Vanderbilt Journal of Transnational Law

Volume 24
Issue 5 *Issue 5 - 1991*

Article 6

1991

Book Review

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Recommended Citation
Richard Gruner, Book Review, 24 *Vanderbilt Law Review* 1047 (2021)
Available at: https://scholarship.law.vanderbilt.edu/vjtl/vol24/iss5/6

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BOOK REVIEW

CORPORATE ETHICS AND LIABILITY IN INTERNATIONAL ENTERPRISES: PRINCIPLES AND LIMITS. (Reviewing G. ELFSTROM,* MORAL ISSUES AND MULTINATIONAL CORPORATIONS (1991))

Reviewed by Richard Gruner**

Large corporations are important, yet enigmatic, participants in world commerce. International corporate behavior is morally and legally significant because of its immense scope and societal impact. That behavior, however, is often so complex as to defy characterization under the simple moral or legal standards applicable to individuals. Furthermore, the ability of traditional moral or legal systems to shape multinational corporate conduct is also unclear given that large corporate bureaucracies lack the motivations and fears normally used to enforce moral or legal accountability. As one frustrated court noted, the problem is that corporations have "no soul to damn, and no body to be kicked."[1]

In *Moral Issues and Multinational Corporations*,[2] Professor Gerald Elfstrom examines corporate morality as a constraint upon multinational corporate behavior. He addresses two fundamental corporate control and accountability questions: First, when should corporations, as opposed to

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1. MERVYN A. KING, PUBLIC POLICY AND THE CORPORATION 1 (1977). *See generally* John C. Coffee, *"No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386, 386 (1981).

2. GERALD ELFSTROM, MORAL ISSUES AND MULTINATIONAL CORPORATIONS (1991) [hereinafter ELFSTROM].

the individual employees and agents who operate them, be morally accountable? Second, how do moral standards for corporate conduct vary, if at all, when large firms intersect multiple cultures and value systems through international operations?

Although Elfstrom examines these topics from a philosopher's viewpoint, legal analysts also can benefit from his study. The moral standards he articulates can be used for evaluating corporate liability standards governing overseas conduct. United States law already imposes criminal and civil liability on corporations when their overseas conduct does not meet domestic moral standards. For example, the Foreign Corrupt Practices Act (FCPA) imposes liability on United States firms for payments to foreign officials that, although not violative of the laws of the nations in which the payments are made, offend United States notions about proper methods of influencing government decisions.[3]

Studies like Professor Elfstrom's book that delineate corporate morality principles in international settings should help the legal community determine whether statutes like the FCPA have expanded criminal liability beyond its moral underpinnings. Of course, illegal conduct need not—and often does not—precisely match immoral conduct. Widely-held moral principles, however, certainly shape standards for identifying criminal behavior.[4] An analysis explaining why particular corporate conduct is immoral can: 1) indicate that such conduct should be criminalized because laws generally should match moral standards;[5] 2) help identify the harmful or unfair quality of the behavior, which may justify criminalization on utilitarian or other policy grounds;[6] or 3) provide a rallying point for public opinion in favor of criminalizing the behavior through political action.[7] Under any of these approaches, new insights into the morality of multinational corporate action can provide useful grounding for adjusting the criminalization of corporate behavior.

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3. 15 U.S.C. §§ 79dd-1, 78dd-2 (1982).

4. *See, e.g.*, O. HOLMES, THE COMMON LAW 39-42 (M. Howe ed. 1963).

5. *See generally* LON FULLER, THE MORALITY OF LAW (1964).

6. The need to separate law from morality and to justify legal rules in terms of policies like utilitarianism is a basic tenant of legal positivism. *See generally* H.L.A. HART, THE CONCEPT OF LAW (1961).

7. Advocates of legal pragmatism contend that laws are settled primarily by political or judicial consensus. Under this approach, initial articulations of laws act like hypotheses, which are subject to continuing scrutiny by courts and politically motivated legislators until they become more or less clarified and settled by consensus. *See generally* FREDERIC ROGERS KELLOGG, THE FORMATIVE ESSAYS OF JUSTICE HOLMES: THE MAKING OF AN AMERICAN LEGAL PHILOSOPHY 280 (1984).

I. Measuring Corporate Organizational Morality Apart From the Aggregate Morality of Corporate Employees

Modern analysts have an unfortunate tendency to treat large corporations like overgrown persons. For example, in most legal contexts, corporations are treated like persons;[8] indeed, they often are referred to as persons.[9] This legal fiction is simply a shorthand way of saying that no significant policy reason exists to treat corporate and individual actors differently, and legal standards developed for individuals consequently should be applied equally to corporations.

Unfortunately, in many instances in which corporations and individuals are treated equally under the law, it is not because a careful policy analysis has indicated so. Rather, lawmakers or courts have simply assumed that corporations and individuals should be treated similarly in all cases in which a contrary result is not indicated clearly.[10] Alternatively, some courts and lawmakers have justified similar treatment of corporations and individuals based on rough physical analogies of corporate actions and decision making to individual counterparts, even though the legal standards involved did not relate to the similar features recognized in the comparative studies.[11] In short, past analyses of corporate criminal

8. *See, e.g.*, The Sinking Fund Cases, 99 U.S. 700 (1878); New York Cent. & H. R.R. Co. v. United States 212 U.S. 481, 494-95 (1909). *See generally* Christopher Stone, Where the Law Ends: The Social Control of Corporate Behavior 24-25 (1975).

9. For example, the California Penal Code defines a "person" to include a corporation as well as a natural person. *See* Cal. Pen. Code § 7 (West 1990). California courts long have recognized corporations as proper criminal defendants for many years. As early as 1907, a California court held that "[p]rivate corporations in respect of their liability for the acts of their agents or servants stand before the law on the same footing as individuals." People v. Palermo Land & Water Co., 4 Cal. App. 717, 721, 89 P. 723, 725 (1907). The position adopted in some other states that fictitious persons, like corporations, cannot commit certain crimes has been firmly rejected by California courts. *See* Criminal Law § 100, 17 Cal. Jur. 3d 146. In California, "corporations [are] proper defendants in any criminal case." Granite Construction Co. v. Superior Court of Fresno, 149 Cal. App. 3d 465, 197 Cal. Rptr. 3, 4 (1983).

10. This assumption is embedded typically in state laws through definitional provisions that identify corporations as a type of person, thereby making all legal standards governing persons equally binding on corporations. *See, e.g.*, Cal. Pen. Code § 7 (West 1990).

11. The irony of this approach is that large corporations have achieved their economic success precisely because of their dissimilarity to individual actors. *See, e.g.*, John Kenneth Galbraith, The New Industrial State 74-75 (2d ed. 1971) ("[M]odern economic society can only be understood as an effort, wholly successful, to synthesize by organization a group personality far superior for its purpose to a natural person.").

liability have involved a variety of unexplored—and sometimes amusing—conclusions about corporate life,[12] but relatively rare assessments of the grounds for treating corporations like individuals and the principles for limiting that equation.

Assessments of corporate morality potentially suffer from a similar problem. Because most moral standards and analyses are framed in individual terms, a temptation exists simply to recast those analyses to a corporate level when determining corporate morality. At least when dealing with large corporate organizations, corporate morality assessments are not so simple.[13]

Fortunately, Professor Elfstrom is sensitive to this potential weakness. In *Moral Issues and Multinational Corporations*, he attempts to identify the corporate features that justify treating a corporate organization as a morally accountable actor separate from the employees and other agents who carry out its business. He concludes that corporate morality at the organizational level must turn on the morality of organizational characteristics—features of internal corporate power structures or ongoing values and means of operation that exist independent of the particular occupants of corporate positions. Individuals within the organization are connected and constrained by "an organizational structure which defines roles for them, specifies the ways these roles relate to those of others, and contains mechanisms for deliberating, making decisions, and

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12. For example, the Lord Chancellor of England, in contemplating the difficulty of legal control over corporations, lamented: "Did you ever expect a corporation to have a conscience, when it has no soul to be damned, and no body to be kicked." According to one account, he added in a stage whisper: "And by God, it ought to have both." *See* Coffee, *"No Soul to Damn: No Body to Kick": An Unscandalized Inquiry into the Problem of Corporate Punishment*, 79 MICH. L. REV. 386, 386 & n.1 (1981). The Lord Chancellor's concern over finding a corporate counterpart to these human features reflects his inability, shared by many lawyers even today, to view corporate actors in a different organizational framework than individuals and to reinterpret legal standards to achieve their underlying policy goals within that framework.

13. Professor Christopher Stone expressed a similar insight concerning legal analyses when he observed:

> Today's giant corporations . . . are much more than persons who just happen to be especially large and powerful. They are complex sociotechnical organisms—not just men, or even men-and-machines-in-groups, but men, machines, patterns of reward, ways of doing things, all divided up into loosely coordinated clusters of cells. There is no reason to believe (as the law implicitly does) that the way "it" will respond and adapt to external threats, the way "it" will scan the environment for information, the way "it" will calculate and weigh "its" pleasures against "its" pains is like that of an actual person.

Christopher Stone, *Corporations and the Law: Ending the Impass* in CRIME AT THE TOP 329, 330-31 (J. Johnson & J. Douglas eds. 1978).

performing actions."[14] These structures encourage employees to undertake certain patterns of decision and action and to avoid other patterns.[15] These features of corporate organizations can restructure markedly the conduct of those acting within the organization. The morality of this restructuring defines the moral quality of the organization.

Professor Elfstrom's identification of morally significant corporate features has both descriptive and normative implications. Its descriptive importance lies in redirecting the search for corporate misconduct—whether immoral or illegal—beyond just the occasional, aberrant actions of a few corporate employees. Rather, Professor Elfstrom's analysis focuses the corporate morality inquiry on more serious forms of misconduct—those stemming from systemic corporate features with ongoing effects on corporate decision making and corporate responsiveness to societal interests. These systemic features deserve attention since they can affect many persons in a large organization and can be difficult to eradicate since they can survive the tenure of any particular position holder. In a normative sense, Professor Elfstrom's focus emphasizes the need for standards governing the morality of systemic corporate processes and values in any code of corporate ethics and morality. Corporate processes and values can restructure individual employee behaviors towards or away from socially risky behavior. At a minimum, morally significant aspects of corporate operations include those features that may encourage corporate employees to overlook their individual moral standards and to undertake socially risky behavior they would otherwise avoid. No firm that ignores these systemic sources of socially risky behavior in pursuit of corporate goals can be deemed to be acting in a moral fashion, any more than a person driving down the street with both eyes closed can be said to be acting morally. Both are choosing to ignore risks that they have created.

Completely articulated standards of corporate morality must identify procedural and substantive measures of proper corporate conduct based on principles like these. Unfortunately, Professor Elfstrom does not carry forward his initial observations about systemic corporate features and their moral implications to describe fully how corporate morality inquiries might be conducted. A number of difficult questions need to be answered to delineate the proper scope of these inquires. At what point should actions taken by individuals within corporations be deemed corporate features meriting consideration in a corporate-level morality assessment? Does this turn on the scope of impact of an action or its dura-

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14. ELFSTROM, *supra* note 2, at 14.
15. *Id.*

tion or both? Do only certain types of corporate policies or practices constitute morally relevant corporate features, such as information-gathering and management practices aimed at measuring and reducing societal injuries? Under what standards should the moral sufficiency of these types of corporate features be measured? What evidence of sufficiency would be relevant?

Professor Christopher Stone of the USC Law Center suggested one approach to answering these questions some years ago. In his landmark study, *Where the Law Ends*,[16] Professor Stone described a number of organizational measures that large corporations can adopt to make their firms responsive to legal constraints. These measures include: 1) making resources available to corporate board members to enable ongoing analysis of corporate compliance with legal responsibilities; 2) board compositions structured to insure the representation of corporate stakeholders and the public in board decision making; 3) management conduct codes that promote responsiveness to legal demands; 4) information-handling systems within large firms that can insure that key information on law compliance and other socially significant aspects of corporate performance is gathered, and that this information rises to high levels within corporate organizations; and 5) decision-making procedures that insure that predicable law compliance problems and social impacts are addressed in corporate decision making.[17]

These same practices might be used more broadly to insure corporate awareness of the social damage incident to its activities and to encourage and monitor progress towards minimizing that damage. The adoption of corporate features like these might then be taken as the mark of a morally responsible firm. Whether or not this approach is used, the characteristics of morally responsible corporate organizations need far more detailed elaboration than Professor Elfstrom's brief treatment.

II. The Content of Corporate Morality

Professor Elfstrom argues that utilitarian theory is the "normative perspective" that should ground moral claims on multinational corporations. He endorses normative analyses of multinational corporate conduct under a variant of utilitarian theory articulated by Mr. R. M. Hare.[18] According to this version of utilitarianism, conduct—corporate or otherwise—is desirable to the extent that it maximizes the fulfillment of the

16. C. Stone, *supra* note 8.
17. *See id.* at 122-227.
18. *See* Richard Mervyn Hare, Moral Thinking: Its Levels Methods and Point (1981).

preferences people hold or that it is reasonable to believe they would hold following reasoned deliberation. Professor Elfstrom concludes that this approach has a number of advantages in characterizing the moral quality of multinational corporate conduct. These advantages include the ability to cut across varying cultures, values, and ideologies in different parts of the world and the ability to provide a framework for moral analysis even in the absence of sophisticated institutional systems defining virtuous corporate conduct or the rights of persons affected by multinationals.

Following his adoption of utilitarianism as a normative framework, Professor Elfstrom goes on to identify the types of individual preferences that should be included in a utilitarian analysis of corporate morality, separating these preferences into basic and secondary wants. In the first category, Elfstrom includes preferences that he presumes all rational persons desire: the preservation of life and the means to sustain it. He interprets these to include preferences for a diet sufficient for normal human activity, shelter, clothing, and basic medical care, as well as a preference to avoid threats to human health and safety. In his category of secondary wants, Elfstrom includes a broad range of preferences related to personal fulfillment. For example, secondary wants include desires for attractive clothes or rewarding careers. He distinguishes these secondary wants from basic ones on the following grounds: 1) secondary concerns are less important to preference holders since these concerns generally will be ignored when their satisfaction will threaten physical well being; 2) secondary wants vary more considerably from person to person and from place to place; and 3) secondary wants often are more costly and difficult to fulfill than are the basic requirements of life.

After developing this dichotomy of personal preferences, Elfstrom uses it to construct moral guidelines for multinational conduct. He concludes that multinational corporations have clear moral obligations to avoid actions and policies that impinge on basic wants—to avoid behavior likely to deprive people of their lives or health. He argues, however, that these entities are subject to much weaker obligations to serve secondary wants. These obligations are weak, according the Elfstrom, because secondary wants "are morally less weighty and because of the practical difficulties and unbounded costs . . . in the way of meeting them."[19] He also believes that multinational firms should not be compelled by moral codes to further the secondary wants of individuals since "the intrusion into human and cultural life necessary to begin to meet them will be inappro-

19. ELFSTROM, *supra* note 2, at 34.

priate for corporations."[20]

Professor Elfstrom's conclusion that corporate actors have moral obligations to avoid physical harm to individuals seems correct, but hardly complete. His rejection of further corporate obligations for the secondary wants of persons affected by corporate activities reflects an overly narrow view of desirable corporate conduct. At least in connection with persons directly affected by corporate operations—consumers, employees, contractors, lenders, or shareholders—a more complete corporate moral code might include obligations concerning honesty, integrity, promise-keeping, fidelity, fairness, caring and respect for others, public service, pursuit of excellence, and accountability for corporate actions.[21] Even if a corporate moral code did not require specific results in these areas, it might still obligate corporations to detect the preferences of affected parties concerning these aspects of corporate performance and to articulate and openly pursue a program for reconciling competing preferences.

Taking just one of these types of obligations, the pursuit of excellence, one can consider how a moral code broader than that proposed by Professor Elfstrom's might operate. Imagine a car company contemplating the adoption of two car designs. The only difference between the two designs is that Model A will last longer than Model B. The production costs and safety characteristics of these two models are essentially identical. Assume further that the company adopts Model B, the less durable design, because management believes that more frequent turnover in car ownership will produce greater repeat sales.

Using Professor Elfstrom's analytic framework, this action results in no moral implications for the corporation. The choice to build the less durable design will not impinge on any basic want of car consumers. This is because the two designs at stake are equally safe and the additional expense that car consumers will bear because they will purchase cars more often probably will not be so large that it will threaten family diets or raise other health concerns.

Although management's decision does not implicate basic wants, the company's decision still would be morally suspect under a moral code valuing the pursuit of product excellence. The decision to implement Model B constitutes a knowing refusal to produce a better design—one better serving the desire of car consumers to maximize value received for car-purchase dollars. Furthermore, management has chosen a lesser quality design with obvious negative implications to consumers to gain a

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20. *Id.*

21. *See* Josephson, *Teaching Ethical Decision Making and Principled Reasoning*, ETHICS, Winter, 1988, at 27, 29-30.

remote and highly speculative benefit for the corporation and its shareholders. This decision should be condemned as immoral simply because it elevates a small or non-existent corporate gain over easily attained product quality improvements and increased consumer satisfaction.

Despite his rejection of a moral obligation on the part of large concerns to pursue the secondary wants of individuals, portions of Professor Elfstrom's discussion imply support for just this obligation. For example, Elfstrom cites with approval Milton Freedman's observation that corporate organizations are subject to obligations of honesty and fairness in dealing with others. In instances when a direct link between corporate dishonesty and public safety is not present, however, a corporation's dishonesty matters because it restricts the fulfillment of the secondary wants of affected parties. For example, a corporation that adopted a policy of consistently misportraying the useful life of cars it was selling would be acting dishonestly toward consumers, but would only be impairing those consumers' ability to satisfy a secondary want—namely, the desire to achieve maximum return from car-purchase dollars by informed consumer choices. While Elfstrom would seem to agree that this corporate conduct is immoral, this result is inconsistent with his general rule that corporate morality demands only that corporations avoid actions impinging on basic harms to human life or safety.

A value scheme like Professor Elfstrom's will shield most corporate business practices from moral accountability even though those practices do not address the full range of personal interests known by corporate personnel to be affected by the practices. This weak moral framework invites toleration of arbitrary, but not life-threatening, conduct by firms that can result in shoddy products and avoidable harms to employees, shareholders, and societal interests. Honesty in corporate operations, while essential to corporate morality, is not enough. Honest greed—the honest pursuit of profit maximization at the expense of all other values except public safety—is an inadequate measure of corporate morality unless society will treat the corporate equivalents of Dickens' Mr. Scrooge as moral giants. Large corporations are capable of better behavior, and applicable moral standards should demand it.

III. International Dimensions of Corporate Morality

Professor Elfstrom goes on to assess moral accountably problems that arise when large corporations engage in multinational operations. He gives separate attention to problems emanating from: 1) the sheer size of many multinationals, and their ability to exercise enormous economic power in small, undeveloped nations; 2) the difficulty of imposing company-wide moral standards in the face of diverse, and sometimes conflict-

ing, cultural values in different states; 3) the ability of many multinationals to move products, employees, and other operations among states either to obscure which nation has jurisdiction over dangerous conduct or to obtain the most favorable environment for that conduct; and 4) the tendency of some multinationals to align with strong governments in overseas settings—either because the governments are major customers or because alignment creates advantages for the multinationals in general business operations within the states—allowing the corporations to be manipulated by government officials to serve political purposes.

Although all these discussions contain valuable insights, Professor Elfstrom's examination of intercultural conflicts is particularly interesting. Elfstrom considers a number of settings in which cultural conflicts presently affect multinational operations, including varying cultural acceptance of racial or sexual discrimination and payments, gifts, or bribes in the course of commercial transactions. He argues that corporate responses to varying value schemes in different states should be governed by two basic principles: first, a corporation should have a single set of publicly announced standards to govern its operations worldwide; and second, these standards should be included in agreements or accords shaping commercial and other relationships in individual foreign states.

Elfstrom goes on to examine how these broad principles might be translated into specific corporate conduct in the face of three types of value conflicts. The first occurs when the standards of moral conduct that a corporation wishes to uphold, though consistent with official policy in a particular nation, conflict with common, informal practices in that state. For example, corporate attempts to maintain complete gender equality in operations in Japan might conflict with the unofficial, but nonetheless real, cultural aversion of business partners to deal with female business executives on an equal footing. In these settings, Elfstrom suggests that the proper course for a multinational corporation is to announce publicly the standards of equality it intends to use in dealing with people inside and outside the corporation and to press for compliance with those policies when possible, but to accept the hypocrisy of discrimination when no alternative exists.

In Elfstrom's view, breaches of corporate equal opportunity standards to accommodate local customs usually are not immoral. He feels that employees will seldom be deprived of subsistence resources because of these breaches—perhaps because he assumes that they can fulfill their basic needs through other jobs in the same state or through similar jobs elsewhere in the world. In terms of Elfstrom's general analytic framework, corporate compliance with cultural hypocrisy concerning employment opportunities does not rise to the level of corporate immorality

since its primary impact is in lessening the job opportunities and fulfillment of affected employees, a disappointment only of the secondary wants of these employees. Elfstrom does not state when, if ever, the steps necessary to do business in such a hypocritical culture will be so onerous that a corporation is morally obligated to forego continued business operations there.

A second, even less avoidable form of conflict arises when values conflicting with corporate standards are embedded firmly in a particular culture, as in states in which legal or religious standards compel observance of certain values. Corporate actions adhering to contrary standards may be deeply offensive to local citizens or even illegal. An example of this conflict would be corporate policies requiring equal treatment of male and female employees in Saudi Arabia. These policies would conflict with widely-observed and strongly-enforced religious standards limiting the activities of women.

Here, Elfstrom suggests that the full extent of corporate moral obligation is to seek interstices in the local cultural requirements and to attempt to maintain corporate values within these narrow gaps. For example, he suggests that a corporation might seek to apply its usual policies to employees brought into a restrictive state, while treating native employees in accordance with local, more restrictive standards. Again, Elfstrom does not explain fully why this mode of operation is morally superior to simply ceasing operations in a state where corporate values cannot be observed. Presumably, however, it is a reflection of his earlier conclusion that negative treatment of employees under local standards rarely will be so serious as to deprive them of their basic livelihood and that other consequences are morally insignificant for the corporation.

Finally, Elfstrom considers value conflicts that involve both basic needs and little hope of cultural change. He cites restraints on corporate equal employment opportunity practices in South Africa as an example of such an extraordinary value conflict. Elfstrom believes this conflict is especially serious because racial discrimination in South Africa directly affects human survival and physical well being, this discrimination is compelled and perpetuated by the state, and there is little indication of substantial movement towards reform. He concludes that adherence to South African laws places corporations in an immoral position, not offset by any meaningful opportunity to promote improvements that would reduce this immorality in the future. Consequently, Elfstrom believes that the only moral course is for corporations rejecting racial discrimination to sever all ties with South Africa. Beyond explaining this conclusion, Elfstrom identifies the features such as intractability and official support that, in his view, make the South African situation morally untenable for

multinationals, thereby suggesting the types of value conflicts that may make similar corporate departures morally warranted in the future.

IV. FEATURES OF A MATURE MORAL ORDER

Professor Elfstrom concludes with observations regarding the steps necessary to achieve a mature moral order governing multinational corporations—a system in which members

> have a distinct sense of accepted standards of conduct; are aware of how responsibility and accountability are assigned to participants; understand that there are effective sanctions for use against those who fail to uphold recognized standards; acknowledge that there are means of recognizing those whose conduct is exemplary; and, most importantly, collectively recognize that they are part of a *moral* enterprise.[22]

Elfstrom sees numerous barriers to the achievement of this moral order. In the short run, he feels that this moral order will require the development of moral codes for application to worldwide corporate operations, government actions to make some or all of these codes genuinely authoritative for corporate actors, and the development of an international equivalent of "case law" to collect and preserve illustrations of how generally framed moral standards apply to particular instances of multinational conduct.

Eventually, Professor Elfstrom argues that the moral order governing multinational corporations should be embodied in formal codes with means of coercion or punishment to insure corporate compliance. As a corollary to the creation of these codes, he feels that two types of bureaucratic structures will be necessary to insure corporate compliance: first, a system "dedicated to communicating accepted standards to employees and encouraging them to speak out when they encounter moral difficulty,"[23] and second, entities outside of national governments and multinational corporations charged with setting and enforcing standards for both national laws and corporate conduct.[24] He identifies the United Nations and independent international organizations like the International Labor Organization as possible holders of this standard-setting authority.

While these actions would promote corporate adherence to the moral codes involved, there are several reasons to believe that these ambitious, and perhaps unattainable, developments may be both insufficient and

22. ELFSTROM, *supra* note 2, at 7-8 (emphasis in original).
23. *Id.* at 107.
24. *Id.* at 108.

unnecessary to realize Professor Elfstrom's vision of a mature moral order governing multinational corporations. Formal moral accountability structures of the sort proposed by Professor Elfstrom will be ineffective to constrain multinational conduct if government officials and the public have no more information about internal corporate affairs than is disclosed currently. Even if extensive, formally codified standards exist, they will have little practical significance if violations of them will go undetected because they can be concealed from public view. The secrecy typically maintained by large corporations, coupled with the particularly weak law enforcement resources of governments in many underdeveloped states, will tend to insure that misconduct rarely comes to light. If external moral accountability is to be a major force in redirecting multinational corporate conduct, regular assessments and public reporting on morally significant corporate conduct must accompany the creation of moral codes. Without mandatory information gathering features, the sorts of moral accountability structures suggested by Professor Elfstrom would be empty gestures.

Were greater information available to the public about multinational corporate conduct, however, it is unclear that the sorts of formal structures identified by Professor Elfstrom will be necessary to achieve his goals. He understates the importance of private action outside of governmental and institutional frameworks as a potential constraint on multinational corporations. Indeed, in the case of his primary example of a desirable corporate response to moral pressure—the departure of most United States multinationals from South Africa—it was primarily private shareholder action and further public criticism that created pressures for firms to leave, not the far more permissive foreign policy of the federal government or any other government body.

Private action can exert moral pressures on multinational firms through a number of channels. First, unofficial commentators—such as Professor Elfstrom himself—contribute to the formulation of moral standards simply by articulating persuasive rationals for distinguishing between moral and immoral corporate conduct. Second, observers of corporate conduct can influence the public reputation of multinational corporations by reporting on whether corporate conduct meets privately identified moral conduct standards. Finally, those with direct influence on corporate conduct, like shareholders, employees, and consumers, can reshape their conduct to support firms that have reputations as responsible moral actors and to withhold support from those firms that do not. For the immediate future, these private mechanisms provide more promise for progress toward the moral accountability of multinationals than the more elaborate mechanisms that Professor Elfstrom envisions. Of

course, the effectiveness of any moral accountability system based on private comment and evaluation of the moral character of corporate conduct will turn on the public availability of sufficient information to make these judgments.

V. Conclusion

Professor Elfstrom's study provides a valuable starting point for further debate on the moral accountability of multinational concerns. Although he has not answered all of the provocative questions that his analysis raises, Professor Elfstrom has covered many of the key issues in this field with great insight.

Unfortunately, the corporate moral standards advocated by Professor Elfstrom demand too little. His view of corporate morality largely overlooks impacts of corporate activity beyond individual health and safety, thereby precluding moral criticism of firms for pursuit of profit maximization at the expense of other values like product quality or employee civil rights. A moral code equal to the task of shaping multinational corporate conduct should be as broadly inclusive as the international activities and corresponding social impacts that it seeks to influence. Professor Elfstrom's narrow moral scheme seems adequate only to condemn the worst corporate offenders, not to guide multinational firms towards new levels of corporate responsibility.