. Decentralizing authority invokes (paradoxically) a new commitment to a central authority to fulfill the higher purposes of an organization – while at the same time members gain more self-direction. In self-management theory today, there is an ongoing effort to decentralize authority through multilateral forms of decision-making. But decentralizing authority may not always be appropriate and timely for every organization. And oddly enough, from another standpoint, the most decentralized organizations (e.g. alliances and confederations) can be more powerful than the most centralized command system. A decentralized association can overpower a dictatorship. See Gene Sharpe, The Politics of Nonviolent Action. Introduction by Thomas C. Schelling. Prepared under the auspices of Harvard University's Center for International Affairs (Boston: Porter Sargent, 1974). Also, See Severyn T. Bruyn and Litsa Nicolaou-Smokoviti,

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International Issues in Social Economy: Studies in the United States and Greece (NY: Praeger, 1989).

<sup>36</sup> The tendency toward oligarchy in trade associations and government is well documented. We discussed oligarchy in *A CIVIL REPUBLIC*, but the comments of one critic on oligarchy in government may be relevant here. Speaking with Bill Moyers on the 2002 election victories, Lewis Lapham, current editor of America's oldest political journal, *Harper's Magazine*, commented on how class divisions are caused by government. Lapham says, "We now have a situation where the 13,000 richest American families have income equivalent to the 20 million poorest American families. And that results in a class system and in an oligarchy." Whether Democrats or Republicans control it, he argues, the U.S. government is based on an oligarchy of wealth and influence. (See [http://www.pbs.org/now/transcript/transcript\\_lapham.html](http://www.pbs.org/now/transcript/transcript_lapham.html).)

<sup>37</sup> This principle of organization goes far back into history. St. Bernard decided to reorganize the Cistercian monasteries in 1112 AD, decentralizing them to encourage greater efficiency. Stuart Crainer, *The 75 Greatest Management Decisions Ever Made...and 21 of the Worst* (NY: AMACOM, 1999).

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<sup>38</sup> William Halal, op. Cit. The New Management: Democracy and Enterprise are Transforming Organizations (San Francisco: Berrett-Koehler, 1996) p. xviii.

<sup>39</sup> Cover Story, Business Week, May 17, 1999, p.106ff.

<sup>40</sup> This is my summary. See Chris Reddy, "Ocean Spray seeks curb on cranberries," The Boston Globe, February 25, 2000, p. E3, and Naomi Aoki, "Beyond the bag," Boston Globe, September 26, 2004, E1, E 11.

<sup>41</sup> In this work, Sociologist Diane Vaughn writes about what happens in divorce and "separation" in the personal lives of people. "Uncoupling" requires that each party change their customary roles and even their lifestyle. In our corporate story, when a big firm decentralizes, or moves from one partner to another, top managers must decide what to do with old "secrets" previously shared as partners; they must decide when to "go public" with private information. Old partners go through "transition rituals," create new "signals" to another in their new status. They face personal "advantages and disadvantages" in the new relationships as they create bonds with new partners. If everything goes right, people can set new standards, find greater personal authority and develop greater strength in the process. Diane Vaughan, Uncoupling: Turning Points in Intimate Relationships (NY: Vintage Books, 1990).

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<sup>42</sup> Cape Cod Alliance for Pesticide Education

([www.greencape.or/cranfact.html](http://www.greencape.or/cranfact.html)). Jere & Gary Deziel, “The Effect of the Food Quality Protection Act on Cranberry Production,” Cranberry Institute, 1998. Buzzards Bay Project ([www.buzzardsbay.org/craninfo.htm](http://www.buzzardsbay.org/craninfo.htm)). My thanks to Gabrielle Watson for these references.

<sup>43</sup> J. Woo, “Self-Policing Can Pay Off for Companies,” Wall Street Journal, September 8, 1993, p. B9.

<sup>44</sup> Cummins Practices, October 1, 1980. Internal document.

<sup>45</sup> At one point Adams refused to take narcotic orders from a technician working for a physician, citing that this was against the Nurse Practice Act. At which point, Adams was threatened with the loss of his job. He was fired in spite of previous performance reviews that were excellent. He then sued and won his case. The hospital appealed, but lost again, and five units of the hospital have since closed “for financial reasons.” Such cases are reported at The National Whistleblower Center, organized as a nonprofit, tax-exempt educational and advocacy organization that is committed to environmental protection, nuclear safety, civil rights, government accountability and protecting the rights of employee whistleblowers. Established in 1988, the Center has established many important precedents protecting employee rights.

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<sup>46</sup> I have drawn information from The National Whistleblower Center. The reader may look further into the Center's report on the constitutional case, *Sanjour v. EPA*, enlarging the rights of all federal employees to publicly "blow the whistle" on misconduct within their own agencies. This action helped to eliminate "gag orders" and travel restrictions placed on whistleblowers. It caused Notices of Violations as well as hundreds of thousands of dollars in civil penalties to be issued by the Nuclear Regulatory Commission against operators of nuclear plants. It set a national precedent prohibiting the use of restrictive settlements and other "hush money" type payments in all environmentally sensitive industries (including the nuclear power and nuclear weapons industries). It extended the whistleblower protection of the federal environmental statutes to EPA employees. The Center supports litigation on behalf of employee whistleblowers.

<http://www.whistleblowers.org>.

<sup>47</sup> The anti-Coke Web sites may not have had any real effect on the company's \$20 billion in sales, but it is clear that management worried about a tarnished image. This mode of protest, accelerated, could bring Coke directors to a negotiating table. The international consulting firm Interbrand estimated that Coke's brand fell in value by 13 percent from 1999 to 2000 owing to concern about a pending lawsuit and a recall of soft drinks in

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Europe. The Internet is a new method of protest. The 1960s had its boycotts and sit-ins, but the Internet could place a new pressure on corporations.

Ellen Miller and Micah Sifry, "Taking it to the Web," The American Prospect, January 1-15, p. 8.

<sup>48</sup> The "good life" in the market means creating a higher order of exchange than is found in a capitalist system, keeping a larger common good in mind. It starts inside the workplace. Then it could mean that employees would talk with a trade union or it could mean that top executives would talk with their board of directors about transforming into an employee owned firm. It could mean that CEOs who have a sense of high principle and secure pension funds that cannot be exploited by top management. It could mean that a board of directors insists on adequate severance pay for employees for emergencies, such as a bankruptcy, or a downturn in the markets.

<sup>49</sup> We mentioned in Appendix D that there are market forces (including Third Sector groups) that cause corporations to rethink their products. For example, Monsanto Corporation announced in May 2004 that it was withdrawing its RoundUp Ready (RR) genetically engineered wheat after seven years of lab development. It had failed to win over farmer associations and international organizations in the wheat market. Monsanto would

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discontinue all research and field trial activities on genetically modified (RR) wheat.

<sup>50</sup> For more, see Food and Market Standards in a Shrinking World, Workshop,

<http://216.239.41.104/search?q=cache:feq7o8NsXJIJ:www.msu.edu/user/ifas/foodag.pdf+public+standards+markets&hl=en&ie=UTF-8>

<sup>51</sup> Two years after the Sarbanes-Oxley Act of 2002, the evidence is clear that the accounting reform law didn't go far enough. A preliminary report released at the end of June by the Public Company Accounting Oversight Board (PCAOB), created by Sarbanes-Oxley to police the accounting industry, found that accounting firms and clients who were involved in accounting scandals continue to have exactly the same business relationships they had then.

<sup>52</sup> States' exculpation statutes, court doctrines (e.g. the "business judgment rule") and the indemnification clauses that come with most board members' contracts, have made it virtually impossible to hold the directors of corporations to account. The Business Roundtable claims that "substantial progress" has been made in corporate governance since Enron, because the percentage of independent directors has increased substantially. See Charlie Cray (director of the Center for Corporate Policy and a collaborator on

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Halliburton Watch) and his forthcoming book, The People's Business: Controlling Corporations and Restoring Democracy, (co-authored with Lee Drutman), with Berrett-Koehler.

<sup>53</sup> It takes publicity on corporate crime to wake up the public. The Nader idea became popular when corporate crime was at its zenith and well publicized in the seventies. Almost 400 firms had admitted to bribing foreign or American officials or making illegal campaign contributions. But the idea of federal charters was dropped after the Reagan victory of 1980.

<sup>54</sup> Many corporate law scholars applaud Delaware, saying that competition among states makes for more efficient laws. But that depends on what "efficiency" means. If another state wants to be more aggressive in fighting corporate crime or protecting stakeholders (shareholders, employees, or communities), its companies will re-incorporate in Delaware. So most states end up mimicking Delaware law. See [www.citizenworks.org](http://www.citizenworks.org), [www.c4cr.org](http://www.c4cr.org), and Kent Greenfield, "It's Time To Federalize Corporate Charters" in the Fall 2002 issue of Business Ethics. Greenfield argues that citizens can no longer leave corporate chartering in the hands of the states.

If we were in the Weberian tradition, we would be talking about the corporate charter movement referring to the attainment of non-utilitarian

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(substantive) values. For Max Weber, economic action is a subtype of social action whose primary meaning refers to the attainment of “utilities.”