

Submission to
Parliamentary Joint Statutory Committee on Corporations and Securities

for the inquiry and report on:
THE PROVISIONS OF THE CORPORATE CODE OF CONDUCT BILL

from
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Globalisation of the market and of corporate practice has introduced serious and intractable global problems whose resolution appears beyond the capacity of national governments acting on their own. The problems need not be elaborated on here. They compel an expanded view in this submission of the meaning of 'securities'.

In view of these problems, the Commission for Global Governance in its 1995 report "the Global Neighbourhood" called for: "a global civic ethic and leadership infused with that ethic"

Implied by the call is the need for the development of a set of global responsibilities to be enacted by individuals everywhere, and exemplified, in the first instance by leaders in respect to both their own corporate cultures,² and to the world at large. Entailed by the call is a civic integrity development challenge of personally unsettling dimensions.

The finger clearly points not only to political leaders, but also to corporate leaders, to directors, CEO's and managers of organisations worldwide.

Invoked is a corporate ethical code having global reach, which if universal compliance is to be achieved, must be accompanied, if not by binding international law, by a civic integrity development regime.

Where a code of conduct is unbinding, that is, if not fully enforceable by law, where it serves as code for self-regulation, compliance will depend on the integrity and trustworthiness of leaders.

But why should trust be placed in persons who have not demonstrated an ethical orientation to the world? Why should the public be asked to trust corporate leaders to voluntarily abide by a code of civic ethics when everybody knows that their training and social conditioning has manifestly disposed them to apply their considerable intelligence to favouring corporate and shareholder interests over civic interests? While there are some exemplary corporate leaders, there is no global civic integrity education or qualification process or registration to screen out those whose superior intelligence is untempered by global civic concern and moral leadership.

What is clear is that a code of ethical conduct on its own will be largely, if not entirely, lame, a document of disrespect in the intelligent world. It will have no more power than a piece of paper, unless it is either fully backed by international legal enforcement, OR accompanied with new authoritative institutions as recommended here as follows:

RECOMMENDATION 1 (10 year implementation horizon)

Establish a democratically constituted and monitored security authority, a civic integrity authority, (a global CIA, perhaps first modelled by an Australian CIA with global reach) serving to provide

- a) civic integrity development – requiring information and education provisions. None other than a non-doctrinaire, unmanipulated, dialogical, discourse-ethical approach³ is recommended.
- b) internet-based facility for amendable public disclosure by leaders of their civic ethical 'platform', ie, global civic norms, independently determined through engagement in program above. Disclosure of ethical platform should include reasons, personal commitment declaration, action plan commitments, and disclosure of ethical platform(s) of the corporation(s) to which they are accountable. (Corporate and government leaders should be required to submit to the same public information and monitoring expectations).
- c) integrity qualification and registration (and de-registration), requiring the completion of (a) and (b).

While this initiative is pursued, the following shorter term items in recommendation 2 could go halfway to meeting the civic integrity goal implied by the notion of a code of conduct.

RECOMMENDATION 2 (3-4 yr implementation horizon).

Establish an interim corporate security authority to:

- a) instigate a global democratic deliberative polling process (such as modelled by James Fishkin⁴) to establish consensus on items to be included in corporate code of conduct.
- b) instigate recommendation 1 - the democratic constitution of a global/Australian CIA, preferably by global deliberative, discourse-ethical means⁵, using the Internet as constitutional vehicle⁶.
- c) create and conduct a mandatory short course on global civics for all leaders (corporate and public), ensuring their familiarity with the code and its compliance implications.
- d) conduct, as in citizenship ceremonies, the public swearing in of leaders, after completion of above course.
- e) phase in and maintain a registration and deregistration system, requiring completion of course, public declaration, and public disclosure (as in 1(b)). Registration could begin as a voluntary, reputation-driven process followed in time by company security's legislation barring unregistered persons from serving as directors and CEO's of public companies (or in political and administrative office).

Clear demonstration that leaders are at least familiar with the code of conduct and its compliance implications, would engender in the public mind a mildly greater sense of security and trust in the decisions of leaders. But public security and trust could not be assured until an institution such as sketched in recommendation 1 was implemented.

There remains a constellation of what and how questions in relation to the design of the institutions I have alluded to. I would be willing to offer elaborations if requested.

NOTES

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- ¹ This submission is personal. While comments from those involved with CIDA have been considered, the submission does not necessarily reflect their views. The recommendations derive from doctoral research nearing completion.
- ² Refer to Shann Turnbull 'Democratising the wealth of nations', 1975 (publ. Company Directors Association of Australia Ltd, 27 Macquarie Place, Sydney 2000). Turnbull notes that companies are not structured to redress inequities internally, ie, within their corporate legal structure and culture, despite voluntary codes of ethics which relate largely to intercorporate behaviour and client relationships that could lead to public criticism. Turnbull recommends Employee Share Ownership Plans (ESOPs), Ownership Transfer Corporations (OTCXs) to remunerate employees according to their contribution to new values, Land Banks to share among residents new wealth created in land values according to their contribution, and Producer-Consumer Co-operatives (PCCs). His work gains from the US Senate Committee on Finance report 'The Role of Institutional Investors in the Stock Market' 93rd Congress, 1st Session, US Government Printing Office, Washington 1973, and Louis Kelso & Patricia Herter's 'The Two-Factor Theory, the Economics of Reality, 1st edition, Random House, New York 1967.
- ³ For a much cited and esteemed theoretical introduction to discourse ethics, refer to Jurgen Habermas, *Moral Consciousness and Communicative Action*, Polity Press, 1992. Refer, in particular, to the chapter: 'Discourse Ethics: Notes on a Program of Philosophical Justification'.
- ⁴ See James S. Fishkin, *Democracy and Deliberation: New Directions for Democratic Reform* (New Haven: Yale University Press, 1991) and *The Dialogue of Justice: Toward a Self-reflective Society* (New Haven: Yale University Press, 1992). See also papers from recent conference 'Deliberating on Deliberative Democracy', Uni of Texas, Feb. 2000, <http://www.la.utexas.edu/conf2000/papers.html>
- ⁵ See note 3 above.
- ⁶ The question as to how the Internet might be used as a facility to enable democratic participation in world civic norm development, has been a central focus of my doctoral thesis.

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