Corporations and Information: Secrecy, Access, and Disclosure

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The tremendous economic power wielded by large corporations has vast political and social repercussions. As this power expands, demands for regulation are heard with increasing frequency. These demands are counterbalanced, however, by a growing recognition of the vital contributions that large corporations make to our economic
well-being. "[P]ublic concern about the irresponsible and unac­
countable exercise of corporate power," in other words, "is matched
by an equal worry about the economic inefficiencies often caused by
the measures we have traditionally fallen back on to deal with that
concern" (p. 5).

In Corporations and Information, Russell Stevenson advocates an
alternative strategy for controlling corporate power, a strategy based
on increasing the flow of information from corporations to govern­
ment and the market place. He believes that it is necessary "to reas­
sert some effective measure of social control over corporate
activities" (p. 5), but that existing regulations are both expensive and
unresponsive to societal needs. Stevenson's strategy relies on the
ability of the public and private sectors to respond to the disclosure
of undesirable corporate behavior. It is unfortunate, therefore, that
he fails to demonstrate that increased disclosure will ever force
changes in corporate policies.

Stevenson's defense of additional disclosure proceeds in three
steps. In Part I, he examines corporate interests in secrecy. His anal­
ysis concentrates on trade secret law and economic theories of com­
petition. Disclosure, he argues, increases market efficiency (p. 31),
and serves a variety of governmental and consumer interests. Cor­
porate managers counter that public disclosure violates their para­
mount economic interest in privacy. But the right of privacy,
Stevenson maintains, derives from complex social values that reflect
the importance of the individual in society (p. 69). Corporations, in
Stevenson's view, are not entitled to the same privacy rights as indi­
viduals, and, therefore, cannot conceal information that might em­
arrass management or reveal conflicts of interest.¹ He further
claims that secrecy is often used to perpetuate a powerful and ineffi­
cient corporate bureaucracy, and concludes:

[The motivations underlying the corporate urge for secrecy are com­
plex and multifarious, and they are not at all limited to the considera­
tions of economic competition usually advanced in its defense. An
examination of these motivations leads inevitably to the conclusion
that the system would be much improved if some of the barriers of
secrecy were broken down. [P. 68.]

His support, however, is almost entirely anecdotal,² and does not ap­
pear to justify so sweeping a conclusion.

¹. Stevenson notes that disclosure of negative information can result in shareholder dissat­
sisfaction and eventual removal of incumbent management; thus management has a personal
interest in keeping poor performances secret. P. 53.
². Stevenson describes an incident at a General Motors shareholder meeting where the
chairman clumsily evaded questions regarding the ability of incumbent management to self­
perpetuate; he also examines the corporation's self-serving concern about its public image and
how the fear of adverse publicity results in nondisclosure of information, the disclosure of
which would not directly benefit the corporation; he cites several instances where corporations
circumvented governmental disclosure requirements by altering communication channels or
In Part II, Stevenson discusses a number of existing disclosure laws and suggests possible improvements. He canvasses disclosure methods designed to benefit both consumers and investors in a workman-like but unspectacular manner; the reader will find little new in either his criticisms or his suggested reforms. He notes, for example, the accounting profession's inability to develop a uniform, "meaningful system of financial accounting" (p. 99), and agrees with the general criticism that potential liability discourages disclosure of "soft" information that investors would otherwise find useful. These criticisms, of course, have been widely discussed in the legal literature.3

Stevenson saves his most thoughtful analysis for Part III. There he argues that existing disclosure requirements have been effective, but insufficient. Corporations, he believes, feel pressure to respond to the increasing public demand for social accountability, but the benefits of candid disclosure of social performance are often outweighed by its economic and social costs. As a result, disclosure will not occur unless mandated by the government (p. 151). Stevenson thus advocates imposing federal disclosure requirements on large4 publicly and privately held corporations because they exert market power that must be watched and controlled (pp. 183-85). Small corporations, too weak to wield monopoly power, would be exempt from the new requirements. Stevenson's sensitivity to social issues (pp. 191-96), however, may leave the reader puzzled at the author's insistence that market power should be the sole determinant of the appropriateness of disclosure.

The efficacy of his disclosure proposal, moreover, is undocumented in a number of respects. Corporations are, Stevenson emphasizes, unwilling to disclose information voluntarily. Ensuring that they provide complete and accurate information may thus require an enforcement mechanism that rivals the scope and intrusiveness of existing regulatory agencies. And Stevenson fails to demonstrate that the information he wants disclosed can be put in a simple and easily comprehensible form. More important, he does not adequately demonstrate that consumers or investors will use this information to increase the social accountability of large corporations. Consumers are concerned primarily with product prices and quality; investors are most interested in security, capital appreciation, and income. Stevenson assumes, without support, that individ-

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4. Stevenson recognizes that any line drawn between large and small corporations will be arbitrary. But he proposes using a sales figure (a quarter of a billion dollars), number of employees (10,000), or minimum assets ($250 million) test; his primary consideration is the amount of power a corporation wields. P. 185.
uals will seek to exert pressure on corporations by changing their consumption and investment patterns. Finally, corporations might maintain a united front and refuse to accede to consumer or investor demands; if so, the disclosure proposal will inevitably fail.

Corporations and Information is a provocative look at controversial issues. Public knowledge of corporate activity and power is clearly inadequate, and disclosure may indeed be a viable alternative to direct regulation. Stevenson, however, too quickly dismisses the need for secrecy, and assumes rather than proves that disclosure will increase the social accountability of large corporations. The author has an appealing theory but fails to prove his case.\footnote{Corporations and Information is also reviewed by Howell, Book Review, 67 A.B.A.J. 618 (1981); Wilson, Book Review, 105 LIN. J. 1626 (1980).}