Corporations and Information: Secrecy, Access, and Disclosure

Michigan Law Review

CORPORATIONS AND INFORMATION: SECRECY, ACCESS, AND DISCLOSURE. By *Russell B. Stevenson, Jr.* Baltimore: The Johns Hopkins University Press. 1980. Pp. xi, 227. $17.95.

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 unaccountable 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 government and the market place. He believes that it is necessary "to reassert 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 analysis concentrates on trade secret law and economic theories of competition. Disclosure, he argues, increases market efficiency (p. 31), and serves a variety of governmental and consumer interests. Corporate managers counter that public disclosure violates their paramount 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 individuals, and, therefore, cannot conceal information that might embarrass management or reveal conflicts of interest.[1] He further claims that secrecy is often used to perpetuate a powerful and inefficient corporate bureaucracy, and concludes:

> [T]he motivations underlying the corporate urge for secrecy are complex and multifarious, and they are not at all limited to the considerations 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 appear to justify so sweeping a conclusion.

---

1. Stevenson notes that disclosure of negative information can result in shareholder dissatisfaction 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 large[4] 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-

methods so as to avoid literal application of the regulations to such communications. Pp. 52-63. He also briefly analyzes bureaucratic inefficiencies caused by internal secrecy. Pp. 63-65.

3. *See, e.g.*, R. JENNINGS & H. MARSH, SECURITIES REGULATION 161-204 (4th ed. 1977).

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.[5]

5. *Corporations and Information* is also reviewed by Howell, Book Review, 67 A.B.A.J. 618 (1981); Wilson, Book Review, 105 Lib. J. 1626 (1980).