Rationality, morality and Joel Bakan’s The Corporation

Michael Haynes
University of Wolverhampton Business School
Telford Campus, Telford TF2 9NT, UK
E-mail: M.J.Haynes2@wlv.ac.uk

Abstract: The business corporation is at the centre of the modern global economy but does it act in the general interest? This paper explores Joel Bakan’s film and book critique of the corporation which suggests that it is characterised by a ‘pathological pursuit of power and profit’. It seeks to extend Bakan’s argument by reconsidering the ethical position of those who run corporations; the question of how far competition constrains their actions; and the extent to which the modern state can control corporations or is itself subject to similar pressures.

Keywords: corporation; corporate governance; corporate ethics; competition; state.

Reference to this paper should be made as follows: Haynes, M. (xxxx) ‘Rationality, morality and Joel Bakan’s The Corporation’, Int. J. Management Concepts and Philosophy, Vol. X, No. Y, pp.000–000.

Biographical notes: Michael Haynes is a Principal Lecturer in the University of Wolverhampton Business School. He has written widely on aspects of global capitalism and the transition in the former Eastern bloc. He is the coauthor, with Rumy Husan, of A Century of State Murder? Death and Public Policy in Twentieth Century, Russia, Pluto Press, 2003.

1 Introduction

In 1994, Tom Peters published his The Tom Peters Seminar with its subtitle ‘crazy times call for crazy organisations’ and its CEO inspired motto that ‘only the paranoid survive’ (Peters, 1994). It seems doubtful that he could have imagined that almost exactly a decade on journals from the Harvard Business Review to the Economist would be positively noticing a small book, and related film, by a Canadian law professor whose central thesis is that if we accept the legal fiction that the corporation is a person then, judged by any reasonable medical criteria, we would have to define that person’s ‘pathological pursuit of profit and power’ as a manifestation of clinical insanity. Joel Bakan’s The Corporation has been widely recognised as a significant challenge to the way we think about business and an attempt to unravel its ethics. Bakan’s central argument is that the Corporation as currently constituted can never deliver, but will always tend to subvert, the common good. Arising out of the misleadingly titled ‘anti-globalisation movement’ it marks a genuine development in its analysis of the ills of the modern global economy dominated by corporate giants (Bakan, 2004a–b). The
reviewer of Bakan’s film in *The Economist*, with a condescension typical of that magazine, wrote that “unlike much of the soggy thinking peddled by too many anti-globalisers, ‘The Corporation’ is a surprisingly rational and coherent attack on capitalism’s most important institution” (*Economist*, 2004). Why is Bakan’s book challenging and how far should that challenge go? This article summarises the basic thrust of the book and the film and then explores three aspects of the debate it seeks to inspire – the Corporation and the individual, the Corporation in global capitalism and the Corporation and the state.

## 2 Bakan’s corporation

The radicalism of Bakan’s account can be seen if it is compared with Micklethwait and Wooldridge’s, *The Company: A Short History of a Revolutionary Idea*, 2003. The authors, long associated with the *Economist*, treated their readers to a standard celebration of the virtues of the company in the spirit of that magazine. For them the Corporation was ‘the most important organisation in the world … the basis of the prosperity of the west and the best hope for the future of the rest of the world’. Like Bakan, they had seen the ‘images of disgraced and handcuffed corporate executives parade across … television screens’ in the USA but they were anxious to assure their readers that the problem was not ‘business but … bad business practices’. With the right leaders and policies the company would continue to embody the “triumph of private sector capitalism spurred on by privatisation and deregulation” (Micklethwait and Wooldridge, 2003, pp.xv, 153–155).

Bakan’s response to this kind of argument is not muckraking in the spirit that has motivated business critics in North America from Lincoln Steffens and Ida Tarbell to Michael Moore. Instead, drawing on his expertise as a Professor of Law, he outlines how the legal and economic form of the Corporation, especially in its Anglo-Saxon variant, forces it “to pursue, relentlessly and without exception, its own self-interest, regardless of the often harmful consequences it might cause to others” (Bakan, 2004a, pp.1–2). For Bakan therefore ‘the failures’ of the Corporation derive from its successes – the more closely it follows its mandate the more ‘anti-social’ it may become. The problem is not what it does wrong but what, in its own terms, it does right. To show this the book and film document ‘corporate logic’ in the words of CEOs, business leaders and gung ho enthusiasts for private capitalism like Milton Friedman and the men from the Cato Institute in the USA and the Fraser Institute in Canada.

The argument that there is a conflict between private profit and the common good is in itself hardly original. Bakan’s particular contribution is the way that he develops the argument through a deconstruction of the company form and its surrounding legal scaffolding. Central to the understanding of the Corporation is the double peculiarity of the joint stock, limited liability form. This allows individuals to bond together in their collective interest but limits their personal liability for the acts that are collectively carried out on their behalf. Secondly, corporate law further separates them by investing the collective entity which they create with an artificial legal personality. This creates a hole in the law where the Corporation, no more than the individuals who make it up, can effectively be punished for its collective misdeeds. “The corporate person had taken the place, at least in law, of the real people who owned corporations.” But as Thurlow put it, when English Lord Chancellor in the 18th century, in the real world a corporation has
“no soul to be damned and no body to be kicked” (Bakan, 2004a, p.79). So successful was this privileged corporate form that it shook off its Anglo-American roots and was generalised across the world. But everywhere the unique privileges that the Corporation came to acquire were a product of state action. So far from the Corporation being therefore opposed to the state it could not exist without the legal protection given to it in law, by the state. This is something on which even Micklethwait and Wooldridge agree. For them too ‘companies spring from the loins of the state’ (Micklethwait and Wooldridge, 2003, p.182). But Bakan (2004a, pp.153–154) puts this point more powerfully, the Corporation:

“...is, as it has always been, a product of public policy, a creation of the state. The state is the only institution in the world that can bring a corporation to life. It alone grants corporations their essential rights such as legal personhood and limited liability, and it compels them always to put profits first. It raises police forces and armies and builds courthouses and prisons (all compulsorily paid for by citizens) to enforce corporations’ property rights – rights themselves created by the state. And only the state, in conjunction with other states can enter into international trade deals and create global institutions, such as the World Trade Organisation, that, in turn limit its ability to regulate the corporations and property rights it has created.”

This unique position was the re-enforced, especially in the Anglo-American the world, by an emerging case law which privileged the interests of the shareholders, above all others, in the operation of the Corporation. It is this case law, Bakan suggests, which provided the fix to the otherwise contradictory situation created by the separation of the company from the stockholders. Why should those who have day to day control of the company not run it in their own interests rather than those who have de jure ownership? The answer in case law is that those who manage the corporation have a duty to serve ‘its best interests’ which are then identified with those of its juridical owners, i.e., the shareholders.

It is this narrow concern with a profit calculus derived from the idea of the ‘best interests’ of the firm, that gives the Corporation its ‘psychopathic personality’. But what makes the Corporation such a dangerous psychopath is the familiar problem of externalities. All economists recognise the role of externalities but conventional accounts rarely take account of the way in which they can undermine not only market theory but, Bakan argues, the capacity of business to operate in a socially beneficent way. He argues that, in the words of one of his respondents (Bob Monk):

“The corporation is an externalising machine, in the same way that a shark is a killing machine ... There isn’t any question of malevolence or of will: the enterprise has within it, and the shark has within it, those characteristics that enable it to do that for which it is designed.” (Bakan, 2004a, p.70)

A corporate calculus exists in which costs are pushed onto both workers, consumers and the environment. Even human life is factored in into the corporate calculus because the Corporation is necessarily an amoral being. Pricing documents become what one critic called ‘the science of exploitation’ (Bakan, 2004a, p.66). Consumers can be sold dangerous products as happened when car companies which allowed vehicles which they knew to be dangerous onto the roads, believing that the costs of rectification were outweighed by the costs of the loss of life that might be attributed to the company involved. And the environment can literally be dumped on. What is interesting about Bakan’s account, here and elsewhere, is the way in which he allows supporters of the free
market to make his argument for him. He is also restrained in avoiding a scatter gun approach in favour of a detailed analysis of a particular case, notably that of the Chevrolet Malibu – where a fault was identified but value analysis found that likely cost of fatalities $2.40 per car and therefore was no need to make an expensive recall.¹

Bakan would emphasise that the executives who took this decision were probably good human beings in their personal lives. “The people who run corporations are, for the most part, good people, moral people”, he says and he quotes Charles Kernaghan, an anti-sweatshop campaigner, saying that corporate executives “make great neighbours … when you meet with them in person they are quite decent”. The difficulty is that the executive in his or her work life must reflect the narrow calculus of the Corporation. They are thus forced to live ‘morally compartmentalised lives’. When at work Bakan argues (quoting the philosopher Alisdair MacIntyre), “moral concerns are at best marginal, engaging [them] qua citizens or qua consumer rather than qua executive” (Bakan, 2004a, pp.50, 51, 55, 70).² The leaders of the Corporation, therefore, are also prisoners of its compelling logic and perhaps its victims too.

And Corporate pressure is growing. There is a continual drive to expand the sway of the Corporation through the commercialisation or commodification (or pseudo-commodification) of our lives. One aspect of this is the drive to deregulate which Bakan sees exemplified in the USA in the Enron debacle, “stripped down to its essentials, Enron’s is the story of a corporation that used political influence to remove government restrictions in its operations and then exploited its resulting freedom to engage in dubious, though highly profitable practices” (Bakan, 2004a, pp.99–102). But, if anything, he finds the removal of cultural barriers to the sway of the corporation more disturbing still. This has two aspects – one is the penetration of the whole life cycle of the individual, which has essentially involved breaking the taboos on marketing to children. The other is the penetration of the breadth of human activity and especially the commercialisation of the provision of services including areas like education and health. The Corporation sees the public sphere as “a collection of unwarranted exclusions for vast profit making opportunities”. This leads to a subversion of human and civic values “as the corporation comes to dominate society – through, among other things, privatisation and commercialisation – its ideal conception of human nature inevitably becomes dominant too”. Human relationships come to be about material things and calculated self-interest and the civic is forced into retreat and redefined in similar terms. One way of seeing this expanding corporate dominance is in terms of the retreat of the state, but Bakan argues that this is misleading since the Corporation continues to need the state. The idea of state retreat “captures the diminishing role of the state in protecting citizens form corporations, it ignores the expanding role of the state in protecting corporations from citizens” (Bakan, 2004a, p.154).

Against these practices ordinary people are, in an unorganised form, necessarily weak and defenceless. The idea of consumer democracy is a myth for Bakan. Most of the world’s population are still too poor even to figure as more than marginal consumers. Even in the advanced world relative poverty undercuts moral choices. I may object in principle to sweatshop labour, but my own position constrains me to value a Tesco or Asda’s £2 tee-shirt or £30 men’s suit. Even when consumers have a greater capacity to make real choices, they usually lack the information to do so and “corporations have no incentive to reveal their misdeeds to the public” (Bakan, 2004a, p.147).
“Can I be certain, for example, that if I reject the £2 tee shirt in favour of a more expensive one that it is not merely distinguished by its label than its design and the quality of the materials or that the two items were not made in the same factory in the same conditions? Ethical trading itself can be come a brand of questionable provenance. It can be subverted by corporations which is what some have claimed Nestlé has been attempting recently with the marketing of ‘fair-trade’ products despite its unenviable corporate reputation” (Vidal, 2005).

We may therefore continue to buy the products of the Corporation but this does not stop us being profoundly suspicious of its motives and character. If the state has a problem with its legitimacy then so too has big business. The contradiction between the interests of business and those of society at large has given rise to an ongoing crisis of legitimacy since the early 20th century. The result has been a succession of attempts to mystify the nature of the Corporation. Just because it soulless it has to appear as something else. The myths of the caring corporation, the corporation as a family, the benevolent corporation have had to be developed to allow the Corporation to cover its tracks. The contemporary focus on ‘branding’, ‘corporate social responsibility’, on ‘capitalism with a conscience’ is merely the most recent forms of an old ploy (Klein, 2000). But given the central task of the corporation they can only be what Milton Friedman calls ‘hypocritical window dressing’ and this is all they should be. The reality is, says Bakan, that “corporate social responsibility is an oxymoron”. Corporate social responsibility cannot be not valued in itself. It can serve only as a means for the further pursuit of profit and power. Such ‘hypocrisy’, he writes, “is virtuous when its serves the bottom-line. Moral virtue is immoral when it does not” (Bakan, 2004a, pp.34, 106).

The central point is that the Corporation cannot allow and is not legally permitted to allow a conflict between corporate social responsibility in any form, and the drive for profit and shareholder value. “ Corporate social responsibility is illegal, at least when it is genuine” (Bakan, 2004a, p.37). If a company devotes too much of its resources to forms of corporate social responsibility – either within or without – then it fails in its duty to its shareholders. Bakan quotes the British judgement in Hutton versus West Cork Railway Company which still underpins British law and which is also echoed in US corporate law:

“The law does not say that there are to be no cakes and ale, but there are to be no cakes and ale except such as are required for the benefit of the company … charity has no business to sit at boards of directors qua charity. There is, however a kind of charitable dealing which is for the interest if those who practise it, and to that extent and in that garb (I admit not a very philanthropic garb) charity may sit at the board, but for no other purpose.” (Bakan, 2004a, pp.38–39)

To show how this operates, Bakan examines several examples of corporate social responsibility. BP, for example, has pushed environmentalism but only, he suggests, as a narrow form of enlightened self-interest – a leading example of what is sometimes called ‘enviro-marketing’. The company’s managers well understand that social and environmental values are not ends in themselves but strategic resources to enhance business performance. True environmentalism might involve, for example, a conflict with the drive to acquire drilling rights. But BP calculates that its environmentalism is a low cost strategy, which will not only improve its sales but also help it acquire drilling rights over its less worldly-wise competitors. The malleability of the environmental ethic is
nicely brought out by the laudable stand of another energy company that Balkan quotes before revealing that the company in question was Enron before “it collapsed under the weight of its executives greed, hubris and criminality” (Bakan, 2004a, pp.57–58).

When the 2004 Christmas Tsunami struck in the Indian Ocean, it provoked possibly the greatest wave of individual giving ever. But controversy briefly broke out over the niggardly corporate contributions. Vodaphone (declared profit £10 billion) announced a £1 million donation and the matching of staff donations, BP (declared profit £9 billion) announced as £1.6 million donation; Tesco £100,000 and Abbey National £25,000 and so on. As the journalist who broke this story pointed out a company like Vodaphone was giving no more than an hour’s profits or the annual bonus of its new head (Freedland, 2005). The low level of donations would seem to confirm Bakan’s claim that companies make no more than a gesture to corporate social responsibility. But what was also striking was that when criticisms were raised of the limited corporate response the defence that was put echoed that at the heart of Bakan’s critique. Companies could not be expected to engage in philanthropy since executives had to have the approval of shareholders for this, argued Ruth Lea of the Policy Studies Institute (Guardian, 7 January 2005). In this, she was perhaps echoing the even more notorious statement of Dow Chemicals that it was and is constrained on action on the legacy of Bhopal because “unfortunately, we have responsibilities to our shareholders and our industry colleagues that make action on Bhopal impossible. And being clear about this has been a very big step”.5

There is an interesting contrast here between Bakan’s account and that of Micklethwait and Wooldridge. They too recognise that corporate social responsibility is essentially part of a profit calculus but they suggest that it is now central to the Corporation because businesses are in fear of negative consumer reactions. If we cannot rely on the company ‘soul’ we can rely, they say, on its ‘brains’ (Micklethwait and Wooldridge, 2003, p.188). But Bakan’s case would seem to be the stronger for the Corporate ‘brain’ has to operate in the market context. The two accounts therefore produce radically different appreciations of the same thing. For Micklethwait and Wooldridge the pharmaceutical companies competing to make a profit through curing illness are a prime example of the benefits of the corporate system. Bakan, on the other hand argues that they are bound to follow the market and reflect, both within a country and between them, what is elsewhere called the ‘inverse care law’ – those who generate the most demand are the wealthiest who have the least illnesses and therefore care follows wealth and income with the familiar result that pharmaceutical companies spend enormous amounts researching minor ailments while ignoring major endemic diseases of poverty. Moreover, the ‘brain’ argument that Micklethwait and Wooldridge argue is deficient in another respect. The case for the Corporation should surely be made to rest on its intrinsic merits? To argue that its potential negative features can be contained by its fear of outside bad publicity and campaigns suggests that the market argument is deficient in itself. But it also points to a profound ambiguity between the Corporation and civil society. If civil society is a constraint on its behaviour then one way of dealing with this is certainly to respond to civil society concerns but another way, that flows directly into Bakan’s argument, is to subvert civil society and to impose the Corporate agenda on it. This is clearly a strategy some Corporations are using in their relationships with NGOs. This certainly suggests, pace Micklethwait and Wooldridge, the use of ‘brains’ but it hardly inspires confidence in the ends to which they are being put.
Bakan’s solution to this indictment of corporate logic is a strong defence of a radical approach to the principle and possibility of closer regulation. So far as the principle is concerned he argued that:

“No one would seriously argue that individuals should regulate themselves, that laws against murder, assault and theft are unnecessary because people are socially responsible. Yet oddly, we are asked to believe that corporate persons – institutional psychopaths who lack any sense of moral conviction and who have the power and motivation to cause harm and devastation in the world – should be left free to govern themselves.” (Bakan, 2004a, p.110)

When regulations “are effective and effectively enforced, they have the potential to stop corporations from harming and exploiting individuals, communities and the environment” (Bakan, 2004a, p.150). This will prompt three questions. The first is does the government have the means to do this? The globalisation debate might suggest that the answer is no but Bakan argues that this underestimates the continuing power of the state. Interestingly Micklethwait and Wooldridge, from their Economist perspective, agree. Together they all recognise that business has pushed a deregulatory framework and when, especially in the USA, the law has been used against the biggest businesses they have successfully resisted it. But they also all share the view that the problem is less the weaknesses of the instruments available to the state than the willingness to use them. Bakan’s own legalistic inflection on the power of the state is to draw attention to the idea of charter revocation. “The corporation depends entirely on government for its existence and is therefore, at least in theory, within government control” (Bakan, 2004a, p.153). He points out that charter revocation is regularly used on a day-to-day basis in the USA against small companies but the possibility of its use against major companies like Enron is ‘a well kept secret’. If government regulation can be extended and strengthened then it can contain the negative aspects of the corporation. But the second question is can it extended?

Bakan has no doubt about the political difficulties of re-regulation. He documents the rise of corporate lobbying and political finance from the 1970s and the growth in the USA of what one Washington lobbyist called ‘a symbiotic relationship between government and business’. In practice, corporations try to ‘stand next to, rather than under democratic governments’. But he nevertheless argues this tide can be turned. He also recognises the third problem, which is that if a will to closer regulation is generated then the problem of ‘regulatory capture’ undermining it will be a continuing concern. But again he argues that this can be overcome.

The reason for this is that he sees his book as contributing to a growing and active campaign to restore a greater degree of democratic control to society, a campaign that can succeed in restraining the political power of big business. But to do this, he argues, it must work with the state to strengthen it, rather than against it. He is especially critical of those in the ‘anti-globalisation movement’ who see the state as a lost cause. There is, nothing he argues, that business would like more than for its enemies to be NGOs who they can incorporate and an amorphous mass movement with uncertain direction. What is necessary therefore is firstly to support an expanded regulatory sphere. This also requires a redirection in the focus of regulation. For example, the 2002 Sarbanes-Oxley Act in the USA that followed the corporate scandals of the turn of the twenty first century was more about strengthened the links of managers and shareholders than the control by society of the corporate form. He therefore wants more ‘social’ regulation of the private
corporation, more public purpose corporations and strengthened personal liability for managers and shareholders for corporate misdeeds with the real use of charter revocation if all else fails. For this to occur, it will also be necessary to strengthen political democracy and for activists to create a more robust sphere which requires an extension of the theoretical challenge that he has undertaken to neo-liberalism but also a development of the more numerous and influential mass campaigns to reassert control, through the state, over the Corporation, “corporate rule must be challenged in order to revive the values and practices it contradicts: democracy, social justice, equality and compassion” (Bakan, 2004a, p.158).

Hopefully this extended account of Bakan’s case shows the seriousness with which it is made. But what I want to suggest now is that in three major areas he could actually have pushed the argument farther than he does. In failing to do so, he leaves the ends of the argument untied and weakens the case that he wants to make.

3  The corporation and the individual

Because Bakan wants avoid a muck raking critique he focuses on the institutional dynamics of the corporation. The contrast then becomes one between the corporate executive as a potentially good human being but a potential bad social being. This appealed to the Economist reviewer who wrote approvingly that:

“Human values and morality survive the onslaught of corporate pathology only via a successfully cultivated schizophrenia: the tobacco boss goes home, hugs his kids and feels a little less bad about spreading cancer. Company executives and footsoldiers alike will identify instantly with the analysis, because it is accurate.” (Economist, 2004)

Bakan is surely right to put the primary emphasis on the institutional dynamics of the corporation and the way that these condition human behaviour. He quotes Alaisdair MacIntyre on how:

“…once the executive is at work the aims of the … corporation must be taken as given … tasks characteristically appear to him as merely technical. He has to calculate the most efficient, the most economical way of mobilising the existing resources to produce the benefits …, at the lowest cost. The writing of costs against benefits is just not his business, it is business.” (Bakan, 2004a, p.64)

But it does not follow from this that ‘company executives and footsoldiers’ are thereby absolved from individual responsibility for the actions that they take. The defence that ‘I was only following orders’ or ‘I was only following corporate logic’ has no more moral purchase than the soldiers defence that he was ‘only following orders’ or the similar defence offered in discussion of war crimes, most notably the Holocaust. In the latter case the Nuremberg Tribunals established that crimes “are committed by men, not by abstract entities and only by punishing individuals who commit such offences can the provisions of (international) law be enforced” (Ryder, 2005).

To those unfamiliar with some of the sharper debates on business ethics it might seem extreme to invoke Nuremberg in a discussion of corporate behaviour but the aim of the Tribunal was to establish a general principle or to derive the limitations of acceptable military behaviour from such general principles. Moreover the same dynamics that Bakan discusses did, in the extreme case of fascism, lead to direct complicity between business
and the Nazi regime. There is now an extensive literature on the relationship between
German business and the Nazis and their war machine. At Nuremberg, of course, several
company executives were found guilty of war crimes (though it is interesting that they
received some of the lesser sentences). Nor were the links peculiar to German business.
Bakan draws attention Edwin Black’s account of IBM and the Holocaust. Until 1941,
IBM supplied and serviced tabulation machines used by the Nazis for concentration
camps and slave labour:

“The head office in New York had a complete understanding of everything that
was going on in the Third Reich with its machines, that their machines were in
concentration camps generally, and they knew Jews were being exterminated.”
(Bakan, 2004a, p.88)

The separation of individuals from their roles can therefore act to divert attention away
from individual responsibility which is no doubt why the Economist reviewer found
this aspect of Bakan’s account attractive. But it should not be allowed to do so. If the
separation of individuals from their roles helps to depersonalise public acts then we
arrive at a dangerous situation where to act unethically in one’s personal interest becomes
a worse offence that to break the (legal and moral) rules for a corporate end. Such
public transgressions can even come to be applauded when they would be condemned
in an individual.

In a well-known essay on public morality the philosopher, Nagel argued that public
morality has to be related to private morality but it cannot simply be reduced to it. Public
action as part of a collectivity can, under certain circumstances, change the moral balance
in decision-making. But just because this is the case it is important to be clear about the
limits to this so that the balance is not pushed too far to justify the indefensible. He also
pointed out that recognising these limits is crucial because allowing the normal restraints
in human behaviour to be modified can put an enormous strain on the individual or a
group of individuals who are given this additional power. Power is something that can be
valued in itself, it is something which helps define the individual both inside and outside
the corporation. As Nagel puts it:

“The combination of special requirements and release from some of the usual
restrictions, the ability to say that one is only following orders or doing one’s
job or meeting one’s responsibilities, the sense that one is the agent of vast
impersonal forces or the servant of institutions larger than any individual – all
these ideas form a heady and sometimes corrupting brew.” (Nagel, 1979, p.77)

Beyond this Nagel also argued that any divergence between public and private morality
has to be understood within the context of the moral features of an institution.
Regrettably he did not turn his analysis to the corporation as a ‘public institution’. Had he
done so, however, he would surely have been struck by the problematic character of its
‘public’ character and therefore the more limited extent to which the morality of the
executive should be allowed to diverge from that of the individual. Bakan’s own analysis
points in exactly this direction for it is at the heart of his analysis. The Corporation is a
private entity which masquerades as a public one. Its moral features are therefore limited
and partial. Nor can they be assumed to be unitary. If a real harmony of interest does not
link the corporation and society nor does it necessarily link say manager and worker
within the corporation.
Market competition cannot resolve this dilemma because, from Adam Smith onwards, those who have applauded self-interest as a guiding hand have also recognised that by itself it cannot guarantee a society based on moral virtue. Even in Smith’s analysis the public good is only ever achieved by the unintended consequences of private interests. Moreover, Hirschman has suggested that economists have failed to appreciate the extent to which Smith’s analysis relied on a double shift in the argument previously advanced, a double shift that directly impinges on Bakan’s argument. In Bernard de Mandeville’s *Fable of the Bees* (1714) potentially destructive human ‘vices’ or ‘passions’ were manipulated in the context of the market to create the public good. But they did not thereby cease to be ‘vices’ or ‘passions’. What Mandeville was trying to present to his readers was what they would see as a shocking paradox. Smith changes this. He firstly reflects a redefinition of ‘vice’ and ‘passion’, as Hirschman (1977, pp.18–19, 41–42) puts it:

“Smith was able to take a further giant step in the direction of making the proposition [that virtue is found in the competition of vices MH] palatable and persuasive: he blunted the edge of Mandeville’s shocking paradox by substituting for ‘passion’ and ‘vice’ such bland terms as ‘advantage’ or ‘interest’.”

But did the substitution of a blander term for a sharper one solve Mandeville’s paradox? For this to work Hirschman argues that Smith had to do something else too. He had to implicitly separate economic ‘vice’ and ‘passion’ from other forms of ‘vice’ and ‘passion’. No one would seriously argue, for example, that the public good could be achieved by the unrestrained competitive pursuit of ambition, power, sexual lust and on on. But ‘greed’ and ‘avarice’, hitherto the ‘foulest [vice] of them all’, were now separated and normalised into acceptable forms of self-interest that could be allowed to compete with one another in a socially constructive way. Seen in these terms we can appreciate more the full force of what now appears as a trite statement of the invisible hand:

“It is not from the benevolence of the butcher, the brewer, or the baker, that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.” (Smith, 1993, p.22)

But if this statement no longer has shock capacity that it had in the 18th century this is not because it is not a shocking argument but because its subsequent ideological re-enforcement leads us to take for granted a separation between ‘business morality’ and ‘individual morality’ – a separation that Bakan could have gone on to unravel.

Thus, while Bakan’s avoidance of muckraking in favour of close analysis of the deficient institutional dynamics of the Corporation makes sense, it does not necessarily lead to an eschewing of arguments about individual responsibility. And there are practical implications. We could, for example, discuss the responsibility of the employee and especially the executive over what happens when corporate logic transgresses what is right. As Nagel says when this happens, “there is no substitute for refusal and, if possible, resistance” (Nagel, 1979, p.90). But how does this work out in practice? We might, for example, consider the issue of whistle blowing and its morality against corporate attempts to gag employees. This might also lead on to arguments about individual executive responsibility in terms of corporate manslaughter and the like. It might lead us also to an exploration of the institutional dynamics which still lead some corporations to get in bed with repressive regimes interact with personal dynamics.
4 The corporation and competitive capitalism

The second area of Bakan’s account that we wish to explore here is the role that competition plays in his critique of the Corporation. As we have seen Bakan’s corporations ruthlessly compete with another and these competitive pressures have taken on a global form as the world economy has become more integrated. The problem is not simply the internal characteristics of the corporation but the way it is forced to act by the competitive external world. But Bakan also appears to believe that this competition can be retained but controlled in some form. This creates something of a paradox, at one level competition is the essence of the system and the root of its problems but at another, it seems it is not. This is an old dilemma that has existed since people first began to look askance at the problems the development of modern capitalism was creating. But it is still no less real for that.

One possible solution to this is to argue that Bakan exaggerates the extent to which a narrowly defined concern with a competitive ‘bottom’ line determines corporate behaviour. In the 1980s, Peter Anthony, for example, lamented what he saw as “a formidable alliance between Marxist and Manchester School economists’ who reduced business to the competitive profit motive – the one side to condemn it, the other to praise it” (Anthony, 1986). They both ignore the real degree of discretionary power that managers and companies actually had. The rhetoric of the ‘bottom line’ is exactly that – rhetoric. In practice accountants can quite legally massage accounts, and executives massage policy, to produce any number of bottom lines and often do so after the event. Managers actually preside over much messier systems but they lack a theory to explain this or guide them. The problem is not to get them to recognise a wider variety of objectives – they already do so. It is to emancipate them from a theory, which delegitimises what in practice they actually do.

This focus on the discretionary power of management is important but it leaves key issues unsolved. If we assume for the moment that it exists and is significant this still leaves open the question of how it is to be used? Anthony, for example, developed a relatively sophisticated critique of the failure of management literature to positively analyse the discretion that he thought real managers had (Anthony, 1986). But his solution was essentially to argue that managers, in recognising that they had choices, should work to restore an almost medieval sense of community. Handy (1996, pp.57–85), on the other hand, is content with sanctimonious moralising about community and responsibility but deliberately leaves one of his most sustained discussions of ‘What is a company for’ open when it comes to answers.

Either way, it would appear that the more socially responsible management of business would have to come as a ‘gift’ carrying with it all the connotations of the ‘gift relationship’ and of the deferential dependence of the many on the ‘charity’ of the powerful few. But what, other than moral injunction, would compel managers to follow such strategies? The reason that we tend to look negatively at the idea that management can escape the tyranny of the competitive calculus is that they may use the greater margin of freedom that they have for their own benefit rather than society at large. Indeed, there are many accounts which accept the existence of discretionary power but then explore its no less negative consequences for society at large. For example, the use of the argument that shareholder approval was needed for more generous corporate giving in the 2005 Tsunami appeal provoked a pithy response from Lord Wedderburn:
“Business leaders rejected the proposal that shareholder approval be required for the rewards paid to top directors who had increased their pay by 288% in the decade after 1993. Their opposition and the government’s surrender to it resulted in law requiring only an advisory, non-binding shareholders’ resolution for the rewards of directors of quoted companies.” (Guardian, 7 January 2005)

This is consistent with the argument that executive power does not have to kow tow before shareholders. But it also points to the way that the discretion that executives may have is much more likely to used to their narrow benefit and than that of society and also the way in which they would resist attempts to control this.

A second and no less serious problem is to understand how large the element of discretion really is and how it is constrained over time? Most obviously ‘bottom line thinking’ is more evident when profits are in relative decline than when they are buoyant. A critique of the Corporation then might be expected to engage with the instabilities of the wider system in which it operates. ‘Bottom line thinking’ is also more evident when in competitive terms the Corporation’s position is insecure rather than secure. But the problem here is not simply global product market competition but the way in which the policy of individual corporations become interlocked with financial markets and institutional funds, the managers of which are themselves subject to competitive pressures and opportunities. Whilst it is easy to pose the problem of finding a way in which Corporation A or B can be constrained, the interconnectedness of the system either promises to undermine that constraint or invites us to consider strengthening across the whole global system but, of course, we have no mechanism available at the moment to do that.

The cautionary tales of executives who do try to buck the trend are therefore not simply examples of the need for regulation but that local regulation by itself may not be enough to solve the real problems. For Bakan, the marginalisation of Anita Roddick from the Body Shop chain is such a tale. In the 1980s and early 1990s, her business model was praised and seen as the basis of a long-term strategy that would help humanise the system. “What is so wonderful about the Body Shop is that we don’t know the rules”, Roddick said at the time, to which an outside commentator like Handy (1994, p.59) added “as long as they think like that they will thrive”. But a decade on, she was being given a more marginal role in her own organisation by a new management group which argued that, “we believe in social responsibility but we are very hard nosed about profit. We know that success is measured by the bottom line” (Bakan, 2004a, p.53). But, of course, for Roddick, and we suspect the greater part of the world’s population, this was to be neither a measure of the success of the company or capitalism as a whole, especially in terms of the responsibility to do something about global poverty. If the attraction of a partial critique, such as Bakan offers, is that it looks ‘manageable’, its weakness is that it can fail to address depth of the structures that create the problems that it seeks to address.

Ironically, this was a problem identified by the young Marx many decades ago when he considered the way in which some critics of capitalism in the 1840s were making their argument:

“They all tell you that in principle, that is, considered as abstract ideas, competition, monopoly etc., are the only basis of life but that in practice they leave much to be desired. They all want competition without the lethal effects of competition. They all want the impossible, namely the conditions of bourgeois existence without the necessary consequences of these conditions.” (Marx, 1846/1943, p.15)
This is why there is more substance to the often inchoate debate between supporters of globalisation and those who claim ‘another world is possible’ (Ashman, 2004). We can see today that, despite the buzz of the 1990s, globalisation is not sweeping all before it. But global capitalism as a system of global competition of both corporations and states is real and its problems cannot therefore be dealt with simply in terms of individual agents or groups of agents, however intimidating the alternative agenda might be.

5 The corporation and the state

Does the solution to these problems then lie, as Bakan argues, in closer state regulation? His argument here is essentially a reconstruction of a more social democratic vision or, given his North American background, a harking back to the more radical aspects of New Deal theorising in the 1930s. It is perhaps no worse for that but it is not sufficient.

The Economist reviewer reacted with disdain to the demand for stronger regularity frameworks:

“Infinitely more powerful than firms and far less accountable for its actions, the modern state has the capacity to behave, even in evolved western democracies, as a more dangerous psychopath than any corporation can ever hope to become … the film [and by implication the book MH] has nothing to say about the immense damage that can flow from state ownership. Instead, there is a misty-eyed alignment of the state with the public interest. Run that one past the people of, say, North Korea.”

Let us discount the last line; it is as juvenile as the arguments attributed by that magazine to the crudest parts of the anti-corporate movement. But the whole comment seems to offer us nothing more than a choice of two evils and invite us to have an equally touching faith in the Corporation over the state, even as the reviewer accepts much of Bakan’s argument about the lack of basis for this. Indeed, the faith demanded of us is greater still because the Economist now gives voice to the argument that legislation as weak as Sarbanes-Oxley Act is doing serious damage to the virility of Corporate America.

This writer has great sympathy with the view that the state does have the potential capacity to constrain and punish the worst aspects of corporate behaviour and that it cannot be assumed that the fad for deregulation in the recent past will extend into the indefinite future. I would also support the view that a democratic state imposing a greater degree of regulation is preferable to undemocratic self-regulation. But Bakan seems to underestimate the extent to which it is necessary to oppose corporate political influence to achieve this and to misestimate the role of the state in general. State modification of corporate practice may reduce the problems it creates but insofar as it does not address the root of the problem it may only help to perpetuate more basic difficulties. Let us take the issue of political influence first.

For many political commentators and theorists, the secret of the liberal democratic state has been the way that it has helped to mask the role of economic power. The ‘ruling class’ in an economic sense does not rule directly but indirectly through an apparently competitive party system and an ostensibly neutral state. The apparent separation of economic and political power helps to incorporate the mass of society through political organisations and ideology, including a belief in the plurality and competition of interests with a degree of countervailing power. But there is now widespread disillusionment with
conventional politics across the Western world and especially in the Anglo-American one. This is not because people do not believe that ‘politics’ is no longer important but because they do not see the things that worry them being articulated by existing politicians and parties. Not the least of the reasons for this is that existing mainstream political parties have accommodated themselves to narrow, business influenced agendas so that the gap between them is smaller than it has ever been and therefore people’s wider commitment to the political structures so painfully built up in the past appears to be atrophying.

Party politics as a choice between Coca-Cola and Pepsi Cola has long been endemic in the USA. Indeed, Micklethwait and Wooldridge quote the US President Rutherford B. Hayes at the time of late 19th century controversy created by the first rise of the trusts like Standard Oil and the influence of business leaders like John Rockefeller, that “this is a government of the people, by the people and for the people no longer. It is a government of corporations, by corporations and for corporations” (Micklethwait and Wooldridge, 2003, p.xiv).

But this does not mean that the alienation expressed more recently is not real and the problems intensifying. And it is increasingly evident in the Europe and not least the UK under ‘New Labour’. But are we reaching, or have we reached, a point where this is no longer remediable within the existing political structures? At one point, Bakan quotes Jonathan Chait that under the first George W. Bush administration “government and business have melded into one big ‘us’” and this would appear to be even truer today in the second Bush administration but the problem is hardly peculiar to the Republicans in the USA. In another place, one of his interviewees talks of “the co-optation of government by business” and Bakan argues that this subversion of the democratic process, or the elimination of the previous apparent separation of economic and political power, is something which business must continue to push:

“The executive who, out of principles concern for the integrity of the democratic processes, refuses to be involved in political influence, fails his or her shareholders, as well and the corporation’s legal mandate to promote its best interest. The job of the corporate executive is not to protect democracy but to manage its uncertainties and avoid the obstacles it presents.” (Bakan, 2004a, pp.101, 106, 175)

This process has gone furthest in the USA but its affects are apparent much more widely. The most obvious connection of business to politics now is the role of corporate donations in political funding.

Secondly, there is the role of the ‘revolving door’ between the corporate world and the world of politics and the state. Ironically as the conventional political party structures and their supports contract, this would seem set to grow. An aspiring politician today would surely be best advised to first establish himself or herself in a business, a think tank or managing an NGO – whatever party they were looking to, rather than to work in say a trade union or a party constituency role. Thirdly, there is the role of business in the direct manipulation of opinion through lobbying and getting into bed with politicians and more generally through corporate pressure on and control of the media. It is interesting that Bakan’s book does not take up this last issue save in terms of the role of TV, but the film does illustrate the ‘the price of whistle blowing’ in the story of two journalists hired by Fox who made a programme on the health risk of synthetic hormone marketed by Monsanto. When Monsanto threatened Fox, the company then turned on the journalists
concerned. Thus, while it may be an in-house joke for *The Simpsons* to attack Fox TV, it does not follow that a mass corporate media will tolerate a serious corporate critique that includes itself or its customers.

My point in raising these issues, which will be familiar from other accounts of corporate power (see, for example, Monbiot, 2000; Heertz, 2001), is not to argue that the task of reigning in business is too formidable but that it needs a political movement and a political aspiration which sees the challenge not simply in terms of ‘the Corporation’ but the wider system it is helping to mould.

This then leads on to the question of the nature of state regulation itself. Here, Bakan is perhaps too sanguine. While it may be true that the state creates the legal structures on which the Corporation rests this does not mean that the relationship is purely contingent. It is true that when capitalism first emerged in Western Europe, the corporate form was a marginal element and widely seen as a dubious one because of the possibilities for fraud. It is also true that the legal form that allowed it to develop was discovered and generalised more pragmatically as it appeared to so neatly fit the needs of developing capitalism. But neither of these points mean that today it can be cut out or its role seriously cut down without this having serious implications for how capitalism works. In this sense, though Micklethwait and Wooldridge offer a much inferior analytical account of what they call the ‘company’, they are right to argue that the relationship between the company form and capitalism is a symbiotic one even if its precise legal expression can vary. To attack one is really to attack the other and to defend one is to defend the other. When Bakan says, therefore, at the start of his book that “it is unthinkable that a government would ban the corporate form” (Bakan, 2004, p.8) it is ‘unthinkable’ not simply because of the lack of will or political capacity but because in normal times this would imply seriously moving beyond the system as it exists.

The issue here is not to argue against this or that reform or this bigger step. It is easy to share Bakan’s sense of the urgent need for action. But this should not be thought of as an end in itself but the beginning of a wider process of rethinking that his work can stimulate. This is also the context of doubts about the ultimate adequacy of the state regulation approach in another sense. This is the problem of the nation state basis of the argument. Both liberal democratic theory and its radical critics have a similar blind spot in respect of the state. The former sees the state as an expression of the general interest; the latter as, in the words of Marx in *The Common Manifesto*, “a committee for managing the common affairs of the whole bourgeoisie” (Marx 1973, p.69). But neither is correct. Marx elsewhere in *The Common Manifesto*, and the rest of what he wrote, makes clear that capitalism is a global system with a global ruling class. The state therefore cannot represent ‘the common affairs of the whole bourgeoisie’ but only a ‘national’ fragment of that class. No less in liberal democratic theory the society which the state is supposed to represent can only be a national fragment of wider human society. These are not trivial points. Reducing problems to the prism of the nation state makes no sense in a world with global connections even if these are not as deep as has been claimed. Any state based regulation must necessarily be partial. We can agree with Bakan that it is still better than no regulation at all but the argument cannot be left there.

The nation state is necessarily ‘Janus faced’. It looks inward to the activities undertaken within its borders but it also looks outwards both to external constraints and the opportunities which exist there as it projects its power. Here, the real problem is less the way that international pressures may undermine domestic regulation – although this is
important – than the use to which national regulation might be put. Consider the extreme case of complete nationalisation and state control. Here, the single state might take on the functions of the individual firms hitherto operating within its borders (This has happened in wartime and some consider the USSR and similar countries to have been a form of state capitalism). But such a state would still have to operate within the global context and even if it succeeded in maintaining its internal control it might well only be able to do so by being more a ‘competitive’ (i.e., ruthless in Bakan’s terms) state capital externally. The implication of this limiting case is that we need to move from the national to the global not simply because the global economy might pose a threat but also because the objective of reform cannot simply be to substitute private global corporate competition by state managed global corporate competition. But, of course, none of the global institutions that we currently have make more than a pretence to solve this problem since all of them are state bound institutions and ones in which a small number of powerful states have overwhelming influence.

6 Conclusions

These criticisms of Bakan’s treatment of the individual, the global economy and the state are intended not to undermine his analysis – but to push his agenda further. The 1980s and 1990s were not a good time for innovative thinking ‘outside the box’. Indeed, over time, it often seemed that the box lid was being ever more tightly held shut. Only the wilfully blind before 1989–1991 considered the Eastern bloc as any kind of alternative to the forms existing in the West. Then, when these societies collapsed, even these people were forced to undergo a Pauline conversion and like him they often transformed themselves into propagandists of the religion that they had previously despised. The result was not merely a politically conservative climate but one that was supported by an underlying conservative consensus in the realm of ideas. It was not so much that fundamental problems that had agonised thinkers for the past two or three centuries had been solved, it was more that they could now be ignored in terms of instrumental ‘second’ or ‘third’ generation problems. Elements of these attitudes still exist today. But they are weakening. The boom of the 1990s unravelled in corporate collapse and ignominy; the eastern European transition foundered in many countries; the Asian tigers stumbled as did the other ‘growth states’; ‘the new world order’ came to involve the deployment of US military power into increasingly unpopular engagements culminating in Iraq. And from the Seattle protests of 1999 against the global order a critical international movement has arisen. All this has had a serious impact on our ideas and weakened the complacency of the 1990s. It is striking, for example, that three of the greatest US economists of the past generation – Joseph Stiglitz, Paul Krugman and even Jeffrey Sachs have all, albeit to greater or lesser degrees, moved toward more critical positions. So too has a financier like George Soros and today politicians and businessmen and women are running to catch up in this more critical atmosphere that is apparent outside of the narrow world of conventional politics.

Bakan’s book is a contribution at possibly a significant moment. It offers a powerful and elegant critique, which is both clear and accessible whether in the book or film version. But it is serious and challenging too. It also poses a problem for academics who in the past decade have often been encouraged to move closer to the corporate agenda in one way or another. Sometimes this has been direct – the most glaring cases is in Britain
where, as Bakan notes, a university has accepted corporate funding for a business ethics centre from a tobacco corporation whose position is not only comprised by its product but well-rehearsed accusations of the illegal promotion of it. But more often the pressure has been indirect, simply reflecting the pressures of the day. In these terms Bakan’s critique of the Corporation, its institutional dynamics, the misleading claims made about corporate responsibility and the like, invites us all to return to ‘the big issues’.

References

Notes

1 However Bakan could have used even more serious cases of a corporate calculus leading to a larger loss of life. Bhopal comes to mind immediately in terms of an accident. But the ‘tobacco wars’ (see the special issue of the *British Medical Journal*, 5 August 2000) and the more recently discussed ‘asbestos wars’ (LaDou, 2004) both involve global companies not only continuing to trade in products that they knew to be dangerous but also attempting to undermine the health campaigns against them. When regulation became too overwhelming to resist the companies then tried to market their products in less protected markets. These are examples which involve possibly millions of deaths. In the case of the tobacco companies the evidence now in the public domain shows what the editor of the BMJ called ‘devious and highly coordinated activities’ by the companies and he asked, in terms which echo Bakan’s analysis, “is this wickedness of the first order or rational behaviour?” *British Medical Journal*, 2000, op cit., p.308

2 One consequence of this, not noted by Bakan, is that whereas in the non-corporate world age is supposed to bring diminished radicalism it is not unusual to find retired executives becoming more radical. They do not, of course, become revolutionaries but they can be found as sharper critics of business practices and supporters of social causes they had ignored when they were in post.

3 Bakan has the late Peter F. Drucker, saying “if you find an executive who wants to take on social responsibility, fire him, fast”. Drucker, however suggested that both the film and the book take this statement out of context.

4 Moreover, we should also note the tied character of the Vodaphone offer to match its staff donations. This is a common practice in corporate charity, for example, in the annual UK ‘Children in Need’ appeal. Corporate encouragement of staff giving can be seen to have a triple function. Internally it helps to cement staff loyalty and encourage performance. The company gains the external benefit of the good publicity and the costs of its socially responsible action are effectively subsidised by the staff giving and free time in collecting.


6 As a public institution, the state, Bakan argues, is mandated to do public good. It may fail to do this but its failure is different from that of a private institution with private interests, “corporations are legally required always to put their own interests above everyone elses” (Bakan, 2004, p. 118).

7 Anthony argued that since all employment relationships are intrinsically unequal this in itself is not a criticism of any form of them. We should accept this inequality and endorse modern day paternalism as a positive model for managers.