Taming the Corporate Beast

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The litany of economic disasters in national headlines changes regularly, but a recurring theme is the role of transnational corporations (TNCs) in creating or exacerbating each new calamity. After the 2008 financial crisis, the near nuclear meltdown at Fukushima, the massive BP oil spill, and more, there is global awareness of the dire consequences of tolerating corporate misbehavior and greed. Despite their rhetoric, the priorities of TNCs are fundamentally at odds with the basic social goal of enhancing human freedoms and well-being. It can no longer be denied that the institutional framework regulating global giants requires a thorough transformation.

Such a restructuring of our major institutions depends on the liberating knowledge that is being developed through the collective work of agents of change. In this article, I focus on efforts to bring structural changes to corporations that would bring new standpoints to corporate decision-making bodies and, in this way, change the values and control of corporates.

I begin with a look at current soul-searching in the business community and efforts that have, at best, beautified the corporate beast. Corporate misconduct and abuse of power have reached such extremes that even leading thinkers of the business community are expressing shock and dismay. Consider the words of Colin Mayer, founder and former dean of the business school at Oxford University:

> The corporation is becoming a creature that threatens to consume us in its own avaricious ambitions. We need to address its failings as a matter of urgency, not only to avert its damaging effects on our prosperity, social cohesion, and the environment, but also because it offers the lifeline out of the dismal science's constrictions. [1]

Notice that Mayer concludes with a plea for a new kind of corporation, one that would help solve, rather than exacerbate, today's economic problems. This new corporate entity, presumably, would live harmoniously with the communities where it is located; act in accord with shared values and goals; protect human rights and the environment; and contribute its talents to solving the global challenges of climate change, inequality and poverty.

There has been a wave of attempts to make corporations more responsible, as well as increasing debate on corporate governance. Many business experts argue that only a new corporate culture and a restructuring of corporate management can end the corporate behavior that they decry.[2]

The solutions that business experts offer, however, keep control of corporations firmly in the hands of owners and executives. The fatal flaw here, of course, is that the lure of higher profits has time and again proven irresistible to those at the top of the corporate pyramid. And those higher profits can often be gained through lower employee compensation, weak environmental standards, and cheaper imports produced under dubious conditions. As long as the power of those at the top remains intact, any hard-won gains advancing human rights and sustainability will be on shaky ground. Changing the priorities guiding corporations requires changing who sets them.

Hope for a radical transformation of the corporate beast comes from the millions of people across the globe that are working to hold corporations truly accountable for their actions as well as seeking to construct new economic alternatives. The results of their efforts, in many cases, are truly remarkable. In the business world, these agents of change are working at the local level in organic foods, green-energy cooperatives, and more. Globally, alternative enterprises such as cooperatives are producing a wide range of goods, with sales in the trillions of dollars. In the world of social activism, environmental, human-rights and labor organizations are engaged on many fronts in the struggle for corporate accountability as well as more democratic ownership and control of business. Both activist organizations and alternative enterprises have formed coalitions with business and governmental groups as feasible to advance human rights, and to curtail the rights that business owners have usurped. These efforts are helping to lay the foundation for a new, more democratic economy.

Beautifying the beast: corporate reforms fail to deliver

Public pressure and growing awareness of corporate abuses have led to a plethora of initiatives undertaken by investors, shareholders and nonprofits to change corporate behavior. There is clearly strong support from the public for corporate accountability. Many of the steps taken so far, however, have proved to be more successful in corporate PR – beautifying the beast-- than in addressing and reducing corporate violations of human rights and the environment.

Social responsibility pacts and networks More than 7,000, businesses in 145 countries around the world have agreed to the principles of the U.N. Global Compact. Included among the ten principles of the Compact are the right of workers to collective bargaining, the right to non-discrimination in employment, and the need for a precautionary approach to environmental challenges. However, there is no evidence that firms noticeably change their behavior after signing the Compact, or even attempt to assess their business practices using guidelines the U.N. provides. McDonald's, for example, asked its shareholders to vote against a shareholder resolution (put forward by the public employee union AFSCME) that would have required the company to assess its human rights record using U.N. Compact guidelines. Not necessary, said the company. It is not surprising that a commitment to social responsibility on paper is seldom sufficient to result in actual accountability to the public.

Membership in a group promoting corporate social responsibility is common among corporations. Such membership is not demanding, and allows a company to decide for itself what social goals it will, or will not, set for itself. Progress in some areas can easily be offset by misbehavior in others. Nestlé, a signatory to the U.N. Global Compact, for example, still had child slave labor on the plantations which supply its cocoa as of 2012.[3]

Investor alliances urge investors to concentrate their funds in socially responsible companies. The ratings of social responsibility, or of environmental-social-governance (ESG) behavior, are done by independent research firms. The Global Sustainable Investment Alliance, with members in five continents, is perhaps the largest investor group promoting ESG principles. The Alliance estimates that, in countries where it has members, about $13.6 trillion has been invested in professionally-managed assets that incorporate ESG concerns into investment selection. This represents nearly 22% of total managed investments in those countries.

But what are the criteria used? As reported by the U.S. Alliance member, SIF-US, an investment was considered socially responsible if 1) it was screened for "minimal standards of business practice," 2) it was in clean energy or in businesses serving under-served communities, or 3) it fulfilled specified ESG criteria in other ways.

ESG ratings are becoming commonplace, and — much like ratings of bonds — are influencing investor decisions. But ESG ratings do not convey an accurate picture of the impact of a firm on society and the environment. A firm's lobbying efforts and its labor records, for example, are typically not taken into account.[4] This is a serious drawback. Just as the pre-financial-crisis ratings given banks by Moody's and Standard & Poor's did not reflect the actual risk embedded in banks' portfolios, ESG ratings do not provide an adequate account of the practices of the firms rated. Again, consider Nestlé. Despite the child slave labor on its plantations, the international accounting firm KPMG ranked Nestlé no. 1 in corporate responsibility among food producers and among the top ten in all categories in 2013! The Gap, an industry leader in retail clothing sales, was ranked number 3 in the *Corporate Responsibility* magazine's 2014 list, while at the same time it made the Top Ten Corporate Criminal's list published by Global Exchange. Its "criminal" status was due to its "refusal to sign 'Accord of Fire and Building Safety in Bangladesh,' refusal to compensate victims' families, workers' rights violations, and unsafe building conditions".

Shareholder activism Shareholder coalitions are passing resolutions demanding more sustainable and ethical practices of firms. Today, ESG shareholder resolutions are garnering more vote support than ever before, with a quarter of such resolutions receiving more than 30% of the shares voted.[5]

As a result of such shareholder activism, more than half of S&P 100 companies now disclose and require board oversight of their political spending with corporate funds. Shareholder resolutions have also addressed CEO pay; the impact of hydraulic fracturing on water supplies; sustainability reporting on water management, energy use, and emissions; and the business risks associated with climate change. These resolutions challenge firms to live up to ESG principles, typically in very specific instances. However, only one or two issues per year per company are addressed, and most resolutions do not pass.

The 2011 EU Green paper on corporate governance is one among many papers calling for more active shareholder participation as part of the answer to creating a socially responsible corporation.[6] Often, CEOs and corporate board members collude to advance their own interests to the detriment of shareholders.

But there is little reason to think that facilitating shareholder involvement in corporate governance will result in more socially responsible behavior. Shareholders cannot be counted on to vote in line with ESG principles; most shareholder resolutions, in fact, fail. Improvement in a few areas, such as oversight of CEO pay and political spending, may be likely, should shareholders get more voice, but changes that would noticeably reduce shareholder returns are unlikely to garner much support.

Reforms that rely on persuading companies to change, then, may beautify the corporate beast but will not tame it. Make no mistake: changing corporations in ways that prioritize human rights and sustainability will involve a transformational shift – a shift that can only be achieved through the work that is part of any major social movement. Inexorably, in any case, the transnational corporation is evolving -- the number of corporations listed on U.S. stock exchanges has dropped 25% since 2000 and on the London Exchange the fall has been even greater. Privately-held companies are increasing. Struggles now underway will shape emerging corporate forms, for better or worse.

Taming the beast: better business through better regulation?

Social movements have worked hard for legislation to combat discrimination, ensure safe working conditions, reduce pollution and promote renewable energy, provide affordable health care, rein in high finance, and ensure fair elections. Such progressive legislation, besides offering some immediate relief in pay, safety, pollution and other areas addressed, also reduces the competitive disadvantage that may be associated with the cost of "doing the right thing" for workers and customers.

Regulatory relief today But moneyed interests that dominate politics and the economy push back against many of the legislative gains achieved and prevent further necessary reforms. In addition, those gains typically fall far short of activists' goals. Progressive legislation is implemented by government agencies that may be under-funded, under-staffed, and subject to capricious political winds. In the U.S., for example, this is true of the Occupational Safety and Health Administration, the Equal Employment Opportunity Commission and the Environmental Protection Agency (EPA). The EPA relies heavily on the self-monitoring of businesses that are required, but only in some cases, to report on the release of 594 chemicals into the environment. By contrast, there are over 70,000 chemicals used commercially in the U.S.; decades can pass before the use of a highly-toxic chemical is banned or tightly regulated. The number of substances on the candidate list for regulation by the European Chemicals Agency is even fewer, at 155.

Budget cuts are a perennial problem as well. Government agencies across the globe are still reeling from the financial blows delivered by legislatures after the recent Great Recession. Assaults on regulation have intensified. Deregulation has been widely touted by corporate ideologues as the solution to today's slow job growth; it is one of the four pillars of the austerity program imposed on Greece by the Troika of lenders financing its bailout. Globally, the outlook for the newer and tougher regulations needed to halt climate change and to fight human trafficking and other abuses is bleak.

Corporate charters, with teeth But effective regulation holds tremendous promise. Currently, violations of rules and laws by large corporations are prosecuted or pursued individually. These corporations have little fear that their charters or license to operate will be revoked, even after repeated violations of the law. With the exception of the European Union, firms are not even required to disclose the negative effects of their activities to the public. (The 2014 disclosure directive adopted by the European Parliament applies only to certain large firms, estimated at approximately 6,000 in number.) A new kind of charter or license for corporations and other large firms could change this.

For the past 100 years, states have demanded less and less of firms incorporating in terms of what activities they engage in and how. The *2007 Summit on the Future of the Corporation*, convened by the nonprofit Tellus Institute, discussed several possible provisions that could be included in charters or licenses to operate in the U.S. In addition to specifying potential penalties for repeated wrongdoing, such as the revocation of a firm's permission to engage in certain activities, charters could include requirements for stakeholder representation at corporate board meetings, for reporting on social impacts, and for the set-aside of some shares of stock to a public trust. Industries with a strong impact on public welfare would be subject to additional rules. Also, as Larry Elliott notes in the *Guardian* (12/12/14), limited liability is a privilege that in some cases should be denied.

The argument holds on a global scale as well: transnational firms should be held to global norms, through a system of accountability devised under international accord. The adoption of Resolution 26/22 in June by the UN Human Rights Council is a step in this direction. This resolution establishes a working group to prepare a treaty imposing international human rights legal obligations on transnational corporations and business enterprises. The treaty, once finalized, will be the first international human rights agreement to explicitly regulate the activities of transnational corporations in terms of individuals' and communities' fundamental rights.

Strengthening freedom of collective speech Big business has tremendous impact on the content of proposed legislation and on the enforcement of existing laws, and there is no adequate counter-weight to their power. Workers do not have at their command institutional channels that could enable the articulation, recognition and adequate consideration of their urgent needs, such as the need for a living wage and healthy working conditions.

Workers and whistleblowers who protest unfair pay, unsafe work conditions or poor quality products are now at increased risk of losing their jobs. Firing for arbitrary reasons – without just cause – is still permitted in the U.S. when there is no union contract (89% of employees are in this category), although in most industrialized countries just cause is required for termination of employment. Protection of free collective speech requires new legislation strengthening workers' job security and right to organize, as well as whistle-blowers' right to speak out.

Steps towards transforming the beast

Mission-minded, grassroots entrepreneurs are social innovators who are fostering an alternative vision of the economy. They show that in business, as in science, art and public service, the profit motive provides no stronger an incentive than does the creative drive to discovery, self-expression and social achievement. Many of these alternative enterprises, even the largest, have participatory management. These enterprises are often successfully balancing the pursuit of profit with social goals, unlike the corporate giants dominating the global economy. They hint at new possibilities.

Alternative businesses offering an alternative vision. The Democracy Collaborative and the Center for a New American Dream are among many progressive organizations that believe a democratic transformation of the economy will be built on alternative, sustainable businesses. These socially-minded businesses already make up a large part of economies.

In Europe, the social and solidarity economy provides paid employment to over 14.5 million people, about 6.5 % of total European paid employment, according to the International Labor Organization (ILO). The number employed is increased substantially if we count the 10 million producer members of cooperatives as well as paid employees. The International Cooperative Alliance estimates that cooperatives in Europe employ about 16 million persons, second only to Asia. Worldwide, there are 250 million people employed through cooperatives in the 65 countries surveyed by the Alliance, with most of these in Asia. Total turnover of these coops was $2.6 trillion.

In the U.S., there are roughly 11,000 employee-owned companies, and about 130 million people are members of cooperatives of one kind or another (including credit unions and mutual insurance companies). Employee stock ownership plans (ESOPs) cover about 13.5 million employees. There are about 4,600 Community Development Corporations (CDCs) located across all 50 states. [CDCs are collaborative regional organizations, whose boards are typically comprised of one-third community residents.] There are also nonprofit enterprises, public-private partnerships such as community development banks and organizations, state-owned enterprises, and other non-traditional businesses that are committed to local economic development and social responsibility; they have changed regional growth patterns across the country.

In every continent, social enterprises are growing, often in new legal forms. These business entities are set up by entrepreneurs with social goals. In Europe, new forms include social cooperatives and the community interest company.[7] In the U.S., benefit corporations and low-profit limited liability companies have spread rapidly.

Cooperatives, which are run jointly by their members, are of especial interest to activists because they show how large enterprises can be democratically managed. The Mondragón Corporation, a federation of worker cooperatives, was founded in Spain in 1956. It employs over 70,000 people and includes 257 firms—operating in finance, industry, retail, and research—with subsidiaries in 41 countries. It has 15 technology centers doing advanced research in such areas as biotechnology and automation. With annual sales over $18 billion, it is the seventh largest company in Spain. Worker-owners in Mondragón firms elect their managers as well as representatives to the annual General Assembly. The ratio of the compensation of top executives to the lowest-paid employee is set at less than 10 to 1 in all firms.

Mondragón has taken leadership in the crafting of collaborative research agreements. It is one of the founding partners of the Microsoft Innovation Center in Garaia Park, Spain. This initiative is in line with its "vocation for innovation" and builds on its strength in cooperation and collaboration, which are crucial bed stones of scientific research.

Cooperatives have had a survival rate similar to or better than that of conventional firms after the recent global recession, and financial cooperatives out-performed traditional investor-owned banks before, during and after the global financial crisis, notes a 2012 ILO study. Employee

Share Ownership Programs (ESOPs) are another significant business alternative. Data show that firms with ESOPs that have effective employee participation in management out-perform similar non-ESOP firms, reports the National Center for Employee Ownership in the U.S..

State-owned and state-controlled enterprises account for an even greater share of world output than cooperatives. According to a 2013 OECD study, total value of sales of the 2,000 largest of these companies was $3.6 trillion in 2011 and total output amounted to 6% of global GDP. These enterprises do not differ much from other firms in how they operate; however, a changed political situation could radically transform their business practices.

Overall, many social enterprises, through their acceptance of social responsibilities, are laying the foundation for a new norm in business, one that may in the future be reflected in a business's license to operate. As with any organization, these enterprises are not without problems and must be integrated into a social framework that monitors and clamps down on any abuse or harmful behavior.

Stakeholder democracy The spread of cooperatives, benefit corporations and other alternative enterprises are contributing to a transformation of economic power, but also needed is a shift of power from the corporate elite and shareholders to those impacted by corporate behavior, including employees, customers, suppliers, and communities. These stakeholders have a right to a say in decisions that have a profound effect on their lives. After all, possible consequences of corporate decisions for these stakeholders include loss of life, of livelihood, and of home and property -- not to mention the devastating effects of climate change.

The rights of stakeholders are legally recognized to varying degrees by member countries of the European Union, Japan and elsewhere, although there is very limited legal voice for stakeholders in the U.S. The EU requires that large international companies investing in two or more member countries set up councils that provide workers a voice in major decisions regarding labor. In Germany, workers in companies employing more than 2,000 persons elect half of the company's supervisory board members and, in smaller firms, a smaller percentage. Although studies have found little impact on firms' outcomes, greater worker voice has helped to safeguard workers' interests.[8]

Economist and former U.S. Labor Secretary Robert Reich and others have pointed out that stakeholders participated more actively in the economy before the recent wave of financialization hit. He holds out hope of a return to greater stakeholder activism, citing the example of the successful Market Basket strike in New England this year, which united customers, managers and workers to reverse the ouster of the company's worker- and customer-friendly CEO.

There has long been recognition that the public interest should be represented on the boards of large corporations. But even in cases where individual directors are charged with this role, their priorities and qualifications may be indistinguishable from those of other directors. The Federal Reserve, for example, specifies that its "class B and class C directors are selected to represent the public" but these directors are largely drawn from the ranks of corporate CEOs, with the occasional member of a Chamber of Commerce or an academic institution.

Collaborative ownership of the giants Firms with tens of thousands of employees are social enterprises that can rival or eclipse entire nations in size. Their actions create waves that are tsunamis for those caught in their path. Taming these beasts is an urgent priority. Having a few stakeholder representatives on the boards of these giants will not suffice to safeguard people's interests. While most should be made smaller, as long as giants remain, a majority of the board of directors should be representatives of the public interest, as Gar Alperovitz of the Democracy Collaborative and others have noted.

Allen White of the Tellus Institute proposes transferring 50% of a company's stock to a firm-specific public trust. Perhaps 1 or 2% would be transferred yearly, until the 50% threshold is reached. The trust, in turn, would control 25% of director seats; stakeholders, 25%; other shareholders, 50%—but with shareholder voting rights depending on the duration of their investment. Of course, once nations reach the point where they make such demands of corporations, other similarly radical demands will also be possible.

How a firm's public trust is set up and how public interest representatives are chosen will be critical to how well the public's interests are served. There are significant difficulties involved in identifying the true interests of different groupings in society and in including those standpoints in evaluations of alternative business decisions.

Collaborative ownership: how do we get there from here? One among the possible paths to collaborative ownership is through the nomination of potential corporate board members by grassroots organizations. The final selection of these potential board members for training and appointment would be done through a representative democratic body.

To elaborate, the requirement that a certain percentage of board members be professionally trained and independent – which is already being discussed in business circles -- opens the possibility that candidates for training be selected by labor, nonprofits, local officials, small business, and other groups not dependent on corporate funding, based on experience and background. The training, done through universities' public and business administration schools, would be financed by a small tax on shares, derivatives and options traded on exchanges. Once trained and elected or appointed to a board, these professionals would be paid from a common fund financed by the corporations using their services. They would also have access to experts as needed for their work, paid for by the corporation.

Another approach to upholding a firm's commitment to customers and other stakeholders is through turning over ownership of the firm to a foundation. Colin Mayer envisages this as the path to corporate reform, with shareholders voluntarily setting up nonprofit trusts to oversee corporate activity.[9] Some of the largest companies in the world are majority-owned by foundations, typically set up by former family owners. These include Bosch (the German electronics firm well-known for its automotive components), the Tata Group (an Indian conglomerate that bought out British Steel and Jaguar), and Novo Nordisk (a Danish pharmaceuticals firm). The foundations or trusts provide oversight of the overall conduct of business, ensuring that the firm adheres to founding values and honors its commitments. But the values and commitments upheld are determined by the persons setting up and controlling the trust – truly democratic values would require democratic control.

Other proposals would tame the corporate beast through ensuring independent financial and social auditing (not paid directly by the firm being audited) and other measures. However, only those proposals that guarantee employees, communities, and customers a significant number of voting representatives on the key committees and boards of companies would bring effective democracy to business. And dealing with systemic problems like discrimination and climate change requires further radical reforms, including, for example, participatory planning processes.

A renaisssance of democracy

The future of democracy depends on transforming how we do business. We need a shift of power within companies—from a small, wealthy elite to a balanced representation of labor, communities, women and other stakeholders. Only such a shift in key decision-making bodies can assure better outcomes. We have reviewed a broad range of initiatives, aimed not only at instituting a means of increasing business accountability, but also at transforming corporations and creating a new business culture.

Democratizing business enterprise is not simply a matter of adding new voices to existing processes. Rather there is a need to change processes. As we learn from standpoint theory, self-organization and collective action are critical to gaining and exercising power.[10] A person can only represent the true interests of a group if he or she has emerged as a leader through the internal democratic processes that characterize self-determination. This implies that reforms that increase grassroots, collective voices in business decisions are of especial importance – whether through structural changes that bring new standpoints to corporate decision-making bodies or through new legal requirements for stakeholder representation, embodied in federal charters or enforceable regulations.

Given the groundswell of support for radical reforms of corporations, there is an opening for changing currently pervasive understandings of business rights and responsibilities – to new thinking that prioritizes the protection of human rights and the environment. With such a change in thinking, progress can be made in democratizing the corporation and instituting new norms for business. And the political mobilization required for an even more thorough transformation of the economy can advance.

When business takes into account what is best for society in all its diversity, we will have better social outcomes. It is understandable that the power elite, Occupy Wall Street's denominated "1%," does not want to lose control. But that's not the only obstacle to change. Many workers fear the loss of jobs and the increased economic insecurity that big business threatens whenever faced with popular demands for democratic change—especially for new labor or environmental legislation. Once such changes are in place, of course, working families will benefit, as their jobs, health, incomes, and security rise higher on the list of business priorities.

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9 Mayer, Chapter 9, pp. 195-237.

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