

# **The NGO Challenge: Whose Democracy is it Anyway?**

**Gary Johns**

Civil society, that space between the state and the market, has recently made somewhat of a comeback. In post-communist countries, it is seen as a means of delivering services once provided by the state, and as a significant source of democratic practice. In democratic countries too there is a revival of its service and democratic credentials. In a certain sense, civil society sustains itself and does not ask anything of the state, the work of the Red Cross is a good example. At important junctures civil society can lead opinion toward decent universal values, a good example is the Anti-Slavery Society.<sup>1</sup>

A number of modern Non-Government Organisations, however, seek to represent civil society and to claim public resources, as well as collective solutions to issues, which they conceive as problems. Human rights, environmental, and social justice activists regard themselves as inheritors of the great traditions of Red Cross and the Anti-Slavery Society. However, they are different. Many assert that the dominant form of the economy; capitalism, and the dominant form of politics; democracy, and the dominant form of geopolitics; the nation-state are the problem, not the answer.

## **The Challenge to Representative Democracy and the Nation State**

In a liberal representative democracy a major virtue of government, and the parliament from which it is derived, is the enfranchisement of the unorganised, it gives them a voice and limits the claims that the many organised interests make against the commons. Civil society, whether church, corporations, trade unions or NGOs, provides citizens with vehicles to exercise private initiative. In a liberal democracy they are, thankfully, free to pursue their aims. Indeed, democracy may be enhanced by an energetic civil society. When civil society organisations, however, organise in pursuit of public purposes they compete with the unorganised. Where their values lead them to collective solutions, they become in effect, civil society regulators. There is a new breed of civil society regulators - advocacy NGOs - and their activities and values have implications for representative democracy.

For example, the Australian Conservation Foundation announced in 2001, 'by 2050 Australia will be a civil society. There will be a high level of community engagement in decision-making processes, a higher level of trust with their decision-making institutions.' There is not much wrong with 'community engagement' so long as the form of the engagement is well tested by public opinion. How public opinion is measured is of course, the nub of the matter. Only elected officials put their careers on the line to test that proposition, all the rest just want what they want, they claim to represent public

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<sup>1</sup> Keck, M. and K. Sikkink, 1998. *Activists Beyond Borders: Advocacy Networks in International Politics*. New York: Cornell University, 41.

opinion, but the claims are difficult to test. Therein lies the problem of participatory democracy, it is democracy for activists. It prefers to be loosened from the ties of formally tested public opinion. It becomes a means of pursuing minority opinion, its aim is to avoid the trade-offs that are essential to representative democracy.

Moreover, civil society is increasingly acting in a new mode. Where, in the past, civil society has acted in *opposition* to government, it has helped to secure guarantees of formal legal, political and civil equality. It has helped to secure the law and institutions that safeguard the liberty to conduct ones business based on ‘a kind of trust among non-intimates’.<sup>2</sup> In other words, it has helped to secure a ‘civil’ society. Moreover, civil society continues in an *apolitical* mode, when it identifies problems, such as the amelioration of the plight of the sick and the poor, and produces its own solutions. In this mode, it exists apart from government and the state, it is self-directed and voluntary, and makes few collective moral or resource claims on other citizens.

The dominant mode in which civil society now operates is essentially *communitarian*. It appears to want to further democratise<sup>3</sup> liberal democracy, it seeks a democratic community and collective solutions, and it makes increasing claims on the community in an increasing number of guises and ways. For example, it is a vehicle for the idea of citizenship<sup>4</sup>, which becomes the basis and the source of welfare claims. It is used as an ethical or normative idea, a vision and prescription for the good life.<sup>5</sup> It seeks distributive or social justice<sup>6</sup> in an increasing number of areas, including the economy. Civil society in the communitarian mode has been taken up and pressed into service as a tool to criticise liberal democracy, in particular by those who think that the state has been decimated by ‘neo-liberals’. It is used as a political slogan to advance the cause of the democratic community and as a weapon to mediate the effects of the ideology of individualism and self-interest.

It may be that liberalism is excessively individualistic and insufficiently democratic. Whether democratising the community can solve these problems, however, is problematic. Communitarians insist on the need to override the wishes of the individual in the name of the greater good.<sup>7</sup> Democratic communitarians assume or require that participation in politics is the norm, whereas, in fact, it is the exception. The work of democracy always comes down to activists, so the question is—which activists and what recourse to their activity do the citizens have? NGOs expand the range of voices but in doing so, do they expand the participation of the community or the ranks of a political elite? A cardinal tenet of liberalism is to keep democracy in its place, to regard it as an activity of limited application. By contrast, the democratic way of life encompasses more than the periodic business of government and elections. It is to be applied to most

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2 Krygier, M. 1996, ‘The Sources of Civil Society’, *Quadrant*, October and November: 12-22 and 26-33.

3 Cohen, J. and A. Arato, 1992. *Civil Society and Political Theory*. Mass.: MIT Press, 26.

4 Harris, D. 1987. *Justifying State Welfare*. Oxford: Basil Blackwell.

5 Seligman, A. 1992. *The Idea of Civil Society*. Princeton N.J.: Princeton University Press, 201.

6 Minogue, K. 1993. ‘Ideal Communities and the Problem of Moral Identity’, in J. Chapman and I. Shapiro eds. *Democratic Community*. NOMOS XXXV New York: New York University Press, 42.

7 Berry, C. 1993. ‘Shared Understanding and the Democratic Way of Life.’ In Chapman and Shapiro, *Democratic Community*, 67.

institutions, democracy in the courts (individualised justice, liberal rules of standing) the home (feminism), the workplace (industrial democracy), the corporation (corporate social responsibility), the economy (market socialism). Democracy may work in some of these without destroying the purpose of the institution, but where it does not, there are costs attached. The application of democratic processes to all walks of life should be contingent on its utility, not on its 'morality'.

As for social justice agendas, these attempt to justify the transfer of funds from one group of people to another. 'Justice turns into the problem of how to distribute goods and losses without any very direct relation to law and order or even constitutionality. To mark its new role, the term 'justice' is commonly partnered by 'social', and social justice is what happens when all basic goods, which may notionally include individual talents and skills, are centrally distributed in accordance with a rational scheme.'<sup>8</sup> The welfare state continues to grow, seeking justification that is ever more elaborate. 'The core of the citizenship theory of the welfare state is community membership. From our membership in our community flow the welfare rights we can assert and the *duties we owe* to contribute to the support of our fellows.'<sup>9</sup> Often it is the second part of citizenship that is left out. Moreover, what happens when insufficient people believe in the theory?

Communitarian civil society is growing because liberal democracy's ability to voice citizen disquiet is unprecedented. It makes the present democratic institutions appear inadequate, less trusted. This position is one that cashed-up NGOs and international agencies favour, and business has to live with. The irony is that the critics of liberal democracy - indigenous, feminist, gay, environmentalist, civil libertarian, socialist - have all had their greatest successes in liberal democracies. They are not doing so well in crony capitalist, Islamic or communist states, even less well in tribal polities. In fact, where they threaten to do particularly well is at a supra-national level - EU and UN - where electorates have no direct control over them. Having been granted many of their wishes, these movements challenge the legitimacy of important elements of the system that sustains them - the electorate's veto over policy-makers, the distribution of the economic surplus, the commitment to evidence as the basis for policy, and the rule of law - hallmarks of the liberal democracies. Each of these is being challenged, in part by prominent NGOs, in part by other players within and outside government. The result may herald the rise of a dictatorship of the articulate, the aptly named Culture of Complaint.<sup>10</sup>

The work of the state is as much to counter the tyranny of the minorities, including individuals, as well as to counter the tyranny of the majority. The task is to limit the claims on the commons, to depoliticise much of life, to make it less amenable to public dispute. In the most prosperous of times, in the most prosperous of nations, there is the invention of permanent poverty.<sup>11</sup> In the most benign of modern production regimes,

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8 Minogue, 1993, 42.

9 Harris, 1987, 145.

10 Hughes, R. 1993. *Culture of Complaint: The Fraying of America*. New York: Oxford University Press.

11 Dennis, N. 1997. *The Invention of Permanent Poverty*. The Institute of Economic Affairs. Cox, J. 2002. 'The Poverty Line Revisited.' *Agenda* 9(2): 99-111.

there is the invention of a permanent litany of environmental disaster.<sup>12</sup> In the most egalitarian and peaceful of nations, there is the invention of a permanent litany of human rights abuses.<sup>13</sup> The application of these civil society agendas to the liberal democracies shows a lack of objectivity and loss of sense of perspective and of magnitude on the part of the advocates.

Largely, political activism has been contracted out. In the early phase of the establishment of the major political parties there was certainly a strand of, or at least pretensions to mass (class) involvement in politics, although in fact the numbers were never large. At present, the parties are brand names run by professionals, paid for by the state to do the work of politics.<sup>14</sup> This is not a criticism. On the contrary, the criticism is of those who believe that civil society activists are more democratic. Civil society activists, as represented by NGOs are brand names - WWF, Greenpeace, Amnesty International - run by professionals. They are less constrained by their membership than say business and union interest groups, and totally unconstrained by the need to run candidates for public office. They are good at voicing opinion, not at resolving the myriad claims that present to government. They have a different part to play in the great democratic panoply, but they are no more democratic.

Consumer groups, like *Consumers International*, and environmentalists, like *Greenpeace*, and international human rights lawyers, like *Amnesty International* are on a mission to remake the way laws are made. In a representative democracy, laws should be made by consensus, with reference to the people. These groups use participation as a non-consensual means to regulate the activities of citizens and business. These groups can do good work, but those with an illiberal bent can capture them. Unlike political parties, they do not need to compromise to gain a majority of the public vote.

NGOs, just like any other interest group, are organisations designed to improve their chances of success in public policy. Therefore, there has to be a strategy to combat their influence. That strategy cannot be, in a liberal society, a strategy of control or a strategy to deny them a voice. The best strategy is to have NGOs prove themselves at the bar of public opinion. Governments should test the credentials of NGOs who seek access to government resources or seek to design laws. They should then share with the electorate what they have learned about NGOs.

The following enthusiast neatly conveys the rationale for NGO involvement in the international arena, particularly to assist inter-governmental organisations. 'But if it is impossible to abandon the initials 'NGO', perhaps it is possible to reframe their significance in a more positive light. One candidate might be 'Necessary Governance Organizations'. The corresponding reframing of 'IGO' might then be 'Insufficient

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12 Lomborg, B. 2001. *The Skeptical Environmentalist: Measuring the Real State of the World*. Cambridge University Press.

13 Karatnycky, A. and A. Puddington, 2002. 'The Human Rights Lobby Meets Terrorism.' *IPA Review* 54(1): 6-10. Also Robertson, J. 2002. 'Take the Candle to the Darkest Dark First.' *IPA Review* 54(2): 7-8.

14 See Johns, G. 2001. 'Desirability of Regulating Political Parties', *Agenda* 8(4): 291-302.

Governance Organizations'.<sup>15</sup> The sentiment is not entirely misplaced, especially when so many inter-government organisations consist of undemocratic governments. The intergovernmental organisation with the most intimate connection with NGOs however, is the European Union, which consists entirely of democratic nations. The NGO bid for legitimacy in such circumstances is grossly exaggerated, it exceeds its mandate in fora that consist of democratic governments.

The desire to transfer decision-making to forums less in control of the nation state is well progressed in the UN and European contexts. It reaches exquisite heights with those who advocate a single world government. An example of the desire for a one-world government is the One World Trust of the United Kingdom parliament. Before the 2001, election the group boasted 176 members, making it amongst the largest all-party groups in Parliament. Over 120 of the members are drawn from Westminster, while another 50 members are from the Welsh Assembly and European Parliament. The All-Party Group for World Government to promote a greater sense of world community formed the One World Trust in 1951. 'The Trust believes that sustainable world peace, prosperity and justice will only be achieved when individuals see themselves as world citizens as well as citizens of their own nations.'<sup>16</sup> The Trust supports the work of the Parliamentary Group in its objectives to establish democratic and accountable world governance through reform of the United Nations, global institutions and international law. A crucial aspect of the Trust's work is to promote stronger more just world law, which will help the nations of the world solve those problems they are unable to solve by themselves. The Trust is a member of the World Federalist Movement and its ultimate objective is a World Government based along federal lines, nations pooling sovereignty.

The Trust published earlier this year a 'Global Accountability Record', claimed to be the first of its kind to compare the accountability of intergovernmental organisations, transnational corporations and international non-government organisations. Eighteen of the 'world's most powerful organisations' were assessed on membership control of governance structures and access to information.<sup>17</sup> Accountability is a fine thing, and measuring accountability is worthy. But to compare intergovernmental organisations and multinationals and NGOs is a confusion of roles. The accountability of sovereign governments to their citizens is a complex matter, which involves the entire infrastructure of the state, including the parliament and courts and free press. The accountability of corporations to their owners is essentially a contractual matter, albeit one controlled by not only the markets, but also national legislatures. As for international NGOs, it is worthwhile pursuing their accountability to their members, but this is a matter of trivial weight compared to the previous two actors. NGOs are free associations governed by an absolute minimum of rules. The members are voluntary, they have a minimal legal presence and no ability to tax. Giving them equal billing with government and multinationals is a problem. Although accountability by NGOs to their members is of

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15 Judge, A. 1994 NGOs and Civil Society: Some Realities and Distortions the challenge of "Necessary-to-Governance Organizations" (NGOs) <http://laetusinpraesens.org/docs/ngocivil.php> Accessed 20 June 2003.

16 <http://www.oneworldtrust.org/index.htm> Accessed 18 June 2003.

17 Kovach, H., Noligan, C. and S, Burall, 2003. 'The Global Accountability Report: Power Without Accountability', iv. <http://www.oneworldtrust.org/Files/Pubs/GAP%20report/GAP2003.pdf>

interest, and NGO capture by minority activists is a source of concern, the real accountability of NGOs must be had through governments and corporations. That is, governments must account to their citizens in their dealings with NGOs and corporations. Corporations must account to their owners and contracted parties within the law, but NGOs need only account to their members. The game of making equivalents of the three pillars of society, state, market and civil society is an overstatement of the importance of the third and misplaces its role, civil society can be its own person, but it cannot substitute for government and it cannot create wealth.

Some very senior international government organisation executives seriously entertain the equivalence game. Mike Moore, former Prime Minister of New Zealand and Director-General of the World Trade Organisation from 1999 to 2002 tells the story, 'All the UN agency heads meet once a year under the chairmanship of Kofi Annan ... at one meeting, an agency head shocked me by stating: "We are in a post-parliamentary, post-democratic age; nation states can't function any more, politicians are despised and people can't even be bothered to vote anymore." He went on to assert that the future of governance was with international organizations in partnership with NGOs representing civil society, bypassing politicians. And of course many NGOs subscribe to and push this theory, it gives them power, status and resources.'

Fortunately, some intergovernmental organisations are beginning to reassert themselves. The IMF has observed, 'Many CSOs appear to seek engagement with the Fund as a way to increase their own credibility and standing with member governments. However, CSOs can add real value by building coalitions at the national or local level to support pro-poor reform. Perhaps direct engagement with their own governments would go a long way towards strengthening their own legitimacy and increasing their possibilities to engage more constructively with the IMF in policy constructions.'<sup>18</sup>

NGO activism, buttressed by the failures in intellectual public market place is kept within bounds within the nation-state by a regular and responsive forum for all interests. One observer described it thus, 'The nation is a daily plebiscite.'<sup>19</sup> Despite the appeals to international citizenship and the wonders of email and the apparent ease of international travel, the daily plebiscite is not available in international forums.

Nor is the business of funding the promotion of democracy without its problems. If international democratic practice lacks the legitimacy of an electorate and NGOs lack the legitimacy of a tested representation, so too is their a problem with the West attempting to seed democracy in undemocratic nations. US and European aid aimed at the development of civil society has grown considerably in the last ten years. It follows on the heels of financial aid, physical infrastructure aid, and governance aid, all attempts to promote development in less developed countries. Civil society aid may be one of the keys to the development of a successful society, but it suffers from so much of the romanticism of the rest of the NGO movement.

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<sup>18</sup> Dawson, T. and G. Bhatt, 2001. 'The IMF and Civil Society Organisations: Striking a Balance.' IMF *Policy Discussion Paper, International Monetary Fund*, 25.

<sup>19</sup> Quoting Ernest Renan in Jusdanis, G. 2001. *The Necessary Nation*. Princeton: Princeton University Press, 24.

It commences with the particulars of electoral systems and government accountability, but soon begins to promote advocacy of interests – environmental, women, indigenous, tenants and so on. NGOs can be attractive to aid donors because they perform some of the same roles as political parties, representing interest, building participation and checking the state – without seeking power. They can appear to make up an ‘antipolitical domain’<sup>20</sup> and bypass traditional divisions, beliefs and interests. They do so however, by promoting particular western agendas, which NGOs promote. The danger is that when the donor withdraws, civil society organisations collapse. In other words, aid cannot sustain democracy, it provides an artifice of activism, but not a sustained belief among a populace.

### **The Assault on Corporations**

Business corporations traditionally face two groups, which regulate their behaviour. The marketplace, which includes business competitors, and government. Now there is a new regulator, civil society or more particularly NGOs such as Greenpeace, Amnesty International, Community Aid Abroad, the Councils of Social Service and the like. The tools that NGOs use to regulate business are very different to the market and government; they are, in the first instance, neither price nor law. Often they are just ideas expressed in a new language. The language of Corporate Social Responsibility (CSR) or its many aliases like Corporate Citizenship, the Triple Bottom Line, the Stakeholder Corporation and so on. This language, these ideas are seductive, they appear benign. Make no mistake - Corporate Social Responsibility is really Civil Society Regulation in disguise.<sup>21</sup>

Civil Society Regulation occurs where NGOs set the standards for business behaviour. Corporations choose to adopt or not to adopt these standards at their risk. While governments have the power of legislation, the ability of civil society organisations to regulate business behaviour through naming and shaming is becoming more powerful.<sup>22</sup> The techniques are many and range from misapplied ethical investment, shoddy reputation indexes, stakeholder dialogue with interlopers, to outright scaremongering aimed to cause maximum damage to corporate brand names.

Some concepts of the corporation are so misguided, they regard the corporation as no more than a process for grievance-settlement in society. For example,

One of the most significant things that companies could do to make themselves good ‘stakeholder corporations’ is to ensure they give ... rights to external review, to stakeholders (and stakeholder groups) with legitimate complaints about the company. The right to access justice—to be able to make claims

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20 Ottoway, M. and Carothers, T. eds. 2000. *Funding Virtue: Civil Society Aid and Democracy Promotion*. Washington DC: Carnegie Endowment for International Peace, 12.

21 For a full discussion see Johns, G. 2002. ‘Corporate Social Responsibility or Civil Society Regulation?’ *Harold Clough Lecture*, Perth 16 August, Institute of Public Affairs.

22 See Murphy, D. and J. Bendell. 1997. ‘The Politics of Corporate Environmentalism’, paper presented at the Business Responsibility for Environmental Protection in Developing Countries conference, September 1997, Heredia, Costa Rica, Universidad Nacional and UNRISD.

against individuals and institutions in order to advance *shared ideals of social and political life* [my emphasis] and to rectify relations that have gone wrong—is an essential part of citizenship in a contemporary democracy.<sup>23</sup>

Further,

We are unnecessarily constrained by the belief that the representative institutions and legal system of the state should be the exclusive or even the primary, home of political deliberation.<sup>24</sup>

These ideas challenge the corporation and the role it has fulfilled in the modern capitalist economy, indeed even in the highly state-regulated modern capitalist economy. Some as ‘socialism regards the view that all stakeholders have prima facie an entitlement to a managerial role in a corporation by another name’.<sup>25</sup> Indeed, a problem with CSR, in particular stakeholder theory, is the difficulty of adjudicating between not only the demands of stakeholders who have a contractual relationship with the corporation, but those who do not. All corporations accept the need to deal with traditional stakeholders, and the law provides the means of settling disputes with each. CSR invites two further impositions. First, it counts as a stakeholder anyone who wants a piece of a corporation. To paraphrase one manager’s view, ‘a stakeholder is anyone who can do you damage.’ Second, it attacks the very purpose of the corporation - its commercial relationship with the market and its owners.

One of the prominent techniques of civil society regulation of corporations is the assault on corporate reputations. Corporate reputations are a serious business, and corporations strive hard to ensure that their reputation is maintained in the best condition. Presumably they do so because it is a component of business success. Which component is difficult to ascertain. Indeed an entire academic journal, the *Corporate Reputation Review*, is devoted to that question. The rationale for the interest in reputation measurement is, it appears, because reputation ‘is a growing factor in maintaining corporate competitive advantage’.<sup>26</sup> Apparently, because factors such as ‘media congestion’ and ‘fragmentation’ and ‘the appearance of ever more vocal constituencies’<sup>26</sup> make it so. These factors place pressure on corporations to differentiate themselves from their competitors and to examine their actions and ‘stakeholder perceptions’ of them. If one accepts such reasons, then it follows that, ‘[t]o be managed, corporate reputations must be measured’.<sup>27</sup>

An example of reputation manipulation is the [Australian] Good Reputation Index, which was published by *The Age* and *The Sydney Morning Herald* newspapers in 2000, 2001 and 2002. The Index purported to examine, ‘through the perceptions of community

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23 Parker, C. 2002. *The Open Corporation: Effective Self-Regulation and Democracy*. Melbourne: Cambridge University Press, 227.

24 Parker, 2002, 7.

25 Barry, N. 1999. *Anglo-American Capitalism and the Ethics of Business*. Wellington: New Zealand Business Roundtable, 29.

26 Gardberg, N. and C. Fombrun, 2002. ‘The Global Reputation Quotient Project: Steps Towards a Cross-Nationally Valid Measure of Corporate Reputation.’ *Corporate Reputation Review* 4(4): 303.

27 Gardberg and Fombrun, 2002, 303.

stakeholders and experts’, the ability of the top 100 corporations operating in Australia,<sup>28</sup> to manage those activities ‘which directly contribute to their reputations as socially responsible organisations’.<sup>29</sup> In fact, the Index does no such thing. The Index begins with preferred definitions of goodness and expands these, for example by measuring financial performance, to capture the whole reputation of a corporation and labelling the result ‘social responsibility’.

In establishing the Index, Reputation Measurement argued that ‘there is increasing evidence to suggest that companies seeking to demonstrate their worthiness as *socially responsible* organisations are most successful when they widen their traditional business *stakeholder* base to include community stakeholders.’ Further, ‘[i]nvestors and consumers are increasingly making decisions based on longer-term issues linked to a company’s capacity to contribute to a *sustainable* future for all.’<sup>30</sup> In other words, the Reputation Index is an instrument for advancing a number of political agendas: corporate social responsibility, stakeholder capitalism, and sustainability.

The key question in the discussion of corporate social responsibility is, ‘what is good?’ Does good mean commercially successful, long-lived, popular among workers or consumers or investors or the community at large? Indeed does any measure of goodness have anything to do with the commercial purpose of the enterprise? This is the first hurdle at which the Index stumbles. It establishes a method that implies that a corporation needs to be something other than a commercial entity in order to be good. It assumes that the corporation needs to be a model citizen. Further, it loads the concept of the good citizen with far higher expectations than it would for individual citizens. Is a good citizen one who earns a lot of money, but then, after paying taxes gives a lot of it away? Does a good citizen account for all of their deeds as they may affect the environment? As parents are they fair to their family, and do they have to account for this? What of citizens’ dealings with their neighbours and workmates? The notion of corporate social responsibility suggests a relationship between, for example, a corporation’s output and the community’s perception of whether a corporation does good work in the community. The suggestion is seductive, it suggests a parallel between corporate reputation and democracy. There are two parts to the seduction.

First, in a democracy the electorate votes on the basis of performance and perception of performance. Perception may belie actual performance. Corporations that cannot rely on actual performance alone to make business gains may have to rely on the perception of performance. Unlike the politician, however, the corporation is selling a more well-defined product than the ‘competence to govern’. The political consumer is far less able to make up their mind on whether to purchase, than the corporate consumer who can do so simply on the basis of a product or service. Nor do governments come with a money-back guarantee! Perceptions no doubt play a role in corporate reputations, but they are

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28 As listed by *Business Review Weekly* magazine, based on financial indicators.

29 <http://www.reputationmeasurement.com.au/2002ReputationIndex.pdf>. Accessed 28 January 2003.

30 <http://www.reputationmeasurement.com.au/2002ReputationIndex.pdf>. (Emphasis added) Accessed 28 January 2003.

hard pressed to overcome the more readily measured commercial performance and compliance with legislative and contractual obligations.

Second, the eligibility to vote for corporate performance is far more restricted than universal adult suffrage. And so it should be. Those with a real interest in a corporation are not the community at large but particular individuals who have a specific relationship with the business. Each of these individuals and groups will make their assessment on whether to purchase from the company, work for it, work with it or invest in it. They will do so less on the basis of a broad 'competence to govern' than on factors such as price, quality, wages, prompt payment and rates of return on investment.

In a democracy, the rules by which corporations carry out their activities are set by consensus. The consensus determines rules across a very wide spectrum of financial and non-financial criteria, but it determines not so much what is good, but what is and what is not, acceptable behaviour. The law also provides penalties for unacceptable behaviour. The Index, on the other hand, is an exercise among civil society activists who wish to appropriate the resources of corporations for their own purposes. It has little to do with corporate goodness, it has a lot to do with increasing the power of NGOs to impose their agendas, which include the appropriation of property (corporate reputation) and the further regulation of corporations.

The Index is extraordinarily arrogant in its assumptions about knowing what is good. It is possible to measure corporate performance so as to enable those interested to assess whether and how they will deal with a corporation. But 'measures' of reputation by groups (some of whom have an adversarial relationship), and others who seek a commercial relationship with the corporations, is at best subjective. To produce a single figure of which corporation is good and by implication, which corporation is bad, is heroic. Although each research group disclosed its direct relationship to a corporation, it was reported that some of the research groups had touted for work by offering their services to corporations in filling out the questionnaire. These approaches were not disclosed.

Goodness, when not defined in a consensual manner, is an act of rent-seeking. No amount of moralising about goodness has been known to revive a commercially unviable corporation. When a corporation ceases to exist, it does so because it can no longer pursue its intended commercial objectives. Without the commercial objectives – and these may include profits, growth, and market share—there is no possibility of pursuing good corporate citizenship. Goodness cannot be allowed to threaten the commercial viability of a corporation. On the other hand, 'acceptable behaviour', when based on a widespread political consensus is less likely to interfere with the real contribution that corporations make to society.

Stakeholder theory suggests a model of the corporation in which all interests in an enterprise compete to obtain benefits from the enterprise, but that none has a priority. This simple proposition is very confronting, because it is in effect posing the question, 'in

whose interests should the enterprise be run?’<sup>31</sup> It also assumes that society grants an enterprise the right to exist. Those whose business it is to advise corporations on social responsibility are fond of arguing that corporations have a license to operate in the community. This is accurate at one level only, the community through its law-makers may grant licenses and certain privileges in return for the enterprise complying with the law, and it does not license the activities of stakeholders at large to impose their views on the corporation.

Nor does the theory satisfactorily answer the question of who, or what, produces economic value. Instead ‘its focus is on the distribution of outcomes, the harms and benefits, and not on who produced the harms and benefits. It assumes value is produced by the enterprise itself and that stakeholders have a claim on some of this value because the enterprise is a creature of society.’<sup>32</sup> It radically overturns the social contract for business that includes obligations to obey the law, honour contracts and agreements and respect the rights of others. It ignores the fact that economic value is produced by owners who make their savings available to other member of society to put them to use in productive ways. The owners have an exclusive moral claim to the benefits produced by their activities, as others have a moral claim for the benefits produced by their labour or other contracted services.

Those with a contractual relationship with the corporation have rights. The breach of contract with a supplier, the dangerous product sold to the consumer, the accident that befalls the worker, the investor who is misled by a prospectus - each is entitled to pursue the corporation for the recovery of losses. Indeed, the corporation can also pursue any of these individuals for breaches of agreement or misrepresentation and so on. Ultimately, the managers on behalf the owners are responsible for all of these actions. Poor management may result in losses all around - workers lose jobs, suppliers lose contracts, investors lose money. But only the owners through the managers decide the nature of the enterprise, its purpose and direction. Whom they choose to deal with and how, within the bounds of law and custom, are matters for them. Which is not to say that ‘stakeholders’ will not have a say, but only in the course of settling matters to the satisfaction of the owners. To assume that everyone starts with an equal say is to assume there is no ownership. There is a suspicion that this is precisely the assumption underlying stakeholder theory, the denial of the rights of ownership.

A second strand of stakeholder theory focuses less on equating the interests of stakeholders with shareholders, and more on their ethical treatment. This means that stakeholders, employees, customers, suppliers, owners, financiers and the community should be treated fairly and justly.<sup>33</sup> This thinking is consistent with those who regard the corporation as no more than a process for grievance-settlement in society, as suggested above.

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31 Weiss, A. 2002. ‘Cracks in the Foundation of Stakeholder Theory’, 1.

<http://www.mngt.waikato.ac.nz/depts/sml/journal/commissi/stake.htm> 27/08/2002

32 Weiss, 2002, 6.

33 Corfield, A. 1998. ‘The Stakeholder Theory and its Future In Australian Corporate Governance: A Preliminary Analysis.’ *Bond Law Review*, 10: 218.

Fortunately, stakeholder theory has no basic recognition in Australian Corporations Law. There is no current case law or provision that requires directors to take into account the interests of stakeholders, or the sometimes touted concept of 'the interests of the corporation as a whole'.<sup>34</sup> While there is no prohibition on directors from considering other interests they can only do so provided there is a prospect of commercial advantage for the company. One of the principle dangers of stakeholder theory is that managers who can claim to be serving the general interests of society in the name of the public good can invoke it. Such claims are not within the powers of managers. Only those with a mandate from the public – politicians - can make such claims, and they only do so cautiously, in the knowledge that if they do so wrongly, they will be punished.

Sustainability refers to ecological sustainability, and ecological sustainability is premised on the notion of limits to growth, based on limits to resources. It argues that natural resources are becoming scarcer. It ignores the history of technological innovation, often promoted by competition between corporations, and that such innovation has extended physical resources in ways untold. In fact, judged by price, physical resources are becoming more abundant over time. For example, the environment category of the Index contains questions about the level of corporate electricity and water consumption. It is highly unlikely that conservation and/or recycling will assist in any problems that arise from some future shortage of these resources. Pricing for externalities or to take full account of infrastructure costs is sensible, but pricing for conservation is very unlikely to produce sensible choices among alternatives. The solution to the so-called limits to resources will be found in technological innovation.

One obvious innovation with clear and positive implications for resource use is genetic engineering in food production. Unfortunately, the issue is raised in the questionnaire in such a way that it carries the clear implication that this is environmentally harmful. There are questions as well about greenhouse gas emissions, but elsewhere about nuclear energy production, also with the clear inference that this is forbidden. The environmental agenda is not broadly shared, nor without controversy, it assumes no trade-offs and that abstinence rather than adaptation or innovation is the cure.

The questions in the Index are based on an ahistorical view of sustainability. They represent a very narrow concept of sustainability, an insular and frozen view of human ingenuity. One of the main principles of sustainable development is intergenerational equity, the achievement of which assumes that this generation knows the needs of future generations. Conserving what are considered resources today does not ensure the future is secure, and using them today does not necessarily mean that tomorrow is in jeopardy. Petroleum was not considered a resource 150 years ago, but today it is vital. Consider the following conundrum,

if the choice to draw down resources is held exclusively by future generations, then we, being the future generations of previous generations, have been deprived of that right. Does it make sense for us to condemn our ancestors, who were poorer and much less secure than we are, for using

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34 Corfield, 1998, 221.

resources to support themselves? Does sustainable development really imply that no generation has the right to use resources, no matter how urgent their needs will be?<sup>35</sup>

Sustainability is just one stream in a more general assault based on public policy advice. For example, the fundamental aim of science and social science has generally been that of explanation. Now, commonly, it is advocacy. Science is too often abused in the public arena, and too many intellectuals in the social sciences and humanities have given up all pretence to rational explanation.

Elizabeth Whelan, President of the American Council on Science and Health remarked last February, 'science – today and every day – is under assault.'<sup>36</sup> The assailants are members of the media, trial lawyers, self-appointed consumer-activists, and environmentalists who constantly promote the fear of health hazards. She concentrates on health topics, but the comments are applicable to whole range of public policy and science. The example given is the ongoing regulatory dispute over PCBs, synthetic chemicals used, because of their insulating, flame-retardant nature, as coolants and lubricants in transformers and other electrical equipment. Dr Whelan argues that any review of the scientific literature will reveal that PCBs at high dose are toxic and carcinogenic in rodents, and that no human study - including workers who were very heavily exposed, and individuals, including pregnant women, who ate substantial amounts of fish with measurable levels of PCBs - has ever shown any major significant long-term negative health effects. Regardless, the Environmental Protection Agency is compelling General Electric to spend more than \$500 million to remove PCBs from the Hudson River. The EPA states that it wants to prevent cancer. Even the National Cancer Institute concedes it knows of no evidence that eating fish from a PCB-contaminated river contributes to the toll of cancer in the United States.

Scientists find it difficult to counter the anti-scientific policy. Most do not feel comfortable in the public arena and they have no real clue about how to go about challenging what they read and see. In cases where scientists have stepped forward to debunk the "carcinogen scare de jour", they have been subject to ad hominem attacks and labeled "paid liars" for industry. Science has become so very specialized, that the overwhelming portion of scientists has very narrow areas of expertise. Those with a Ph.D. in entomology, biology, veterinary medicine, or physics might possibly be as duped as the average citizen. The consequences of the silence of the scientific community, which is interpreted as assent, are profound. It distorts health risks, threatens innovation, and jobs.

The abuse and misuse of science is not, of course confined to NGOs, they have some powerful support in the academe. Literary and cultural theorists, poststructuralists, postmodernists, radical feminists, black separatists, Afrocentrists, deep ecologists and

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35 Mitra, B. and R. Gupta, 2002. 'Sustainable Development Versus Sustained Development.' In R. Bailey ed. *Global Warming and other Eco-Myths*. Roseville, California: Forum ,134.

36 The Washington Times, 27 February 2003.

animal liberationists are making the assaults on science.<sup>37</sup> These assaults have in some cases gone much further than mere verbiage. They include censorship of books and conference papers, re-writing or banning school textbooks, obstruction of research funding, incessant vexatious lawsuits, sabotage and raids on laboratories, not to mention death threats and assaults on some scientists who have refused to be cowed by their critics.

The origins of much of this extraordinary assault stems from 'science studies', which are inquiries into the nature of science. People in the field have not been scientists per se but sociologists of science, historians of science, philosophers of scientific method and, most recently, people who engage in cultural studies of science. In other words, rather than a province of the physical sciences themselves, science studies are a domain within the humanities and social sciences.<sup>38</sup> The field was designed to impart some understanding of science to students taking arts degrees and to encourage those learning science to reflect on the intellectual and social implications of their field, and the study of the development and social impact of science.

The humanities and social sciences can be even worse. The University of Queensland, Australia awarded a doctorate last month, which found that Jesus and three or possibly four of Jesus' disciples was gay. The thesis was about homosexual spirituality, the author it will come as no surprise, was gay.<sup>39</sup> Such is the burden of liberalism and free speech, but also of the post-modern fashion to recognise as valid all manner of nonsense, especially on behalf of the previously repressed.

Richard Posner's recent study of public intellectuals,<sup>40</sup> who are in the main academics, demonstrated that, too often, many do not have the same regard for accuracy in their public statements, as they do in their academic work. Moreover, comment comes overwhelmingly from the humanities and social sciences and, overwhelmingly from the left of politics. His solution to the lack of market discipline on the public intellectual is to encourage universities to have the public statements of academics published alongside their academic work and made available for scrutiny.

## Conclusion

The NGO phenomenon will continue to grow. For a great many young political activists, it is much more expressive than joining a political party. NGOs sell participation, not settlement of competing interests. The amount of spare cash and time for political purposes is rising. The money is coming from a generation who will inherit the greatest amount of wealth in history. It is also coming from private foundations, loosened by time from their original intent, and government who have outsourced their aid budgets to

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37 See Gross P. and N, Levitt, 1994. *Higher Superstition: The Academic Left and its Quarrels With Science*. Baltimore: Johns Hopkins University Press.

38 Windschuttle, K. 1998. 'Foreword to David Stove, *Anything Goes: Origins of the Cult of Scientific Irrationalism*.' Sydney: Macleay Press <http://www.sydneyline.com/Stove%20foreword.htm> Accessed 18 June 2003.

39 *The Courier-Mail*, 29 May 2003.

40 Posner, R. 2001. *Public Intellectuals: A Study of Decline*. Cambridge: Harvard University Press.

advocacy NGOs. Much of this extraordinary amount of money will find its way into 'good' works.

NGOs have made a significant contribution to public policy, though more often their strength has been to organise resources outside of the state apparatus or in opposition to an oppressive regime or egregious examples of oppressive policy. More recently, they have turned their attention to using the state for their own policy ends, using an assertion of moral and democratic superiority to do so. Whose idea of 'good' is being sorely tested by some NGOs, it is best that government, on behalf of all the people, keeps an eye on them.