

Understanding the “Corporate” in Corporate Social Responsibility

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I. INTRODUCTION

As progressives confront the problems of the twenty-first century, be they global poverty and increasing income inequality, the scourge of HIV and other diseases, educational disparities, or climate change, an increasingly popular strategy is to enlist corporations in the effort. Even as some progressives continue to launch attacks on corporate misbehavior, often excoriating corporations for causing and exacerbating the world’s greatest ills, many progressives also understand that corporations can be part of the solution, not just the problem.

The growing popularity of corporate social responsibility (“CSR”) is premised on the belief that modern corporations have the financial resources, human capital, and global influence to advance progressive causes.¹ And though corporations themselves initiate CSR voluntarily—whether to add value to the company’s brand, attract targeted consumers, forestall regulation, or develop a particular corporate culture—a significant fraction of CSR is a response to political and consumer campaigns by progressives.² Indeed, progressives have invested considerable energy and resources to target corporations as potential agents for change.

However important CSR has become to the progressive agenda, and however proudly many corporations bring attention to their CSR efforts, progressives should not delude themselves into thinking that corporations

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¹ The popularity of CSR movements is undeniably growing. *See, e.g.*, Dashka Slater, *Resolved: Public Corporations Shall Take Us Seriously*, N.Y. TIMES, Aug. 12, 2007, § 6 (Magazine), at 22 (documenting the growth of shareholder activism); *see also* Henry Blodget, *The Conscientious Investor*, THE ATLANTIC, Oct. 2007, at 78 (illustrating the growth of, and problems with, socially responsible investing). Of course, the debate over what social obligations corporations have, if any, has been vibrant for many decades. For an early attempt to preempt the rise of CSR, *see* Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES, Sept. 13, 1970, (Magazine), at SM17.

² For an assortment of motivations behind various activist campaigns *see* Charles Eesley & Michael J. Lenox, *Secondary Stakeholder Actions and the Selection of Firm Targets* (May 30, 2005) (unpublished manuscript, on file with the *Harvard Law & Policy Review*), available at http://faculty.fuqua.duke.edu/~mlenox/papers/stake_wp2.pdf.

will act unilaterally on the public's behalf.³ Corporations are constrained by shareholders and market competition in their ability to allocate funds for social causes, and the "win-win" scenarios in which firms maintain a competitive advantage while also advancing social causes may be less common than we would hope. An inherent and inescapable tension exists between pursuing desirable social outcomes and striving for maximum profits. One veteran Wall Street analyst remarked that any suggestion that socially responsible behavior leads to vast financial reward "is just dreaming."⁴

Empirical research confirms the lack of evidence showing that good deeds lead to good profits.⁵ Even studies that demonstrate a correlation between socially responsible corporate behavior and superior financial performance cannot always convincingly illustrate which way the causal arrow points because financially successful companies simply have more money to dole out to social initiatives and larger marketing budgets to publicize their CSR programs. Further, because some companies overstate or misrepresent the extent of their contributions, a practice commonly known as "greenwashing,"⁶ it can be difficult to determine which companies actually have a meaningful social impact. Metrics of social responsibility are sometimes so faulty that companies that initially receive praise for being good citizens are later exposed as laggards.⁷

Still, corporations can be pressured to invest their resources to advance progressive causes, and progressive activists deserve praise for their several successes in extracting socially desirable behavior from these profit-maximizing organizations. But progressives have limited political capital, and they need to expend that capital wisely. Too often progressives pursue campaigns that yield either fruitless results or token concessions from targeted corporations. While convincing corporate managers to pursue progressive goals should remain a priority, progressives have significant room for improvement in understanding when and how to engage with corporations, and

³ See generally Aaron Chatterji & Siona Listokin, *Corporate Social Irresponsibility*, DEMOCRACY: J. IDEAS, Winter 2007, at 52, available at <http://www.democracyjournal.org/article.php?ID=6497>.

⁴ See Blodget, *supra* note 1.

⁵ See Aaron K. Chatterji, David I. Levine & Michael W. Toffel, *How Well Do Social Ratings Actually Measure Corporate Social Responsibility?* (Harvard Bus. Sch., Working Paper No. 07-051, 2007), available at <http://www.hbs.edu/research/pdf/07-051.pdf>.

⁶ See Thomas P. Lyon & John W. Maxwell, *Greenwash: Corporate Environmental Disclosure under Threat of Audit* (Ross Sch. of Bus. Working Paper Series, Working Paper No. 1055, 2006), available at http://webuser.bus.umich.edu/tplyon/Lyon_Maxwell_Greenwash_March_2006.pdf.

⁷ One recent example of undeserved CSR praise is Morgan Stanley's inclusion in *Working Mother* magazine's list of "100 Best Employers for Working Moms" shortly before paying \$54 million to settle a sex discrimination lawsuit. *Marketplace: A List Mom Should Watch Out For* (NPR radio broadcast Sept. 24, 2007), available at http://marketplace.publicradio.org/display/web/2007/09/24/a_list_mom_should_watch_out_for. Ironically, Morgan Stanley cited its inclusion on *Working Mother*'s list as part of its defense. *Working Mother*'s list is even more suspect since many on the list fail to offer rudimentary family-friendly services, yet purchase significant advertising in the magazine. *Id.*

how to effectively expend the progressive movement’s limited political resources.

We recommend that progressives adopt a “know your enemy”⁸ approach and consult the academic and practitioner knowledge on how corporations compete, pursue opportunities, and survive in the current business and political environment. A better understanding of corporations and corporate behavior would enable progressives to more effectively procure corporate cooperation with fewer political sacrifices. In short, if the goal of the progressive movement is to change corporate behavior, progressives must first understand how corporations behave.

So, can corporations change the world for the better? In this article, we argue that the answer is “yes,” but not always in the ways progressives might expect. Progressives need to avoid traditional political tactics that rest on categorical approaches, which usually rely on confrontation, condemnation, and coercion. Furthermore, progressives must eschew strategies that manipulate corporate law in the hope of coercing corporations to act on behalf of progressive causes⁹ or rely on moral suasion to compel corporations to voluntarily solve vexing global problems.¹⁰ Tinkering with corporate legal obligations to compel social responsibility will likely foster hostility, spurring investment to undermine progressive efforts and, ironically, reducing the likelihood that corporations will work to solve larger social problems. Instead, progressives must tailor their strategies to the strengths and inclinations of the targeted corporations. Our argument rests on the idea that business organizations have embedded “capabilities” that both determine a particular corporation’s strengths and delimit the circumstances in which a corporation can excel.

The implication is that progressives must recognize that the current political environment offers a continuum of strategies, and the effectiveness of each is a function of the surrounding political and business environment. Thus, progressives should carefully select their strategies and tailor their tactics to the targeted company. In the end—whether targeting the government as voters, a firm as a political collaborator, or a corporation as consumers and investors—progressives will have more success, and will use their limited political resources more effectively, when they adopt the strategies we outline in this paper.

To articulate this strategy, we first describe how global politics are changing—most significantly, the shift from public governance to private governance—and how corporations are adjusting to those political and economic changes. We conclude that corporations are increasingly focal actors

⁸ SUN TZU, *THE ART OF WAR* 129 (Samuel B. Griffith trans., Oxford University Press 2d ed. 1971).

⁹ See Kent Greenfield, *Saving the World With Corporate Law?* (Boston Coll. Law Sch., Research Paper No. 130, 2007), available at <http://ssrn.com/abstract=978242>.

¹⁰ See Slater, *supra* note 1.

in the battles that progressives wage, but that progressives have not incorporated a realistic model of corporate behavior into their strategies. To remedy this gap, we then delve into what the corporation is, explicating both its potential and its limits. The corporation is not an atomistic “black box” that easily responds to changing incentives, but is rather a complex entity with embedded capabilities and culture that are often ill-equipped for change. As such, we are skeptical of the potential effectiveness of progressive corporate law, which targets all corporations indiscriminately, to deliver on progressive goals. Instead, we offer some alternative strategies based on a more nuanced understanding of the firm in a world increasingly dominated by private politics.

II. HOW PRIVATE GOVERNANCE IS CHANGING PROGRESSIVE POLITICS

For decades, progressive politics followed the traditional political paradigm in which interest groups lobbied the government for certain policies. However, as economic globalization has enabled and often compelled firms to locate operations beyond the reach of domestic governments, this traditional paradigm has yielded to a new political landscape where private entities—non-governmental organizations (NGOs), corporations, and private interest groups—have replaced domestic government’s traditional roles of regulating quality, imposing standards, and providing public goods. Increasingly, progressives find themselves battling in unfamiliar territory, in the realm of “private politics”¹¹ where they must demand responses from private entities.

Under traditional politics, movements that sought to alter corporate behavior targeted their political attention at domestic governments. Interest groups offered the currency of votes, campaign contributions, and political mobilization. They demanded in return regulations, taxes, or appointments that would yield their desired social outcome.¹² This strategy was vulnerable to many sources of failure. Often, the governmental action requested (and often designed) by progressives to compel certain corporate behavior was co-opted by targeted corporations, leading to what is commonly known as “regulatory capture.”¹³ Meanwhile, the administrative state increasingly delegated policymaking to professional and industry groups, so progressive demands for product quality and safety, for example, led instead to collusive behavior, entry barriers, and adverse outcomes—high prices and poor qual-

¹¹ See, e.g., David P. Baron, *Private Politics, Corporate Responsibility, and Integrated Strategy*, 10 J. OF ECON. & MGMT. STRATEGY 7 (2001).

¹² For a general overview of interest group politics, see EDWARD C. BANFIELD & JAMES Q. WILSON, *CITY POLITICS* (1963). For an economic approach that models an exchange of votes for campaign contributions, see Arthur D. Denzau & Michael C. Munger, *Legislators and Interest Groups: How Unorganized Interests Get Represented*, 80 AM. POL. SCI. REV. 89 (1986).

¹³ The seminal article in the now-abundant literature on regulatory capture is George J. Stigler, *The Theory of Economic Regulation*, 2 BELL J. ECON. & MGMT. SCI. 3 (1971).

ity—for consumers.¹⁴ Political scientists have observed that even the most successful progressive political movements have a tendency to become co-opted by the governmental agencies from which they demand attention, thus the very action demanded by the social movements becomes the source of the movements’ failure.¹⁵

Nonetheless, progressive politics largely thrived within the traditional political paradigm. Progressive political efforts led to important civil rights, labor rights, environmental, and public safety regulations. Most notably, the 1960s and 1970s saw the passage of the Civil Rights Act, the Voting Rights Act, the Clean Air Act, the Occupational Safety and Health Act, the Consumer Product Safety Act, the Age Discrimination and Employment Act, the Endangered Species Act, and the National Environmental Policy Act.

However, the modern political economy has made progressive political success substantially more difficult. Largely because of economic globalization, domestic governments have become increasingly unable to control the social consequences of market forces.¹⁶ For example, increased production outsourcing to low-wage nations has diminished the ability of minimum wage legislation to further progressive wealth distribution in the production chain and has hindered the ability of domestic governments to fully assert their economic and social goals. Globalization similarly restrains the efficacy of labor laws, environmental regulations, and even tax codes.¹⁷

Consequently, nearly all the popular mechanisms that progressives had previously relied upon are either incapable of achieving the desired objectives or, frequently, harm the individuals they are targeted to help. Demands for permitting the unionization of garment workers, for example, accelerated the outsourcing trend and left American workers without jobs, rather than merely without union representation. Heightened emissions regulations pushed some manufacturers to the third world, where regulations were far weaker than the U.S. rules that activists deemed inadequate in the first place (thus increasing, rather than decreasing, total pollution). The threat of going overseas, to new workers and to a new regulatory environment, has given corporations a trump card that progressives appear unable to confront through traditional public politics.

¹⁴ See Clark C. Havighurst, *Contesting Anticompetitive Actions Taken in the Name of the State: State Action Immunity and Health Care Markets*, 31 J. HEALTH POL. POL’Y & L. 587, 587–92 (1964).

¹⁵ FRANCES FOX PIVEN & RICHARD A. CLOWARD, *POOR PEOPLE’S MOVEMENTS: WHY THEY SUCCEED, HOW THEY FAIL* xxi–xxiv (Vintage Books 2d ed. 1979) (1977).

¹⁶ For the political consequences of economic globalization, see Gary Gereffi & Frederick Mayer, *Globalization and the Demand for Governance*, in GARY GEREFFI, *THE NEW OFFSHORING OF JOBS AND GLOBAL DEVELOPMENT* (2006). Some have described the subsequent regime of private governance as “The NGO-Industrial Complex.” Gary Gereffi et al., *The NGO-Industrial Complex*, 125 FOREIGN POL’Y 56, 64 (2001).

¹⁷ For a discussion of the impact of globalization on environmental regulation, and alternative global regulatory responses, see generally Jonathan Wiener, *Global Environmental Regulation: Instrument Choice in Legal Context*, 108 YALE L.J. 677 (1999).

In response, progressives have expanded their efforts to reach into a world of “private politics,” where private entities—corporations, industry associations, and other commercial entities—are the targets of political activity. Progressives use the threat of consumer boycotts and the subsequent possibility of decreased market share or damage to a corporate brand to compel firms to act in accordance with a progressive political agenda. The rise of private politics represents a new political reality and a new menu of political instruments that have emerged for progressive causes.

Accordingly, progressive activists now pressure companies to adopt voluntary codes of conduct, invest in the local community, and disclose the environmental impact of their operations. Progressives also wage global efforts to lobby trade associations and multinational conglomerates to set international industry standards that achieve similar results. Sometimes, these efforts do little more than insulate firms from the threat of public politics and potential government regulation. But in many cases, these efforts lead to self-regulation where corporations create industry-wide schemes to govern themselves. Self-regulating regimes rest on substantive measures, such as voluntary standards, and often (but not always) on monitoring mechanisms to ensure compliance. Voluntary codes have been adopted in many industries, ranging from apparel to forestry.

In some respects, the rise of industry self-governance has constituted a meaningful advance for progressive causes. Adopting industry-wide standards is one way that corporations can solve collective action problems, whereby one firm refrains from taking a socially conscious yet costly step on its own unless it can guarantee that its competitors will do the same. Standards can also facilitate the sharing of best practices across firms in a particular industry and lead to pro-social and pro-competitive cooperation. In these respects, industry-wide collusion can replace government regulation, which would normally provide public goods and facilitate beneficial collective action. Moreover, in a globalized world with many different markets, progressives might more effectively enact rapid international change by engaging industries directly. For example, instead of lobbying hundreds of national governments, progressives could lobby McDonald’s and other fast food restaurants to adopt voluntary codes of conduct that require the listing of nutritional information in all of their restaurants around the world.

However, substantial risks accompany reliance on corporate self-regulation. First, companies might lack the capability to monitor their own activities effectively. Take the example of Mattel, which until recently had received praise for one of the most rigorous safety protocols in the toy industry. Rather than have the government test the safety of every toy, companies in the industry (including retailers, manufacturers, and contractors) developed voluntary codes of conduct to monitor safety. Over many years, Mattel had developed a trusting relationship with Lee Der, a Chinese contract manufacturer, and allowed the Chinese firm to manufacture and test the safety of the toys it made for Mattel. While effectively “outsourcing product safety”

to a foreign firm might seem controversial, international business scholars have long argued that developing-country firms can acquire capabilities and valuable technologies through alliances with multinational firms. If Chinese companies could successfully acquire capabilities to ensure product safety from American firms, consumers all around the world could benefit. Unfortunately, that was not the result in this case. Lee Der, under pressure to cut costs, outsourced painting to another Chinese firm, which used lead paint. The ensuing recall not only led to bad publicity for Mattel, but also to calls for stricter regulation of the toy industry and for heightened product safety. The legislative battle will likely center around strengthening the standards, increasing the funding for the Consumer Product Safety Commission, and requiring firms to pay for third-party pre-market testing.¹⁸

There is also a substantial likelihood that voluntary codes are little more than window dressing. This concern has been directed at De Beers and the world’s diamond mines, which established the Kimberley Process in 2002 to end the proliferation of “blood diamonds” that fund civil strife in war-torn nations.¹⁹ The Kimberley Process requires that each diamond entering a member nation’s market is certified to have come from a legitimate source. However, a diamond’s origins are virtually impossible to guarantee, leading some to fear that the Kimberley Process is little more than a “fig leaf” or, worse, a marketing ploy to assure concerned customers rather than an enforcement tool to ensure compliance.²⁰

Furthermore, in a world that relies on voluntary codes, even symbolic certifications can dilute meaning or misinform consumers. For example, if NGOs and labor groups support a code of conduct that requires a particular sector to pay workers a living wage, the industry association might introduce a code with a suspiciously similar sounding acronym that offers to pay a “prevailing wage.” Even if substantial differences separate the two codes, it would be nearly impossible for most observers to distinguish between them. Most would likely demand only that the companies are abiding by some code of conduct. In the extreme case, the proliferation of codes dilutes the value of each code that came before it, and even if some companies might find it profitable to go beyond compliance with the industry standard, confusion among consumers might convince them that it is not worth the trouble.²¹

¹⁸ Nicholas Casey & Nicholas Zamiska, *Chinese Factory Is Identified in Tainted-Toy Recall; Mattel’s Reluctance Was Seen by Critics As Regulatory Flaw*, WALL ST. J., Aug. 8, 2007, at A4.

¹⁹ Barak D. Richman, *Ethnic Networks, Extralegal Certainty, and Globalisation: Peering into the Diamond Industry* 13 (Duke Law Sch. Legal Studies Research Paper Series, Paper No. 134, 2006), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=949467.

²⁰ Barak D. Richman & Joost Pauwelyn, Op-Ed., *Blood Diamonds’ Many Facets*, NEWS & OBSERVER (Raleigh), Jan. 11, 2007, at A13.

²¹ Conversely, voluntary initiatives could encourage free riding, especially if there are no sanctions to punish poor performers. See Andrew A. King & Michael J. Lenox, *Industry Self-Regulation Without Sanctions: The Chemical Industry’s Responsible Care Program*, 43 ACAD. OF MGMT. J. 698, 702 (2000). There is a similar danger that voluntary measures would invite selection effects, where only the best or the worst join a voluntary initiative. See Andrew King

But the biggest problems with industry self-regulation, and the larger challenge of private governance, mirror many of the problems that plagued progressive efforts in the traditional paradigm of domestic politics. Industry-wide cooperation facilitates cartels, forecloses entry by new competitors, and harms consumers. Private interests easily hijack international efforts to demand progressive results, and because the governmental and NGO actors who put rules in place are even more remote and less accountable to popular politics than domestic politicians, they succumb to interest group politics with little resistance. Consequently, interventions are manipulated by the parties they target, minority groups who resist are easily co-opted, and, as often occurs in domestic politics, international rules are often desired, rather than avoided, by the parties the rules target. By permitting corporations to set market rules that favor incumbents and stifle innovation, industry self-governance tends to be substantially more harmful than helpful to the targets of progressive causes.

The flaws of industry self-regulation present difficult challenges for progressives. One potential response would be to devise measurements for meaningful corporate social performance that could strengthen private governance. George Akerlof's pioneering work teaches that information asymmetries can have a significant impact on the functioning of markets.²² If a responsible company has no credible mechanism through which to communicate its virtue to relevant stakeholders, it may reconsider costly investments in good deeds. However, if a way to communicate this information to interested parties exists, then a market can emerge to reward corporate social responsibility. The key is to devise meaningful yet transparent and straightforward metrics of social performance so that responsible companies actually stand to benefit by differentiating themselves. By reducing the information asymmetries between companies and their stakeholders, progressives can make the market for social good work more effectively.²³

However, the shift from public to private governance will require more than better metrics. The absence of a receptive government makes the challenge of achieving meaningful change more difficult, and progressives are still in the process of adjusting to this new playing field and recognizing the

& Michael W. Toffel, *Self-Regulatory Institutions for Solving Environmental Problems: Perspectives and Contributions from the Management Literature* 13 (Harvard Bus. Sch. Tech. & Operations Mgmt. Unit, Research Paper No. 07-089, 2007), available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=985619.

²² See generally George Akerlof, *The Market for "Lemons": Quality Uncertainty and the Market Mechanism*, 84 Q. J. OF ECON. 488 (1970).

²³ In fact, there are several current efforts to standardize metrics and improve understanding about how to measure social performance. These include the Global Reporting Initiative, which is based in Amsterdam, and is made up of experts on corporate sustainability from around the world. See Global Reporting Initiative, <http://www.globalreporting.org> (last visited November 10, 2007). Interestingly, companies are increasingly evaluating their own social impact, which presents another opportunity for progressives and firms to find common ground. Charitable organizations, such as the Gates Foundation, are also keenly aware of the need to measure the impact of their philanthropy and could be enlisted in this effort as well.

limits of many of the current approaches. The new political framework has placed corporations at the front lines of progressive politics, and progressives need to find constructive ways to engage directly with these important business organizations.

To succeed in this environment, we argue that progressives need to understand corporations as well as they understand the political system (and perhaps even better, since the shift to private politics has made corporations even more crucial in the battles that concern progressives). We argue that a careful study of how corporations behave could greatly inform progressive strategies. In the next section, we summarize some of the insights from this body of academic research and explain how a deeper understanding of corporations can help progressives engage in more successful private politics.

III. UNDERSTANDING THE FIRM

Since corporations have a strong inclination to resist, co-opt, or preempt government directives, and since the spread of economic globalization has made it even easier for corporations to avoid governments altogether, progressives have understandably sought mechanisms to demand change from corporations directly. However, governments are critically different from firms, as progressives realize when they find corporations unreceptive and unresponsive to political rhetoric that has traditionally been effective in the public sphere. These differences extend far beyond the obvious contrast between governments as vote maximizers and corporations as profit maximizers. In fact, neither firms nor governments are singularities that are explainable by simplistic models. Just as political scientists have invested great energy in understanding the complexities of governments—how they respond to environmental changes, how their internal mechanisms operate, and how they implement actions—business scholars have similarly studied the corresponding complexities of firms.

A deeper understanding of corporate behavior begins with the recognition that firms are not (as many activists—and neo-classical economists—often presume) a mechanistic “black box” that dutifully translates inputs into outputs. A corporation thus cannot seamlessly redeploy itself in one direction or the other, no matter the incentives. Decades of academic scholarship have revealed that corporations are complex bundles of interdependent resources and capabilities that constrain their ability to undergo rapid change in response to changes in the external environment. In recognition of these facts, organizational theorists, rooted in economics, sociology, and other fields, aim to explain how disparate human resources and capital investments are gathered to create cooperative and productive behavior, despite massive agency and organizational costs.

One particularly influential approach to understanding the firm that has gained popularity in academic business circles rests on the observations that firms have unique resources and capabilities that enable them to excel in the

marketplace. In this “resource-based view” (RBV) approach, “capabilities” are defined as a firm’s core resources—they embody what the firm does well. These capabilities lie embedded within a firm’s infrastructure, reflect both the firm’s human resources and its institutionalized routines, and are difficult to duplicate or replicate by competitors.²⁴

A firm’s capabilities include everything that enables the firm to excel in the marketplace, and its financial success depends not only on the power of its capabilities but also on its managers’ abilities to recognize the market opportunities in which their firm’s capabilities would be best utilized. The challenges endemic to recognizing and capitalizing upon a firm’s capabilities are especially salient in times of political, technological, or regulatory change. For example, when digital technologies began transforming the photograph and camera markets, Kodak scrambled to adopt and profit from the emerging technologies. Its success came when it realized its unique capabilities were not reflected in its ability to develop new technologies, but rather, in its ability to understand and meet consumers’ picture-taking needs (as one executive succinctly stated, “Kodak is a picture company, not a technology company.”). Kodak thus acquired externally-developed technologies through joint ventures and acquisitions and focused its company resources into harnessing the technologies to meet consumer needs.²⁵ Similar recognitions dictated the strategies of companies such as IBM and Dell towards the computing market: IBM offers complex and high-tech consulting services whereas Dell assembles components developed and designed by others.

The upshot is that capabilities are valuable and essential to market success because they are hard to imitate, replicate, or purchase in the open market. While this enables firms with certain capabilities to consistently outperform rivals with inadequate capabilities, it also presents challenges when firms need to adjust to new market conditions. One of the most puzzling yet persistent findings in recent business scholarship is that corporations have great difficulties adjusting to changing circumstances and acquiring new capabilities.²⁶ The literature is replete with horror stories where successful firms failed to adjust to a new technological paradigm: fountain pen manufacturers failed to acquire ball point technology, propeller plane manufacturers fell to companies making jet engines, large mainframe computing companies could not respond in time to the rise of the personal computer.²⁷ Even when market conditions demand immediate reform, firms

²⁴ For a review of the “capabilities” literature, see generally David J. Teece et al., *Dynamic Capabilities and Strategic Management*, 18 STRATEGIC MGMT. J. 509 (1997).

²⁵ See Jeffrey T. Macher & Barak D. Richman, *Organisational Responses to Discontinuous Innovation: A Case Study Approach*, 8 INT’L J. INNOVATION MGMT. 87, 102–03 (2004).

²⁶ See, e.g., Richard N. Foster, *INNOVATION: THE ATTACKER’S ADVANTAGE* 20–23 (1986).

²⁷ See Philip Anderson & Michael L. Tushman, *Technological Discontinuities and Dominant Designs: A Cyclical Model of Technological Change*, 35 ADMIN. SCI. Q. 604, 617–18 (1990); see generally, William J. Abernathy & James M. Utterback, *Patterns of Industrial Innovation*, 80 TECH. REV. 40, June–July 1978.

have trouble adjusting away from the capabilities that were originally responsible for their success.²⁸

The immediate lesson from the RBV approach is that corporations respond best—to consumer demands, to technological shifts, to political pressures—when they are asked to do something that is in line with their unique capabilities. As a starting point, progressives would do well to recognize this institutional feature of business organizations. Rather than focusing on changing the incentive structure of business to engineer a desired social outcome (an inexact science at best), we recommend that identifying the unique capabilities of business and harnessing selected ones for the social good may be more effective. Moreover, we expect that companies will respond more favorably to tailored campaigns that offer firms the opportunity to use capabilities honed by competition for social gains.²⁹ And conversely, it simply makes little sense to request a corporation to do something it is not well equipped to do.

The RBV theory offers other lessons for progressive activists, especially when activists are operating within a time of turbulent technological change. Even though capabilities are generally unique and firm-specific, certain firms have been able to acquire new technologies despite their organizational constraints.³⁰ Firms have been able to acquire new capabilities through purchasing companies (and their capabilities), developing joint ventures with companies that have different capabilities, or channeling resources into internally financed corporate venture capital funds that invest in new capabilities or new companies.³¹

Thus, progressives may be able to convince and assist companies to acquire new capabilities that are useful for the social good. For example, progressives could partner with corporations in cooperative efforts to help those corporations acquire targeted capabilities that are necessary for desired reform. Similarly, progressives could offer their own capabilities—in organizing, publicizing, and motivating social movements—and partner with corporations. Many corporations, such as Levi Strauss and Nike, for example, employ activists to oversee their compliance offices and to develop certain socially responsible policies. In short, if progressives understand how

²⁸ There are a number of interrelated explanations for this phenomenon. See Rebecca M. Henderson & Kim B. Clark, *Architectural Innovation: The Reconfiguration of Existing Product Technologies and the Failure of Established Firms*, 35 ADMIN. SCI. Q. 9, 16–18 (1990) (arguing that because of information filters and the solidification of routines, firms have trouble instituting organizational innovation); see generally CLAYTON M. CHRISTENSEN, *THE INNOVATOR'S DILEMMA: WHEN NEW TECHNOLOGIES CAUSE GREAT FIRMS TO FAIL* (1994) (arguing that firms become overcommitted to current markets, at the expense of ignoring growing future markets).

²⁹ See Michael E. Porter and Mark R. Kramer, *Strategy and Society: The Link Between Competitive Advantage and Corporate Social Responsibility*, HARV. BUS. REV., Dec. 2006, at 78, 80.

³⁰ See Macher & Richman, *supra* note 25, at 88–89.

³¹ See Gary Dushnitsky & Michael J. Lenox, *When Do Firms Undertake R&D by Investing in New Ventures?*, 26 STRAT. MGMT. J. 947, 947–48 (2005).

corporations learn, they might be able to help corporations acquire the capabilities to enable more socially desirable conduct and perhaps also become more attractive to consumers.

Similarly, progressives should understand how corporations fail. The growing tendency of disruptive innovation—in which firms fail because they cannot compete with an entrant with a new and superior technological paradigm—offers progressives a similar opportunity.³² Progressives might realize that certain industry leaders that persist in socially undesirable behavior are prone to losing their leadership mantles to technology upstarts, and progressives instead should target the new generation of leaders, rather than wasting time and money on stubborn industry incumbents (for example, progressive campaigns to pool funds for, or encourage institutional and government investment in, venture capital for clean energy as opposed to simply protesting oil company profits).

In short, the resource-based view of the firm models competition as a process in which firms play to their strengths. Firms recognize the market arenas in which, because of their unique capabilities, they can excel, and they mobilize their resources accordingly so their talents translate into profits. In the world of private politics and private governance, this insight into firm behavior is critical. Armed with a more nuanced understanding of the power and limits of corporations, progressives can begin to craft new strategies to achieve gains through private politics. In the next section, we offer some practical examples that follow from this perspective, and explain when and how progressives can work with the corporate sector to achieve social change.

IV. HARNESSING CORPORATE POWER TO CHANGE THE WORLD

We believe that the new global landscape means that progressives should update their playbook. Progressives should not be discouraged by shallow or unsuccessful corporate social responsibility efforts, but they should stop expending their political capital unwisely. We begin by observing that political strategies fall within a continuum that spans from traditional politics to the assorted and increasingly popular practice of private politics: activists can act purely as voters and target elected officials, as watchdogs and target industry associations, as collaborators with specific companies, or purely as consumers and invite responses from commercial interests.

Progressives can choose from this menu of strategies. For example, recalling the Mattel example described above, progressives can act as voters that demand action from domestic politicians to reform the Consumer Product Safety Commission. They can develop mechanisms in conjunction with industry associations to monitor and reform international manufacture and

³² See generally CHRISTENSEN, *supra* note 28.

trade of toys. They can engage specifically with Mattel, who has worked hard over many years to develop capabilities (that clearly failed in this instance) to monitor outsourced contractors to assure quality. And, at the other extreme, progressives can exercise power as consumers, informing all toy purchasers of the dangers of certain products and urging purchases from only companies that address safety concerns. In this case and many others, progressives can pursue any combination of these strategies. However, given a fixed amount of financial resources and political capital, the progressive movement might wish to focus on a particular strategy for maximum impact.

Indeed, in many cases, progressives should lobby the government directly rather than wasting political capital and financial resources asking business to do something that is not in its interest or even within its reach.³³ As discussed above, this kind of traditional politics is more difficult than ever before, but it still may hold more promise than asking corporations to take actions not in their interest. When a market failure requires government intervention to solve a problem or provide a public good, and a government is in a position to do so, then pursuing a traditional political strategy is the optimal approach. However, in many other cases—an increasing number, with the rise of globalization and private governance—progressives should pursue one or more of the strategies of private politics. We discuss each, paying particular attention to how these strategies are informed by the RBV of corporate behavior.

A. *The Progressive Industry*

As we discuss above, the challenges of globalization have forced progressives—especially when addressing problems such as child labor and pollution that are deeply shaped by international commerce—to target industries rather than governments. Progressives urge industries to adopt voluntary codes of conduct, set international industry standards, and construct industry-wide monitoring schemes to police themselves. We noted that these strategies have been the natural successors to traditional political efforts, since there is no viable international policeman, and that industry-wide self-regulation can solve some collective action problems and facilitate the widespread adoption of certain socially desirable practices.

The severe drawbacks of employing industry-wide strategies, of course, are also well known and discussed above. Such an approach can encourage collusion, dishonesty, weak enforcement, and toothless standards. For these reasons, we encourage progressives to pursue mechanisms, such as the alternatives discussed below, that encourage (not stifle) competition between rivals and force corporations to compete towards progressive goals. Nonetheless, sometimes the collective action problem is sufficiently severe

³³ See Chatterji & Listokin, *supra* note 3.

that industry-wide cooperation offers the only avenue for advancing progressive causes. The RBV theory might also suggest that industry-wide solutions might be preferable to individual firm initiatives if a firm's success has been dependant on cross-fertilizations and joint ventures with other entities, wherein the leading corporations have strong capabilities in transmitting and acquiring information. In these instances, corporations might be exceptional cooperators and coordinators, and pursuing a collaborative, industry-wide solution would build upon these capabilities.

B. The Progressive Corporation

Since capabilities are specific to individual firms, the RBV theory has the greatest relevance when progressives have specific corporations as their targets. Whereas traditional political strategies—including proposals for reforming corporate law—suggest imposing burdensome requirements onto firms, a strategy informed by the RBV school would provoke a firm to act in the way it is most comfortable and capable.

Consider, for example, progressive efforts to improve wages for low-skilled workers, and the aggressive campaign against Wal-Mart. Wal-Mart has thoroughly resisted calls for offering its workers better wages or comprehensive benefits—after all, the company excels at cutting costs. Wal-Mart does not just save on its own labor costs; it also pushes its suppliers to cut costs and is adept at utilizing technologies like RFID to increase the efficiency of its operations. The core of Wal-Mart's business model is to cut costs aggressively through innovation, market power, and non-union labor to offer the lowest possible prices for consumers. The unique combination of their capabilities has made the company quite successful and equally difficult to imitate. When progressives ask Wal-Mart to pay its workers more and offer greater benefits, the request runs counter to the heart of Wal-Mart's business model and assorted capabilities, and the firm naturally fights back. Wal-Mart now spends considerable resources battling activists through lobbying, campaign contributions, advertisements, and other methods. The result can only generously be described as a stalemate, with Wal-Mart introducing very few changes to its business practices.

But Wal-Mart cannot be described as a categorical anathema to progressives because it has contributed to other sorts of advances that progressives are forced to admire. The company has taken some high profile first steps to use its renowned influence over suppliers to advance progressive issues, such as global climate change.³⁴ Wal-Mart has also announced a plan to offer its own health insurance to its many full- and part-time employees.³⁵ Since low-cost insurance is widely deemed to be a potential solution

³⁴ Michael Barbaro, *Wal-Mart Puts Some Muscle Behind Power-Sipping Bulbs*, N.Y. TIMES, at A1. It is important to note that energy efficiency also serves Wal-Mart's private interest.

³⁵ Press Release, Wal-Mart, Wal-Mart Announces Improvements to 2008 Benefits Package (Sept. 18, 2007), available at <http://www.walmartfacts.com/articles/5301.aspx>.

to America’s growing insurance crisis, some health policy scholars consider Wal-Mart’s initiative to be a model that others should copy. These Wal-Mart initiatives offer lessons to how progressives might engage Wal-Mart more constructively. Progressives should consider trying to enlist Wal-Mart, and its very substantial cost-cutting capabilities, to promote the welfare of workers through other means. Wal-Mart could be a useful partner in devising solutions to reduce health insurance costs nationwide, and Wal-Mart’s capabilities might offer promise in addressing the larger crisis.

Companies with different capabilities could make different contributions for advancing different progressive objectives. One interesting counterexample to Wal-Mart (and a sharp illustration of how different companies, and their capabilities, are from each other), is De Beers. Unlike Wal-Mart, which excels at distributing high-volume, low-cost goods, De Beers excels at limiting the global supply of diamonds and maintaining high quality. De Beers therefore is a natural ally in stemming the flow of conflict diamonds, and progressive NGOs such as Global Witness have worked cooperatively with the company to construct the Kimberley Process that is charged to monitor the illegal trade. Both the Kimberley Process’s effectiveness and De Beers’s motives have been appropriately questioned, suggesting that conflict diamonds continue to present a problem and that the current solution requires improvement.³⁶ Nonetheless, progressives were wise to solicit De Beers’s experience in organizing global gem traffic and to pressure the company to be a partner in devising an acceptable solution. In short, for the same reason progressives should enlist Wal-Mart to introduce new products, they should enlist De Beers to keep out problematic ones.

This approach—tailoring demands on corporations according to their capabilities, and matching the corporation with the appropriate progressive cause—can apply to a host of important policy challenges. One difficult social problem, for example, involves assisting workers who are displaced by trade. Technology-intensive firms (such as 3M or Motorola, which regularly bring new products to market) might assist progressives by identifying certain worker skills that will be in demand as new markets emerge, and thus could develop worker retraining strategies. These companies already make their living from predicting technological trends and making smart long term investments in research and development. Progressives might simply ask them to apply these capabilities to a vexing social problem like worker displacement. Financial services companies, such as Fidelity or Citicorp, might help devise strategies for pension and retirement security. Companies that are experts in developing human capital like Goldman Sachs and McKinsey might be enlisted to help in education reform. Firms with expertise in logistics, like UPS, could help in disaster relief.³⁷

³⁶ See *supra* notes 19–20 and accompanying text.

³⁷ UPS did perform this role after a recent earthquake in Pakistan. Press Release, United Parcel Service, UPS Donates \$2 Million to Earthquake Relief (Nov. 29, 2005), available at <http://www.pressroom.ups.com/pressreleases/archives/archive/0,1363,4628,00.html>.

One might say that just as a surgeon addresses her problems by wielding her scalpel, a technology-intensive company turns to new technologies, a luxury good company aims to preserve its brand and maintain quality, a low-cost company strives to keep down costs, and so on. Social activists would be most productive if the demands they impose on a corporation were sensitive to the corporation's capabilities. Asking firms to do what they do best, rather than something they do not do at all, is the easiest way to create positive results.

It bears repeating that many pressing social problems will not overlap with a capability found in the private sector, and many complex tasks, like maintaining security in Iraq, providing health care to the elderly and veterans, and ensuring consumer safety, might instead be best suited for the public sector. Our recommendation is that progressive activists carefully consider corporate capabilities when looking for resources to advance progressive goals. When such capabilities can be helpful, progressives should doggedly employ their political resources to convince, cajole, and compel corporations to contribute to the cause. If progressives correctly appraise a firm's capabilities to be uniquely helpful, they will likely find both that the firm will provide invaluable help and that the firm will be receptive to the overture. If progressives fail to take capabilities into account, demand that corporations act contrary to the core of their business model, and continue to misunderstand the potential and limits of the private sector, they will continue to meet resistance.

C. The Progressive Consumer

All successful companies aim to meet the demands of consumers, and to some degree enjoy a capability to detect and respond to market preferences. Sometimes, often when firms resist direct engagement or when no firm has a capability that can address a particular problem, progressives might best serve their own cause by encouraging and shaping market competition by flexing their strength directly as individual consumers and investors. Moreover, consumers have the unique ability to pressure incumbent companies into acquiring new capabilities or support entrepreneurial efforts to develop new capabilities that could be useful in addressing global problems. In these consumer- and investor-focused strategies, which range from public relations campaigns to information disclosure to shareholder resolutions, progressives act to sway consumers and investors to use their collective buying power to pressure companies into pursuing the common good.

For example, progressives as consumers can urge corporations to pursue socially responsible production practices. One popular effort is to encourage a boycott of goods made with child labor, thus encouraging corporations to assume the additional costs of pursuing desirable labor practices. This would require a political effort that targets consumers that not only conveys the importance of avoiding certain kinds of products but, more

critically, informs consumers which goods to avoid. While most consumers would probably choose to avoid products made under unethical conditions, in practice it is often difficult to communicate this information at the point of sale. Consumers might not wish to buy a shirt made by child laborers, but how exactly is a consumer supposed to know which companies abide by which codes of conduct, or what acronyms like FLA or WRC even mean?³⁸ Progressives can define precise standards of “responsibility” and devise mechanisms to provide this information to consumers so progressive consumers can assert their power. Furthermore, progressives can work together with NGOs, governments, and companies themselves to develop standards, but the key is to develop a single, transparent standard that consumers understand.³⁹

Along with consumers, investors can also use their power for the social good. Through shareholder resolutions or simply by pooling their shares into large blocs like CalPERS, socially conscious investors can wield significant power. For example, investors can be encouraged to pressure companies to divest from interests in trouble spots like Sudan. This kind of socially responsible investing (SRI) aims to reward responsible companies, punish laggards, and provide incentives for all firms to improve their social performance. However, similar to the many existing codes of conduct, there are also several competing definitions of corporate social responsibility. Companies like KLD, Innovest, Calvert, and others have their own metrics and ratings, but they often disagree,⁴⁰ and if we cannot measure consistently and convincingly which firms are more responsible than others, socially responsible investors cannot achieve their goals. To address these issues, progressives can support more accurate social measurement and channel their money to the raters who get it right over the long term. It is crucial to validate social metrics, even if it sometimes provides ammunition to critics of social investing. One simple strategy would be to provide a single responsibility questionnaire to companies, similar to the common application used in college applications, to reduce the response burden and increase response rates. Having companies answer a large set of questions once and only once, and posting the data in the public domain, would likely increase the amount

³⁸ The Fair Labor Association (FLA) and the Workers’ Rights Consortium (WRC) offer two competing codes of conduct in the apparel industry.

³⁹ As was noted above, industries and companies often do their part to muddy the waters, introducing alternative and weaker standards with similar sounding acronyms that blur important differences to outside observers. *See supra* note 21 and accompanying text. Thus, progressives must ensure that their interactions with companies add clarity rather than obfuscation, and do not result in a proliferation of codes that makes it difficult for consumers to identify responsible firms and their products.

⁴⁰ *See* Aaron K. Chatterji & David I. Levine, *Imitation or Differentiation?: Evaluating the Validity of Social Raters 2–5* (August 2007) (unpublished manuscript, on file with the *Harvard Law & Policy Review*).

of information of corporate social responsibility without resulting in a proliferation of “responsible company” lists and ratings.⁴¹

These are examples of how progressives can shape market demand, so current firms—seeking to maintain or increase market share—are compelled to alter their business practices. As mentioned above, progressives could also seek to harness the power of consumers either to compel firms to seek new capabilities or to encourage entry by new firms with capabilities that can aid progressive causes. For example, progressives might urge for reducing consumption of or boycotting a certain kind of good, like gasoline or gas-guzzling SUVs, in the name of environmental sustainability. The success of this strategy depends on the availability of eco-friendly substitutes that incumbent or entrant firms might consider offering. Some environmental groups have pursued this approach by encouraging purchase of the Toyota Prius or other fuel efficient cars. The objective here is to induce firms to invest research and production efforts into goods with socially desirable consequences that might not be lucrative without a certain consumer consciousness and demand for those goods. This way, progressives could encourage socially desirable innovations.

Even if the investments in these innovations, or the switching costs from offering an undesirable product (e.g. gasoline) to more desirable ones (e.g. alternative fuels), may be too high to convince profit-maximizing firms to proceed, progressives still might find ways to make the market work in their favor. Progressives might find useful metrics to grade the social responsibility commitments of firms based on their investment strategies. British Petroleum, in an effort to appeal to environmental concerns, has pursued a marketing strategy of “Beyond Petroleum,” but such ploys have little meaning without reliable confirmation that they genuinely seek new capabilities that would benefit the environment. Just as progressives could inform consumers of the social impact of certain goods, they also could inform consumers as to which corporations are seeking desirable capabilities.

Thus, progressive efforts to inform and shape consumer behavior should appreciate the potentially dynamic nature of firm capabilities. Even a small market could convince firms to pursue new opportunities and bet that the market grows over time. While social investing and consumption have been increasing in recent years, for example, it is still unclear whether consumer and investor based strategies ever have the potential to engage a broad swath of society. After all, as responsible as it may be to shop at Whole Foods or buy a Toyota Prius, many consumers will never be able to afford either. However, if these consumers are especially prized by companies or their purchasing power happens to be extremely influential, companies might still make adjustments to attract them (for example, Wal-Mart’s recent

⁴¹ Different social investing companies, magazines, and other interested parties could still develop their own “Part II” questionnaires with detailed questions on the environment, working conditions for women, or product safety.

initiatives on organic food).⁴² Progressives have a crucial role to play in informing consumers and investors, and thus increasing the pool of socially conscious purchasing power and capital. Still, it is just as important for progressives to work on lowering the cost of responsible substitutes and improving social measurement so that responsible companies can be identified and rewarded. These are stiff challenges, but absolutely necessary to realize the power of consumer and investor activism.

The great appeal of empowering consumers and investors as progressives (or progressives as consumers and investors) is that it avoids many of the shortcomings of both public and private politics. Empowering consumers and investors through information and educational awareness campaigns, without establishing a formal organizational structure, reduces the possibility of capture. Whereas a governmental agency or voluntary organization dedicated to monitoring behavior or disseminating information is prone to corporate takeover, a consumer-oriented movement requires no vulnerable infrastructure. Similarly, the lack of an organization that might unite industry-wide competitors reduces the possibility of collusion, and the lack of a governmental agency dedicated to address certain consumer or citizenry needs dilutes the possibility of consumer complacency or cooptation. Given the significant deficiencies of industry-wide and firm-specific efforts, and given the dramatically reduced role of public politics, preparing consumers and investors to voice their political preferences to corporations might offer the most promising opportunity for progressives.

In sum, allowing RBV theories to inform social activism implies a strategy that allows firms to utilize their unique capabilities for the common good. Some corporations, after all, are remarkably good at what they do, and some creative thinking could direct them to do good as well. Similarly, understanding the organizational limitations of corporations would compel progressives to stop asking for what is impossible, and start engaging with corporations to do what they can and enable them to learn what is necessary. It is our view that some cases exist where corporate resources and capabilities can be harnessed for admirable objectives.

It might also be said that these approaches embrace what could be considered to be the progressive movement’s unique “capabilities.” We urge progressives to remain ambitious and aggressive, to continue to think big and tackle society’s most challenging problems, to engage with the private sector’s wealthiest and most powerful institutions, and to invigorate consumers and investors who adhere to progressive causes. We merely encourage progressives to also take into account these important lessons from the business literature. Effective progressive activism has and will always require being creative, and devising strategies that harness corporate capabilities is well within reach. In short, we believe that by asking progressives to har-

⁴² See Pallavi Gogoi, *Wal-Mart’s Organic Offensive*, BUS. WK. ONLINE, Mar. 29, 2006, http://www.businessweek.com/bwdaily/dnflash/mar2006/nf20060329_6971.htm.

ness corporate strengths to promote their agenda, we are asking progressives to do what they do best.

V. CONCLUSION

The transition from public politics to private politics will require progressives to refine their strategies for achieving social change and to recognize that corporations can sometimes become valuable collaborators. To effectively enlist corporations in the pursuit of progressive causes, progressives must develop a better understanding of corporate behavior. The assertion that corporations maximize profits is only part of the story. Rather than viewing the firm as a “black box,” progressives need to understand that corporations have specific capabilities, built over time, that allow them to perform some tasks and not others. As a result, attempts to reengineer the firm from the outside are likely to fail, whether from legal mandates or from uncompromising activists.

Instead, we advocate a realistic approach that incorporates the literature on firm behavior and suggests the roles in which corporations could be most fruitful. We recognize the tremendous potential that corporations have to change the world, but also emphasize the limits to using corporate assets to advance the progressive agenda.

The key insights we offer rest on a basic point: if you want an economic entity to yield certain results, you need to understand how it behaves. The shift from traditional to private politics has made the corporation a focal actor in progressive battles, and we argue that a careful consideration of how the firm actually operates might inform a more successful progressive political strategy. In our view, if progressives can creatively adjust their demands on corporations to what those corporations do best, then CSR just might live up to its promise.