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On The Frontier Of Capitalism: Implementation Of Humanomics By Modern Publicly Held Corporations: A Critical Assessment

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ON THE FRONTIER OF CAPITALISM: IMPLEMENTATION OF HUMANOMICS BY MODERN PUBLICLY HELD CORPORATIONS: A CRITICAL ASSESSMENT

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> Corporations which exist solely to maximize profit become disconnected from their soul—the spiritual interconnectedness of humanity. Like individuals, businesses can conduct themselves with the knowledge that the hearts, souls, and spirits of all people are interconnected; so that as we help others, we cannot help helping ourselves.
>
> . . . It makes no sense to compartmentalize our lives—to be cutthroat in business, and then volunteer some time or donate some money to charity. For it is business that is the most powerful force in our society. . . .
>
> . . . So, if business is the most powerful force in the world, it stands to reason that business sets the tone for our society.
>
> BEN COHEN,
> BEN & JERRY'S HOMEMADE, INC.
> 1990 ANNUAL REPORT 2 (1991)

> I see business as a Renaissance concept, where the human spirit comes into play. . . . It can be something that people genuinely feel good about, but only if it remains a human enterprise.
>
> . . . .
>
> . . . I still believe that enlightened capitalism is the best way of changing society for the better.
>
> ANITA RODDICK,
> BODY AND SOUL 22, 27 (1991)

I. INTRODUCTION

Critics maintain that for-profit, business corporations should be more "responsible," that they should take account of all constituencies affected by their operations and should even assume responsibility for broader societal problems that they may impact only tangentially. Defenders of a narrower set of corporate goals and constituent interests argue that corporations should be concerned exclusively with maximizing the profits they can earn for shareholders within the law. This controversy regarding cor-

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porate goals and stakeholder interests has spanned most of the twentieth century.

In the early 1930s, two leading corporate law scholars, Adolf A. Berle and E. Merrick Dodd, debated the role of the corporation. Berle's view was that corporate powers were held in trust and were "at all times exercisable only for the ratable benefit of all the shareholders. . . ."[1] Dodd's thesis was that the business corporation was properly seen "as an economic institution which has a social service as well as a profit-making function. . . ."[2]

Twenty years later, the New Jersey Supreme Court seemed to vindicate both points of view. In a leading case,[3] the court upheld as valid a corporate charitable contribution to Princeton University, on the grounds that the gift at least arguably advanced the donor corporation's long-run business interests. But as Berle later astutely observed, the effect of the discussion was to recognize that "modern directors are not limited to running business enterprise for maximum profit, but are in fact and recognized in law as administrators of a community system."[4]

However, Professor Dodd's "managerialism" view, because it treats corporate managers as professionals whose duties require the exercise of almost statesmanlike responsibility, has come under attack, most notably by Milton Friedman. In *Capitalism and Freedom*, Friedman asserts that corporate officers' sole obligation is to maximize long-run profits "so long as [they] stay within the rules of the game."[5] It remains unclear whether Friedman merely wants corporate managers to stay within the law, or whether his use of the phrase "rules of the game" refers to some broader obligations. Beyond this linguistic quagmire, Friedman has come to represent the view that the social responsibility of corporations is to make increasing profits for their shareholders and that business-funded programs designed to redress social ills represent theft from corporate shareholders.

Today in the Anglo-American legal system, corporations have considerable flexibility in undertaking socially responsible activities. While retaining the profit maximization goal of free market economists, the more moderate and flexible model considers the time frame for assessing profitability to

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1. Adolph A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1931).

2. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1148 (1932).

3. A. P. Smith Mfg. Co. v. Barlow, 98 A.2d 581 (1953), *appeal dismissed*, 346 U.S. 861 (1953).

4. Adolph A. Berle, Jr., *Foreword* to THE CORPORATION IN MODERN SOCIETY at ix, xii (Edward S. Mason ed., 1960). *See generally* ADOLPH A. BERLE, JR., THE 20TH CENTURY CAPITALIST REVOLUTION (1954).

5. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133 (1962). In a celebrated newspaper article, Friedman suggests that the "responsibility" of business is "to make as much money as possible while conforming to the basic rules of society, both those embodied in the law and those embodied in ethical customs." Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 33.

encompass long-term corporate profit and shareholder gain, and also enlarges the scope of corporate conduct. Corporate managers "[m]ay take into account ethical considerations that are reasonably regarded as appropriate to the responsible conduct of business" and "[m]ay devote a reasonable amount of resources to public welfare, humanitarian, educational, and philanthropic purposes."[6]

Some call this expanded view of corporate interests the doctrine of enlightened self-interest. This view postulates that the corporation will profit from social activities that enlarge markets and improve the work force by helping the disadvantaged; that help reduce the costs of welfare, crime, and wasted human potential; and that combat insensitivity to society's changing demands. Such activities reduce public pressures for governmental intervention and regulation.[7]

While the debate continues as to whose interests corporations should serve—those of their shareholders or those of society—the takeover boom of the 1980s stimulated interest in the United States in the notion that managers should be allowed, or even required, to take direct account of the interests of nonshareholder constituencies when managing a corporation's business. Almost thirty state legislatures in the United States have enacted "other constituency" statutes.[8] These permit, and in one case require,[9] a corporate board to consider the effect of any action on nonshareholder interests. These interests may include the corporation's employees, customers, creditors, and suppliers; the economy of the state, region,

6. PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS § 2.01 (Proposed Final Draft 1992).

7. *See* COMMITTEE FOR ECONOMIC DEVELOPMENT, SOCIAL RESPONSIBILITIES OF BUSINESS CORPORATIONS 19-23, 26, 28-33 (1971) (discussing doctrine of enlightened self-interest, stockholder interest, social improvement and profitability, and limitations on corporate social activities).

8. For a list of these statutes see the appendix to *Symposium: Corporate Malaise—Stakeholder Statutes: Cause or Cure?*, 21 STETSON L. REV. 121, 278-93 (1991); Steven M. H. Wallman, *The Proper Interpretation of Corporate Constituency Statutes and Formulation of Director Duties*, 21 STETSON L. REV. 163, 194-96 (1991) (Appendix A). In 1980, the British Parliament added two provisions to the Companies Act designed to promote employee interests. The first provision declares, "The matters to which the directors of a company are to have regard in the performance of their functions include the interests of the company's employees in general, as well as the interests of its members." Companies Act 1980, §46(1) (1980) (Eng.) (re-enacted in Companies Act 1985, § 309(1) (1985) (Eng.)). The other provision states, "The powers of a company include . . . power to make . . . provision for the benefit of persons employed or formerly employed . . . in connection with the cessation or the transfer . . . of the undertaking. . . ." Companies Act 1980, § 74(1) (1980) (Eng.) (re-enacted with modifications, as Companies Act 1985, § 719(1) (1985) (Eng.)). The statute authorizes a corporation to make these payments out of funds that would otherwise be available to shareholders, even if the payments were not in the best interests of the shareholders. Companies Act 1980, § 74(6), (2) (1980) (Eng.) (re-enacted in Companies Act 1985, § 719(4), (2) (1985) (Eng.)). *See generally* L.C.B. GOWER, GOWER'S PRINCIPLES OF MODERN COMPANY LAW 73-74 (5th ed. 1992).

9. CONN. GEN. STAT. § 33-313(e) (Supp. 1993).

or nation; community and societal interests; and the long-term and short-term interests of the corporation.

Like the corporate social responsibility debate, other constituency statutes have generated considerable discussion;[10] whether these laws represent the wave of the future and what impact they will have on corporate operations remain open questions, beyond the scope of this Article.

This Article comprises a first step in the reconceptualization of the modern business corporation. The article begins by presenting the twin foundations of a "humanomics" approach to political economy policymaking. According to humanomics, in addition to meeting human needs, business executives and policymakers should strive to be cognizant of current and future ecological conditions, considering both the resource and environmental constraints. In other words, the political economy must be enabling for humans *and* conserving of resources and the environment.

The article next examines how two publicly held corporations, Ben & Jerry's Homemade, Inc. and The Body Shop International PLC, noted for their financial success and their unusual degree of social consciousness, have implemented a humanomics approach to business operations. These two vanguard corporations are among a handful of firms presenting themselves as having an agenda that goes beyond the mere pursuit of profits.

However, the analysis of these two corporations' socially responsible activities and their attempt to consider the impact of corporate actions on a variety of constituencies reveals a critical gap. Amid the economically depressed conditions of the 1990s, the most profound current crisis may not involve unemployment or underemployment, certainly a tragic plight, but two fundamental challenges to which the Anglo-American business executive, policymakers, and the legal system have not responded: Why should people perform dull, meaningless work in inhumane business organizations, and why should workers take orders from leaders they do not choose? This time of doubt in the Western world may provide an unparalleled opportunity for a fundamental re-examination of a key institution—the for-profit business corporation—particularly the organizational and control structure in which an increasingly educated workforce must toil. The question of who should govern corporations becomes a key subject for discussion, along with the more traditional topics of in whose interest and to what ends corporations should be run. In other words, a need exists to examine how power is and should be distributed in the modern corporation and who should participate, formally and informally, in the corporate decisionmaking process.

Humanomics points to the creation of business organizations that will promote both human growth and ecological considerations as part of a

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10. *See, e.g.*, James J. Hanks, Jr., *Playing with Fire: Nonshareholder Constituency Statutes in The 1990s*, 21 STETSON L. REV. 97 (1991); A.A. Sommer, Jr., *Whom Should the Corporation Serve? The Berle-Dodd Debate Revisited Sixty Years Later*, 16 DEL. J. CORP. L. 33 (1991); Wallman, *supra* note 8.

larger interest in the quality of life and the preservation of the planet. The attempt to bring the attributes of human life and ecological soundness back into the economic system emphasizes a decentralized corporate governance system and greater employee participation in decisionmaking. In other words, this Article advocates more widespread access to corporate decisionmaking. Greater involvement on the job and in decisionmaking at work hopefully will lead to a greater concern by individuals for other aspects of their life beyond the shop or office. In coming decades, the contradiction between the professed values of a democratic society and the authoritarianism at work may become more apparent.

II. Foundations of a Humanomics Approach

Formulation of an alternative political economy model, humanomics, rests on two key points: the needs of people and those of planet Earth. The emerging social order will be characterized by minimum damage to ecological processes (ecological sustainability) while meeting human needs. This section presents the twin foundations of a humanomics approach.

A. A Human Needs Approach

A human needs theory is one based on humanistic as opposed to economic theory. Its notions redirect the economist's goal from efficiency and profit maximization to include concern for human beings. Its objective is to develop values that promote the creation of economic and political organizations that, in turn, further human growth and development as part of a larger interest in the quality of life.[11]

The human needs approach to development is based on the writings of psychologist Abraham Maslow. In his book, *Motivation and Personality*, Maslow sets forth his theory of a hierarchy of human motivators.[12] The basic idea behind his theory is that humans develop at different stages and at each stage are motivated by different human needs. He fashioned his view of the different stages and needs into a hierarchical structure in which, as each need is more or less satisfied, the needs found at the next higher level become the most pressing human motivators. The hierarchy consists of five levels as follows:

> (1) *Physiological Needs*: This first level of human motivators includes such needs as hunger, sexual desires, and personal comfort.
> (2) *Safety Needs*: This second level of human needs includes security, dependency, protection, freedom from fear, from anxiety and chaos, need for structure, order, law, limits, strength in a protector.

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11. *See* Lewis D. Solomon & Kathleen J. Collins, *Humanistic Economics: A New Model for the Corporate Social Responsibility Debate*, 12 J. Corp. L. 331, 337 (1987); Lewis D. Solomon, *Law and Social Theory in the Twenty-First Century*, 6 Humanomics 60, 80 (1990) (discussing goals of humanomics).

12. Abraham Maslow, Motivation and Personality 35-47 (1954).

(3) *Belongingness and Love Needs*: This third level, often shortened to "social needs," includes the need to belong to groups and to be loved.
(4) *Esteem Needs*: The fourth level of the hierarchy focuses on the individual's ego. Individuals must feel that they are respected by others to attain self-confidence, strength, a feeling of worth.
(5) *Need for Self-Actualization*: Self-actualization represents the highest level of fulfillment that individuals can strive for; individuals who realize self-actualization realize their full potential.[13]

Maslow leaned toward categorizing the first four need categories as deficiency needs, and the fifth category, the need for self-actualization, as a growth need. Basic deficiency needs, such as the need for food and water, are cyclical.[14] As compared to deficiency needs, growth needs differ markedly in "that their gratification leads to an *increase* rather than a decrease in their strength."[15]

Some observers believe that the needs hierarchy conception is flawed in that it: (1) fails to demonstrate the concurrent presence of both poles—the material pole encompassing the first four deficiency needs and the spiritual pole encompassing growth needs, namely, self-actualization needs; and (2) fails to recognize the existence of individual choice between expressing lower or higher needs in situations where the two are mutually exclusive.[16]

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13. *See generally id.* (describing each level of hierarchy and their interactions more completely). Maslow believed the need hierarchy was based on hereditary traits common to all people. ABRAHAM MASLOW, TOWARD A PSYCHOLOGY OF BEING 190-97 (2d ed. 1968). Some very important human needs, such as freedom, justice, honesty, and orderliness, serve as preconditions for Maslow's hierarchy and are not included at any particular stage. For a more detailed explanation of the hierarchy's preconditions, see MASLOW, *supra* note 12, at 47. *See also* CHARLES MURRAY, IN PURSUIT: OF HAPPINESS AND GOOD GOVERNMENT 54 (1988) (discussing freedom and justice as preconditions of Maslow's hierarchy).

14. MARK A. LUTZ & KENNETH LUX, PH.D., HUMANISTIC ECONOMICS: THE NEW CHALLENGE 11 (1988) ("[T]hey are quieted upon being satisfied, but after a period of time they again press for satisfaction.").

15. *Id.* at 12.

16. *Id.* at 16. Critics have also attacked Maslow on four other grounds. First, Maslow has received criticism for viewing human nature primarily in the context of biology. One critic notes that "[n]eeds, for Maslow, are neither caused nor created but are simply intrinsic to our genetic nature." Leonard Geller, *The Failure of Self-Actualization Theory: A Critique of Carl Rogers and Abraham Maslow*, 22 J. HUMANISTIC PSYCHOL. 56, 68 (1982). He continues, "Maslow's logic of development entails that the self is implicit in human nature and merely unfolds or develops from this genetic core as the environment allows. But again, the environment has no formative or creative influence upon the self. It contributes nothing to what the self is." *Id.* at 69. Another commentator points out that "[w]hat a humanist would regard as historical human action [Maslow] persists in regarding as the instinctoid expression of biological propensities." Brewster Smith, *On Self-Actualization: A Transambivalent Examination of a Focal Theme in Maslow's Psychology*, 13 J. HUMANISTIC PSYCHOL. 17, 29 (1973).

Without trying to resolve the nature-nurture dispute, these same critics take a different view on the issue. Geller, for example, believes that "human needs, wants, and desires are dependent upon and unintelligible apart from a particular sociohistorical context." Geller, However, Maslow's hierarchy is not fixed and rigid; the importance of each level may vary according to each individual.[17] Moreover, Maslow did not believe it necessary for every individual to completely master each level before progressing. Rather, individuals are motivated at all levels of the hierarchy simultaneously and "the dominant motivation depends on which of the lower needs are sufficiently satisfied."[18]

The highest level of achievement for all individuals in Maslow's theory, however, is self-actualization. Under this theory, self-actualized people are characterized by a superior perception of reality, increased acceptance of self, others, and nature, spontaneity, autonomy, freshness of appreciation, richness of emotional reaction, improved interpersonal relations, and increased creativity. They are people who, as individuals, are doing what they should do and occupy the position that best suits them.[19]

Moreover, development of self-actualized people leads to community development. Maslow's findings suggest that as individuals satisfy their own needs and become closer to actualizing their innermost potentials, they become increasingly devoted to the happiness of others.[20] Self-actualized people use their potentialities for creative results that are beneficial to themselves and to society as a whole; they surmount the dichotomy between individual development and the common good.[21]

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supra, at 68. Smith concludes that "[n]either ethics nor politics is bestowed upon man by any instinctoid biology, though workable versions of ethics and politics have to take his biological nature as well as his historically developing situation into account." Smith, *supra*, at 32. Geller finishes with the statement that any theory of self-actualization "must take seriously the social origin and nature of the self; and it must place human development within a complex matrix of interaction in which free agents make free responses to the appeals of others and to the institutional conditions within which they must live." Geller, *supra*, at 69.

Second, critics attack Maslow's methodology as replete with scientific inadequacy. Smith views as the paramount flaw in Maslow's theory "the boot-straps operation by which he selected his 'sample' of self-actualizing people." Smith, *supra*, at 24. In selecting specimens to establish the self-actualization concept of the "fully human" person, Maslow excluded individuals with a gross pathology, thereby limiting the higher needs to "virtue," not evil. Inclusion of such individuals would broaden the range of human possibilities. *Id.*

Third, Maslow is also criticized because of his idealistic view of human potential, viewing growth solely in terms of good. Smith argues that "[v]ice and evil are as much in the range of human potentiality . . . as virtue; specialization as much as 'well-rounded' development. Our biology cannot be made to carry our ethics as Maslow would have it." *Id.* at 25.

Finally, Smith notes that "[s]elf-actualization in its various meanings is intrinsically concerned with values. For Maslow, the doctrine bridged the gulf between value and fact." *Id.* at 18. Smith criticizes Maslow as having used global concepts of values to cover up his own idiosyncratic values. *Id.* at 18. Smith continues, "[h]is empirical definition of psychological health or self-actualization thus rests, at root, on his own implicit values that underlie this global judgment." *Id.* at 24.

17. MASLOW, *supra* note 12, at 51-53.

18. *Id.* at 53-54. *See also* R. A. Goodman, *On the Operationality of the Maslow Need Hierarchy*, 6 BRIT. J. INDUS. REL. 51, 52 (1968).

19. Maslow, *supra* note 12, at 46.

20. EDWARD HOFFMAN, THE RIGHT TO BE HUMAN: A BIOGRAPHY OF ABRAHAM MASLOW 160 (1988).

21. Mark Lutz has advanced the concept of a dual self. He notes:

As suggested by Maslow's reference to self-actualization as fostered by a "calling,"[22] the human needs approach seeks to use social policy to create a work environment in which people can and are encouraged to become self-actualized. People need to work, to grow, and to be worthwhile. Moreover, it is the workplace and, more generally, larger bureaucratic organizations that currently stagnate and alienate individuals and desperately call for reform. Individuals are currently faced with meaningless work that not only fails to encourage, but also dampens individual development toward self-actualization. Maslow's own studies indicated that the work environment is one in which individuals, if provided with the correct motivation, can be encouraged to attain self-actualization.

Humanomics aims to develop shareholder and employee owned, decentralized business organizations that will further both human growth needs and a sense of community by creating an atmosphere that encourages and enables self-actualization. Moving from the premise that the development of human potential constitutes a key societal goal, humanomics looks to the restructuring of economic and political institutions to attain maximum human growth, autonomy, and participation.

Along with organizational restructuring must come a focus on meeting individual and collective human needs (i.e., an adequate supply and distribution of essential goods and services) rather than an ever increasing expansion of a nation's economic indicators (gross national product and per capita income). Achieving the full physical, mental, and social development of each individual constitutes the ultimate objective of the humanomics approach.[23] The "material" aspect encompasses items for personal consumption, such as staple foods, housing using local materials, and simple clothing, as well as basic public services, such as preventative health care and education tied to jobs. In addition to attaining "concrete" material goods, this approach also includes "nonmaterial" elements, such as political freedom, self-determination, participation in decisionmaking processes, quality of life, and religious and cultural identity.

The concept of a better balanced approach to our concept of the political economy must in the twenty-first century also consider the planet Earth's needs. This necessitates a brief analysis of the resource and environmental constraints on a human needs approach to development.

> By such a view there is a lower self, or *ego*, which is dominant only at the lowest levels of need satisfaction but vanishes at the top of the hierarchy. This ego has to be complemented with a higher ideal self, or *Self*, the consciousness of which increases as we ascend the pyramid.

Mark Lutz, *Beyond Economic Man: Humanistic Economics*, *in* ECONOMICS AND PHILOSOPHY 105 (Peter Koslowski ed., 1985).

22. According to Maslow, "[s]elf-actualizing people are, without one single exception, involved in a cause outside their own skin, in something outside of themselves. They are devoted, working at something, something which is very precious to them—some calling or vocation in the old sense . . . so that the work-joy dichotomy in them disappears." ABRAHAM MASLOW, FARTHER REACHES OF HUMAN NATURE 43 (1971).

23. *Id.*

B. Ecological and Population Limits

Looking to the twenty-first century, the world faces a number of limits as the traditional patterns of development and economic growth encroach on the carrying capacity of the Earth. One must consider the ecological consequences of economic growth and development, as well as the question of overpopulation.[24]

1. Ecological Limits

Six factors set the ecological limits of a humanomics approach to development. First, the world is a gigantic machine for burning fossil fuels. Modern economies live on nonrenewable resources, such as petroleum and natural gas. Growth has been based on cheap oil, which is becoming ever scarcer. Second, tropical forests are disappearing at an alarming rate. Whatever the cause,[25] the loss of tropical forests results in massive soil erosion, the conversion of forest into low-grade farm land, and the spoilage of local water supplies.[26] Third, acid rain, which originates in sulfur and nitrogen oxides that emanate from smokestacks and vehicle exhaust pipes, destroys forests and lakes (and thus is harmful to aquatic life) and damages a nation's artistic and architectural heritage.[27] Fourth, we face the depletion of the ozone layer in the upper atmosphere, which shields people from ultraviolet radiation. The catalyst for this change was the release into the atmosphere of chlorofluorocarbons. As a result, incidences of skin cancers will rise and the ocean's food chain also will be disrupted.[28] Fifth, desertification results from the destruction of vegetation by woodcutting, burning, and overgrazing; by erosion induced by water; and by salinization of irrigated fields. Over two hundred million people, mostly in developing nations, are directly and deleteriously affected by desertification.[29] Sixth, the world faces its greatest environmental threat from the much discussed "greenhouse effect," a phenomenon caused when increased amounts of carbon dioxide, in combination with the release of other gases, trap the

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24. For helpful overviews, see COUNCIL ON ENVIRONMENTAL QUALITY AND DEPARTMENT OF STATE, GLOBAL 2000 REPORT TO THE PRESIDENT: ENTERING THE TWENTY-FIRST CENTURY (1980); PAUL R. EHRLICH & ANNE H. EHRLICH, THE POPULATION EXPLOSION 110-35 (1990); WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, OUR COMMON FUTURE (1987).

25. Deforestation results from a number of local factors. In Brazil, for example, the migration of poor, landless people to the Amazon has led to deforestation. *See* Kenneth Maxwell, *The Tragedy of the Amazon*, N.Y. REV. OF BOOKS, Mar. 7, 1991, at 24. The demand for cheap beef in fast food chains fueled cutting forests in Brazil and Central America to provide temporary pasture for cattle raising. *See* Joseph Skinner, *Big Mac and the Tropical Forest*, 37 MONTHLY REV. 25 (1985). In India, timber cutters have responded to urban needs for firewood and lumber.

26. EHRLICH & EHRLICH, *supra* note 24, at 115-17. *See also* Nicholas Guppy, *Tropical Deforestation: A Global View*, 62 FOREIGN AFF. 928 (1984).

27. EHRLICH & EHRLICH, *supra* note 24, at 123-24.

28. *Id.* at 124-26.

29. *Id.* at 126-29.

radiant heat emitted from the Earth's surface. The net result of the greenhouse effect is an increase in global temperatures that may cause serious environmental damage as soon as the early years of the twenty-first century. The alterations of climatic patterns caused by rising temperatures will likely throw agricultural systems out of balance.[30] Yet, while the probability of global warming is high, its exact consequences and timeline remain uncertain.

2. Overpopulation

In addition to ecological limits, one must face the question of overpopulation. Neo-Malthusians perceive exploding Third World populations as outracing food supplies in some areas as well as exacerbating resource and environmental stresses. However, the despair engendered by the fear of overpopulation meets two responses. First, the existing population levels could be fed adequately with improved food distribution mechanisms and different political and economic arrangements.[31] Second, the optimists view an everexpanding population as a positive, not a negative, development.[32] These observers maintain that people working and creating knowledge are the "ultimate resource." More specifically, additional people will generate additional useful knowledge that, over the long term, will increase productivity and material welfare. In other words, human ingenuity can expand indefinitely the Earth's carrying capacity. Furthermore, high population density makes it easier to develop local markets for business and support an efficient public transportation system.

However, population growth may not offer the opportunity to implement innovation and, if implemented, people may not use innovation when

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30. *See generally* Lewis D. Solomon & Bradley S. Freedberg, *The Greenhouse Effect: A Legal and Policy Analysis*, 20 ENVTL. L. 83 (1990). *See also* COMMITTEE ON SCIENCE, ENGINEERING, AND PUBLIC POLICY, POLICY IMPLICATIONS OF GREENHOUSE WARMING (1991); Intergovernmental Panel on Climate Change, *Policymakers Summary of the Response Strategies: Working Group of the Intergovernmental Panel on Climate Change (Working Group III), in* CLIMATE CHANGE: THE IPCC RESPONSE STRATEGIES (1990); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, POLICYMAKERS SUMMARY OF THE POTENTIAL IMPACTS OF CLIMATE CHANGE: REPORT FROM WORKING GROUP II TO IPCC (1990); INTERGOVERNMENTAL PANEL ON CLIMATE CHANGE, THE IPCC SCIENTIFIC ASSESSMENT-REPORT PREPARED FOR IPCC BY WORKING GROUP I, at vii-xxxiv (1990); RESPONDING TO CLIMATE CHANGE: TOOLS FOR POLICY DEVELOPMENT (Jill Jager ed., 1990); USABLE KNOWLEDGE FOR MANAGING GLOBAL CLIMATIC CHANGE (William C. Clark ed., 1990); A.J. Fairclough, *Global Environmental and National Resource Problems—Their Economic, Political, and Security Implications*, WASH. Q. 78 (1991); William K. Stevens, *Earlier Harm Seen in Global Warming*, N.Y. TIMES, Oct. 17, 1990, at A9. However, some scientists believe that the industrial pollution blamed for the "greenhouse effect" may also spawn clouds that reflect heat and lower world temperatures. *Industrial Gases May Have Global Cooling Effect, Scientist Says*, CHRISTIAN SCI. MONITOR, Aug. 27, 1990, at 7; *see also* SHERWOOD IDSO, CARBON DIOXIDE AND GLOBAL CHANGES: EARTH IN TRANSITION (1989); William K. Stevens, *Scientists Confront Renewed Backlash on Global Warming*, N.Y. TIMES, Sept. 14, 1993, at C1.

31. *See generally* FRANCES MOORE LAPPE & JOSEPH COLLINS, FOOD FIRST: BEYOND THE MYTH OF SCARCITY (1977).

32. *See* JULIAN SIMON, THE ULTIMATE RESOURCE (1981). For a more generalized attack on the myth of the population explosion, see P.T. BAUER, EQUALITY, THE THIRD WORLD AND ECONOMIC DELUSION 42-65 (1981).

the opportunity arises. Also, once population goes beyond a reasonable level of density, further rapid population growth is a drag on living standards.[33]

Each nation must analyze whether it is (or will be) overpopulated and make a decision regarding its rate of population growth. An acceptable population level is a choice each nation must make.

Beyond the question of whether a government should intervene in a couple's decision to have children is the issue of whether a government can successfully limit population growth. More specifically, how can a democratic system change traditional beliefs and institutional arrangements? Rather than direct government intervention, indirect approaches may be more effective, such as financial incentives to raise smaller families. Population control can emanate from a number of sources, including a stable social order and an attempt to build a more secure future; an expansion of the range of social choices for women through enhanced educational opportunities; and alleviation of parents' concern about who will support them in their old age.[34]

C. Humanomics Approach: A Conceptual Policy Synthesis

The twin foundations of a humanomics approach, namely human and planetary needs, should be brought together. We should strive to find a middle way between advocates who favor economic growth regardless of the consequences and the "Earth First" advocates (i.e., nature over people) who maintain that all species have equal title to the Earth's bounty.[35] Humanomics, in my view, consists of an ecologically sound way of living with and relating to the Earth in the context of using resources to meet human needs and to promote human development. In other words, human development must take place in the framework of avoiding irreparable harm to the environment. Rather than focusing on the preservation of nonhuman species of animals ("Save the Whales"), plants, or the "wilderness," we should formulate a strategy based on and cognizant of the impact of development on the ecosystems that humans depend on for their livelihood.

The political economy model would emphasize the nature and quality of growth (particularly personal growth and nonmaterial quality of life) and

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33. Peter Passell, *Economists Start to Fret Again About Population*, N.Y. TIMES, Dec. 18, 1990, at C1; *see also* F.E. Trainer, *A Critical Examination of The Ultimate Resource and The Resourceful Earth*, TECH. FORECASTING & SOC. CHANGE 19 (1986).

34. Jonathan Lieberson, *Too Many People?*, N.Y. REV. OF BOOKS, June 26, 1986, at 36; Jodi L. Jacobson, *Planning the Global Family*, WORLDWATCH PAPER No. 80 (1987).

35. *See* DAVE FOREMAN, CONFESSIONS OF AN ECO-WARRIOR (1991). Deep ecologists advocate that nature has its rights and that humans, as one of a multitude of species, have no intrinsic authority over any other species; therefore, human beings should move from the basepoint of their underlying unity with other living beings and processes. *See, e.g.*, BILL MCKIBBEN, THE END OF NATURE (1990); ARNE NAESS & DAVID ROTHENBERG, ECOLOGY, COMMUNITY AND LIFESTYLE: OUTLINE OF AN ECOSOPHY (1989); RODERICK FRAZER NASH, THE RIGHTS OF NATURE: A HISTORY OF ENVIRONMENTAL ETHICS (1989); Warwick Fox, *Deep Ecology: A New Philosophy of Our Time?*, ECOLOGIST 194 (1984).

the need to operate within the limits of the planet.[36] Humanomics as a political economy model may rest on a less affluent global lifestyle and more self-sufficient patterns of local production and consumption. In this way, humanomics considers conserving land and water resources, replanting trees, lessening use of fossil fuels, and slowing population growth through family planning.

D. *The Role of Modern Corporations in Implementing a Humanomics Approach*

In the twenty-first century, business corporations should respond to the challenge of humanomics. Business must strive to enable employees to achieve personal growth yet operate within the limits of the planet. Paul Hawken, the former head of Smith & Hawken, a garden and horticulture catalog company, posed the following question: "Can business change in time to arrest global environmental degradation?"[37] Hawken's questions continue as follows: "Can there be . . . businesses that are so meaningful to those who work for them that they feel they have found their life's work and that their jobs have dignity and integrity and that their own creativity is enlivened and that they experience their own imaginations richly? Why is it that work is so hellish for the majority of Americans?"[38]

To answer these questions, Hawken draws on humanomics themes. He advocates that businesses engage in a:

> [P]atient reconstruction and repairing of social and environmental wounds. [Restorative economics] begins with seeing products in relationship to raw materials and to the sustainability of those raw materials on land and sea. . . . Restorative economics means producing products in ways that do no harm to workers, the environment, and society. And finally, it means educating customers so their values are honored, awakened, and informed. In order to restore that relationship with the customer, business must change from being predator to being educator.[39]

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36. The concept of "sustainable development" popularized by the Brundtland Report has inspired enthusiasm by those on both sides of the economy-environment debate. *See generally* WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *supra* note 24. Some see it as an opportunity for humanity to develop a gentler, more balanced relationship with the natural world. *See* JAMES ROBERTSON, THE SANE ALTERNATIVE (1978). Others perceive sustainable development within the context of continued economic development. The Brundtland Report forthrightly indicates that "a five-to-ten-fold increase in world industrial output can be anticipated by the time world population stabilizes some time in the next century." WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT, *supra* note 24, at 213. *See generally* Clem Tisdell, *Sustainable Development: Differing Perspectives of Ecologists and Economists, and Relevance to LDCs*, 16 WORLD DEV. 373 (1988) ; MICHAEL REDCLIFT, SUSTAINABLE DEVELOPMENT: EXPLORING THE CONTRADICTIONS (1987).

37. Paul Hawken, *The Ecology of Commerce*, INC., Apr. 1992, at 93, 94.

38. *Id.* at 96.

39. *Id.*

In addition, Hawken offers a commercial bill of rights that articulates the rights of employees and people served by the business. Hawken's seven point bill of rights is as follows:

> FIRST: The right to create products and participate in processes that do not harm others. *Simply that*: that do not harm others.
> SECOND: The right to work in a clean and safe environment.
> THIRD: The right to a job that is meaningful, worthy, and constructive.
> FOURTH: The right to work in a company that compensates fairly.
> FIFTH: The right to be told the truth about the company and its products.
> SIXTH: The right for employees to participate in critical and substantive decisions that affect the work force.
> SEVENTH: The right not to exploit other people or other forms of life.[40]

For-profit corporations may use all of Hawken's points to implement a humanomics approach.

The next section discusses two leading-edge, publicly held corporations, Ben & Jerry's Homemade, Inc. and The Body Shop, and their efforts to implement a humanomics approach to contemporary business.

III. Implementing a Humanomics Approach

This section examines the implementation of a humanomics approach through a close look at two companies widely noted for both their financial success and their unusual degree of social consciousness. Ben & Jerry's Homemade, Inc. produces "superpremium" ice cream and frozen yogurt products and markets these products to grocery stores, supermarkets, and restaurants. The company also franchises Ben & Jerry's ice cream shops around the country. The Body Shop International PLC manufactures skin and hair care products. The Body Shop sells cosmetics in its own shops and in its franchised outlets located throughout the world. These two corporations are among a handful of companies presenting themselves as having an agenda that goes beyond the pursuit of profits.

It is not unusual for a large public corporation to donate money and other resources to charitable causes. But it is generally assumed that the principal purpose of any public corporation is to maximize profits for the benefit of its shareholders, at least in the long run. The validity of this assumption is not clear, however, in the case of companies like Ben & Jerry's Homemade and The Body Shop. These two companies have made it clear that their corporate objectives encompass much more than the economic wealth of their shareholders. Their support of social causes goes beyond charitable donations (although they are both generous on that score

40. *Id.* at 98.

as well). The founders of these companies appear to be making every effort to operate their business in a manner that best comports with the needs of the surrounding community and the interests of society at large.

This section will explore various instances of these companies' "socially responsible" and "humanistic" conduct. Part A of this section will provide an overview of Ben & Jerry's, its background, and its corporate structure, as well as a similar overview of The Body Shop. Part B will describe and compare the companies' various socially responsible activities.

A. *Background: Corporate History and Financial Information*

Ben & Jerry's and The Body Shop parallel one another in numerous respects. Both companies rose from humble beginnings in the late 1970s when their founders took the risk of starting a small business. Financially successful from the start, both companies went public in the mid-1980s in order to generate the necessary funds for expansion, and have been enjoying continued gains in sales and earnings ever since. The founders of the two companies have managed to retain much of their control over the goals and operations of their businesses.

1. Ben & Jerry's Homemade, Inc.

After incorporating Ben & Jerry's Homemade, Inc. in late 1977, in May 1978 Ben Cohen and Jerry Greenfield opened their first ice cream store in a renovated gas station in Burlington, Vermont. They invested $12,000 (one-third of it borrowed from a bank) in rehabilitating the building and stocking it with rudimentary equipment. Because the company was successful from the start, the Small Business Administration granted a small loan to them in 1980 to begin manufacturing ice cream in pint containers. The company went public in 1984 to raise funds to expand its plant capacity. The initial public offering of Ben & Jerry's stock was accomplished through information provided on their ice cream cartons explaining how to buy shares. (The packages advised prospective purchasers to "scoop up our stock.") The company limited the initial stock offering to Vermont residents. After the initial public offering, observers estimated one in a hundred Vermont families owned shares in the firm, contributing to its grassroot image.[41] Even now, about 65% of the firm's shareholders are Vermont residents.[42]

The company makes superpremium ice cream (containing less air and more butterfat than garden-variety ice creams) and low fat frozen yogurt in regular and unique flavors, for example, Rainforest Crunch and Chocolate

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41. Karen Bruno, *Ben & Jerry's Confronts Identity Crisis*, NATION'S RESTAURANT NEWS, Nov. 2, 1987, at F23; Nancy Shulins, *Ben and Jerry Have Kept Their Cool*, L.A. TIMES, Dec. 13, 1987, § VI, 32.

42. Jonathan Adolph & Florence Graves, *Ben & Jerry: A New Age Interview*, NEW AGE J., Mar. 1988, at 32, 36; Jon Anderson, *How '2 Fat Guys' Got a Big Scoop of a Hot Market*, CHI. TRIB., July 10, 1988, § 5, 1, 6.

Chip Cookie Dough. The company markets its ice cream nationally in the United States in bulk, mainly to its four company-owned stores and about eighty-seven franchised ice cream stores, as well as to restaurants, and in packaged pints, for sale primarily in supermarkets, grocery and convenience stores, and other retail food outlets. In addition, there are Ben & Jerry's ice cream shops in Canada, Israel, and the former Soviet Union.[43]

By gallonage and by dollars, superpremium ice cream accounts for less than 10% of the entire U.S. ice cream market. At present, the corporation's principal competitors in the United States are Haagen-Dazs (owned by The Pillsbury Company, which was acquired by Grand Metropolitan PLC) and Frusen Gladje (owned by Kraft, Inc., a subsidiary of Philip-Morris, Inc.).[44] Ben & Jerry's is the second largest manufacturer of superpremium ice cream with 36% of the national market at the end of 1991, up from 30% at the end of 1990. Based on latest supermarket sales, Haagen-Daz has fallen to about 39.7% of superpremium brands; while Ben & Jerry's has 38.6%.[45]

The net income of Ben & Jerry's has increased each year since the company's inception. For the year ended December 28, 1991, the company reported net income of about $3.7 million (on sales of $97 million), an increase of more than 40% over the prior year's figure of $2.6 million (on sales of $77 million).[46] Its 1992 earnings reached $6.7 million (on sales of $132 million).[47] Investors who bought stock at the company's initial stock offering in 1984 have made a fifteen-to-one return on their investment.[48]

Two classes of common stock and a foundation that owns the corporation's preferred stock contribute to a somewhat complex corporate capital structure. One class of common stock, Class A (traded publicly), has one vote per share and the other, Class B, has ten votes per share. In 1987, the company distributed the Class B stock as a stock dividend to its common shareholders. The Class B stock is nontransferable, but it can be converted

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43. The Ben & Jerry's Ice Cream shop in Harlem is the fourth in the firm's Partnershops program. The firm waives its usual franchising fee and offers support to the franchisee. Leonard Drey, *Making a Difference: Ice Cream Meets Charity in Harlem*, N.Y. TIMES, Feb. 21, 1993, at F13.

44. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 3, 8 (1992); 1991 FORM 10-K 10 (1992); Suzanne Alexander, *Life's Just a Bowl of Cherry Garcia for Ben & Jerry's*, WALL ST. J., July 15, 1992, at B3. The ice cream wars of the 1980s between Ben & Jerry's and Haagen-Dazs (Pillsbury), concerning the latter firm's seeking exclusive contracts with distributors in Massachusetts and Connecticut, are chronicled in Calvin Trillin, *American Chronicles: Competitors*, NEW YORKER, July 8, 1985, at 31, 44 (Ben & Jerry's mounted unconventional guerilla-style publicity campaign against Pillsbury, alleged corporate bully, based on the slogan "What's the Doughboy Afraid of?"); *Vermont's Ice Cream Upstart*, N.Y. TIMES, Mar. 29, 1985, at D1.

45. Suein L. Hwang, *While Many Competitors See Sales Melt, Ben & Jerry's Scoops Out Solid Growth*, WALL ST. J., May 25, 1993, at B1.

46. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K, F-3 (1992).

47. *Ben & Jerry's Considering L.A. Plant Site*, UPI, May 12, 1993, *available in* LEXIS, Nexis Library, UPI File.

48. Allan Sloan, *The Selling of the Simple Life*, WORTH MAG., Feb.-Mar. 1992, at 76, 80.

into Class A stock, at which point it becomes transferable. The company has never paid a cash dividend on its common stock and does not plan to do so in the future. Instead, it plans to reinvest its earnings in the business.[49]

The Ben & Jerry's Foundation, a tax-exempt charitable corporation, was organized in 1985 as a vehicle for implementing the company's various charitable giving programs. The Foundation receives cash contributions each year from Ben & Jerry's equal to 7.5% of the company's pre-tax earnings. The Foundation receives the bulk of the company's cash charitable contributions thereby providing the principal means for implementing the company's cash charitable giving policy.[50]

The Foundation currently owns 100% of Ben & Jerry's outstanding preferred stock, giving the Foundation special voting rights with regard to certain mergers, other corporate combinations, and tender offers. Without the approval of the holders of the preferred stock, a raider could not take over the company. Furthermore, an acquiror could not take over the Foundation without the Foundation board's approval. One observer has characterized this arrangement as "one of the most clever anti-takeover devices ever: a charitable foundation that doubles as a corporate 'shark repellant.'"[51]

Control of the corporation continues with its cofounders, Ben Cohen and Jerry Greenfield. Cohen owns over 13% of the Class A common stock and more than 50% of the Class B common stock; Greenfield holds nearly 3% of the Class A common stock and over 9% of the Class B common stock.[52] Because of the weighted voting rights among the two classes of common stock, Cohen and Greenfield control 41% of the corporation's voting power.[53] Cohen's shares are worth about $20 million, and Greenfield's about $4 million.

2. The Body Shop International PLC

In 1976, Anita Roddick opened up her first Body Shop store in Brighton, England, with £4000 in funds borrowed from a bank. She began by selling a small range of skin and hair care products made from natural ingredients. The firm offered products in various sizes in its first shop. It did not have enough lines to stock the shelves so it stocked everything in five different size containers. The containers Anita Roddick found were plastic bottles used by hospitals to collect urine samples. Because she could not afford to buy enough, she refilled empty containers or customers' own bottles. Recycling and reusing were born out of economic necessity.[54]

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49. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 16 (1992).

50. *Id.* at 13.

51. Sloan, *supra* note 48, at 80.

52. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 33 (1992); BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 13 (1992).

53. Sloan, *supra* note 48, at 80.

54. ANITA RODDICK, BODY AND SOUL 19, 76 (1991); Jules Arbose, *The Natural Formula That's Making Body Shop a Winner*, INT'L MARKETING, July 1986, at 37, 38.

Anita Roddick's business flourished immediately and she opened a second store later in 1976. She borrowed £4000 to open the second store in return for a one-half share of the entire business.[55] The Body Shop went public in 1984 to raise the capital it needed for further expansion and to obtain better store locations.[56]

The company manufactures a wide range of skin and hair care products designed to "cleanse and polish."[57] The company also produces a line of more typical cosmetics.

From its inception, The Body Shop has relied on mainly natural ingredients. Although natural ingredients continue to be at the heart of every item The Body Shop makes, some of its products contain synthetic preservatives, dye colors, and artificial fragrances. For example, rather than extract the musk scent from the glands of a male musk deer, The Body Shop created a synthetic version that has become the fragrance for its best selling perfume, White Musk.[58]

Reliance on herbal and botanical formulations means using sustainable, renewable resources that do not rely on petroleum and are less toxic and presumably biodegradable. In contrast, traditional cosmetic companies depend on petrochemicals that produce volatile hydrocarbons that pollute the air and expose workers to dangerous compounds.[59]

Rather than selling its skin and hair care products through department stores and drug stores—the traditional outlets—The Body Shop, now a global corporation, sells through a chain of about 900 stores (most of which are operated by franchises) in 39 countries.[60] After opening its first store in the United States in 1988, the firm currently has about 135 shops in the U.S.[61] It also operates a successful mail order business in the U.S. The Body Shop expanded into Japan in 1990.[62]

Like Ben & Jerry's, The Body Shop has flourished. The company's net profit before tax for the year ended February 29, 1992 totaled approximately \$37.8 million on sales of \$221 million.[63] In 1991, net income totaled approximately \$23 million, an increase of almost 50% over the figure for 1990.[64]

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55. Roddick, *supra* note 54, at 86.

56. *Id.* at 104-07.

57. *Id.* at 70.

58. The Body Shop, What is the Body Shop? (1991).

59. Francesca Lyman, *Cosmetics Go Green*, S.F. Chron., Mar. 3, 1991, at 8.

60. Telephone Interview with Robert Triefus, Vice President, Communications, The Body Shop International PLC (Aug. 18, 1993).

61. The Body Shop International PLC, 1992 Annual Report and Accounts 9; Telephone Interview with Robert Triefus, Vice President, Communications, The Body Shop International PLC (Aug. 18, 1993).

62. Roddick, *supra* note 54, at 23, 131, 137, 139; Jean Sherman Chatzky, *Changing the World*, Forbes, Mar. 2, 1992, at 83.

63. Chatzky, *supra* note 62, at 83.

64. The Body Shop International PLC, 1991 Annual Report and Accounts 11. However, the firm's pre-tax annual profits for fiscal year 1992 fell 15% from £25,200,000 to

In September 1992, however, The Body Shop's stock dropped 41% on the London Stock Exchange when it was announced that the company's profits in the U.K. declined by 42% for the six month period ending in August.[65] The company cited the continuing recession, a legal dispute with a franchisee that led to the temporary closure of six U.K. stores, and the expenses of relocating a manufacturing subsidiary as reasons for the decline in profits.[66]

Despite this temporary setback, the firm's shares have rebounded. Anita and her husband Gordon Roddick own over one-quarter of The Body Shop's outstanding shares, worth over $300 million.[67]

B. *Business Philosophy and Corporate Objectives*

Ben & Jerry's and The Body Shop profess to be socially responsible businesses whose corporate agenda includes concern for their employees, their surrounding community, and the global environment. Such philosophies have been termed the "new brand of capitalism."[68] This section analyzes the founders' business philosophies and their embodiment in corporate objectives.

1. Ben & Jerry's Homemade Inc.

In 1988, Ben & Jerry's board of directors formalized its basic philosophy by adopting a "mission statement," which the corporation has included in each subsequent annual report. Before considering the corporation's mission statement, it is helpful to examine the distinctive business philosophies of Ben Cohen and Jerry Greenfield.

Ben Cohen, a former ice cream truck driver and the company's chairperson of the board, chief executive officer, and driving creative force, states that one of his primary business goals is to "redistribute wealth," what he calls "linked prosperity."[69] Successful firms, like rich neighbors, should, in Cohen's view, share their wealth.

Jerry Greenfield, currently vice chairman of the board and President of Ben & Jerry's Foundation, Inc., views business from a different per-

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£21,500,000 ($34,000,000). Maggie Urry, *Dull Performance in UK Behind 15% Decline at Body Shop*, FIN. TIMES, May 13, 1993, at 24; *Body Shop Profits Fall As British Recession Bites*, Reuter Bus. Rep. May 12, 1993, *available in* LEXIS, Nexis Library, Busrpt File.

65. John Thornhill, *Body Shop Shares Fall 40% on Profit Warning*, FIN. TIMES, Sept. 17, 1992, at 21; John Thornhill, *Roddicks in a Tough Environment*, FIN. TIMES, Sept. 17, 1992, at 21; *Body Shop*, FIN. TIMES, Oct. 14, 1992, at 22; Jane Fuller, *Overseas Rise Limits Body Shop's Decline*, FIN. TIMES, Oct. 14, 1992, at 30.

66. *Body Shop Profits Slide as British Recession Bites Deep*, Reuter Bus. Rep., Oct. 13, 1992, *available in* LEXIS, Nexis Library, Busrpt File; Patrick Hosking, *Body Shop Share Price Dives 108 p*, THE INDEPENDENT, Sept. 17, 1992, *available in* LEXIS, Nexis Library, Indpnt File; Thornhill, *Body Shop Shares Fall 40% on Profit Warning*, *supra* note 64, at 21.

67. Sloan, *supra* note 48, at 80.

68. Anderson, *supra* note 42, § 5, at 6.

69. Adolph & Graves, *supra* note 42, at 33-34.

spective than Cohen. The goal of Greenfield is simply to "spread joy," which he does by giving away as much ice cream as he can at schools, fairs, and Ben & Jerry's stores, and by overseeing the activities of the Foundation.[70]

Cohen seeks to create and demonstrate the corporate concept of "linked prosperity" that undergirds the firm's mission statement, which consists of the following three interrelated parts:

> PRODUCT MISSION: To make, distribute and sell the finest quality all-natural ice cream and related products in a wide variety of innovative flavors from Vermont dairy products.
> SOCIAL MISSION: To operate the company in a way that actively recognizes the central role that business plays in the structure of society by initiating innovative ways to improve the quality of life of a broad community: local, national and international.
> ECONOMIC MISSION: To operate the company on a sound financial basis of profitable growth, increasing value for [its] shareholders and creating career opportunities and financial rewards for [its] employees.[71]

Underpinning the corporate mission is a determination to seek new and creative ways of addressing the three interrelated parts, "while holding a deep respect for individuals, inside and outside the company, and for the communities of which they are a part."[72] As Ben Cohen put it, the firm is trying to make the way it runs its business "every day a reflection of our conscious caring for the people around us."[73]

2. The Body Shop International PLC

The Body Shop's Annual Report does not formally set forth a similar set of corporate social objectives. The 1991 Annual Report contains only a brief paragraph describing the company's policy of "contributing to the community," which includes the amount of its charitable donations, and notes "[w]e continue to run the business in an environmentally responsible way."[74]

In her book, *Body and Soul*, however, Anita Roddick gives an extensive account of The Body Shop's social agenda. Roddick takes a holistic view of business, seeing herself "not just as a creator of profits for shareholders, but as a force for good, working for the welfare of our staff, for the community and ultimately for the future of the planet itself."[75] As part of

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70. *Id.* at 34.

71. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 1 (1992). The firm's job applicants must endorse its mission statement. Howard Kurtz, *Ben & Jerry: Premium Ice Cream Sprinkled with Liberal Ideology*, WASH. POST, Nov. 29, 1989, at A3.

72. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 1 (1992).

73. *Id.* at 2.

74. THE BODY SHOP INTERNATIONAL PLC, 1991 ANNUAL REPORT AND ACCOUNTS 4, 9.

75. RODDICK, *supra* note 54, at 142.

this holistic view, Roddick emphasizes that social conscience is not incompatible with profit. She sees the company as a "consciousness-raising business."[76] She notes that The Body Shop's vision, since it went public in 1984,

> [H]as been to act as a force for social change. We are embarked, essentially, on an experiment designed to prove that a successful business can take on board a whole slew of social responsibilities, that it can divert energy and resources to areas completely divorced from its principal trading activity, and yet can still be extraordinarily successful and satisfy its shareholders.[77]

Roddick writes that "[s]ocial and environmental dimensions are woven into the fabric of the company itself."[78] As an ongoing part of everything the firm does, Roddick continues, "not a single decision is ever taken in The Body Shop without first considering environmental and social issues."[79] Stressing her environmental focus, she notes, ". . . [E]nvironmentalism will be the most important issue for business in the nineties. The principle of environmental performance must be a major priority for every business . . . ."[80]

C. *Implementation of Business Philosophy and Corporate Objectives*

We next consider the implementation of the companies' business philosophies and corporate objectives in three areas: 1) Marketing products and promoting causes; 2) corporate social responsibility; and 3) treatment of employees.

1. Marketing Products and Promoting Causes

Ben and Jerry's and The Body Shop have used successfully their "politically correct" social policies to generate significant unpaid media coverage for their products. They have employed similar marketing strategies that avoid the traditional (and usually expensive) advertising campaigns. Instead of advertising their high-priced, high-quality products, they primarily promote their social causes and the unique way they run their business operations. Pursuing nontraditional marketing techniques, both corporations are willing to take stands on controversial political and social issues. Both promote their products by promoting causes. Both subscribe to the view that business must use itself as a communications vehicle, for example, through packaging, to advance appropriate social causes.

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76. *Id.* at 111.
77. *Id.* at 226.
78. *Id.* at 23.
79. *Id.*
80. *Id.* at 242.

a. Ben & Jerry's Homemade, Inc.

Unlike The Body Shop, Ben & Jerry's does not eschew advertising. Although the corporation does very little media advertising, it does promote products and is conscious of its corporate "image." The company's 1991 Form 10-K notes, "Significant prominence is given to Ben Cohen and Jerry Greenfield, the founders of the Company, as 'two real guys' actively involved in the management of the Company, as contrasted with the 'European' images used by some of its competitors."[81] Cohen and Greenfield have been the subject of numerous newspaper and magazine articles that portray them as down-to-earth guys who are more interested in saving the planet than in making a profit. In short, this technique has succeeded in giving the company a "human face," so to speak. Consumers associate two people with the company and its products.

The firm's marketing strategy currently focuses on community involvement and the firm's status as a socially responsible business. The company sponsors a variety of community events, adding to its support of local communities, and continues its sponsorship of major public events in its primary ice cream sales markets. In 1991, for example, the corporation sponsored four big outdoor festivals throughout the United States. The corporation used each event to rally support for adopted campaigns.[82]

Ben & Jerry's expresses its support for various issues on its product packages. By combining packaging and political messages, the company strives to indicate its support for issues the company deems important and to motivate customers to take action on these issues.[83] Several examples illustrate Ben & Jerry's cause-related marketing approach.

Since early 1989, the company has supported a nonprofit organization, 1% for Peace, which consists of two entities: an educational foundation and a legislative action campaign that supports the passage of legislation allocating 1% of the U.S. defense budget to programs to build understanding between nations. Not only has the company named its chocolate and nut ice cream bar product the "Peace Pop," but also the company's Foundation allocates the equivalent of 1% of the Company's pre-tax earnings (which comprises part of the 7.5% of the pre-tax earnings the Foundation receives from the company) to 1% for Peace. The company clearly prints an explanation of the cause and its involvement on the ice cream's packaging. Although some retailers initially refused to carry the product, fearing that its message was "too political," the product has proved successful. Observers

81. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 8 (1992).

82. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 9 (1992). *See also* Adam Bryant, *Ding-a-Ling Marketing: An Ice Cream Truck Not Just for Kids*, N.Y. TIMES, Aug. 21, 1992, at D3 (featuring photograph of Ben & Jerry's traveling circus bus); Peter O. Keegan, *Ben & Jerry's Dishes Out Awareness Programs*, NATION'S RESTAURANT NEWS, May 31, 1993. The firm has also acted as the primary corporate sponsor of the Newport Folk Festival in Newport, Rhode Island. BEN & JERRY'S HOMEMADE, INC., PROSPECTUS 20 (1992).

83. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 8.

credit the ice cream as the key to the product's success, not the cause.[84]

Also in 1989, the company put notices on its cartons urging that bovine somatotropin, a genetically engineered growth hormone that increases cows' milk production, be banned in order to save family farms, as well as for health reasons. Small dairy farmers maintained that the use of the hormone threatened their survival because increased production results in lower prices and profits. Explaining Ben & Jerry's opposition to the drug, a company spokesman stated: "We're interested in what's good for dairy farmers and what's good for our customers. This issue goes to the heart of what kind of farm community we want in this country and what kind of food they will raise."[85] Preservation of the rainforests and the plight of the world's economically disadvantaged peoples are also causes mentioned on the firm's product packages.[86]

Despite the firm's generally high level of social responsibility in marketing, several marketing deficiencies are noteworthy. First, Ben & Jerry's procrastinated for years with putting nutritional information on its ice cream packages. The corporation finally included nutritional labels on its pints in mid-1992 just in time to conform to new U.S. Food & Drug Administration requirements.[87] Second, in 1990, Ben & Jerry's introduced a line of "light" ice creams. The U.S. Food and Drug Administration sent a warning letter to the corporation in September 1991 objecting specifically to the "40% Less Cholesterol" claim on the Light Chocolate Fudge Brownie product. In November 1991, the firm advised the FDA it was discontinuing the entire light product line.[88]

b. The Body Shop International PLC

From its humble origins, The Body Shop has neither engaged in advertising nor appealed to vanity to sell its products. The firm does not have an advertising or marketing department. It offers its products in plain identical rows of bottles.

Like Ben & Jerry's, Anita Roddick, the founder of The Body Shop, has given the firm a "human face." She has been a popular subject with the media. Moreover, she has been a vocal spokesperson for her company's socially responsible agenda. In her book, *Body and Soul*, she sets forth both her opinions on corporate responsibility and information about the

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84. Bill Kelley, *The Cause Effect*, 9 FOOD AND BEVERAGE MARKETING, March 1990, at 20; BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 3. In 1991, for example, the Foundation awarded $63,000 to 1% for Peace. *Id.* at 13.

85. Keith Schneider, *5 Big Chains Bar Milk Produced With Aid of Drug*, N.Y. TIMES, Aug. 24, 1989, at A18.

86. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 8.

87. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 9.

88. *Id.* Federal regulators also have disputed the firm's use of the term "low fat" for its line of frozen yogurt which contains one-half less fat than the superpremium ice cream. Floyd Norris, *Market Place: Low-Fat Problems at Ben & Jerry's*, N.Y. TIMES, Sept. 9, 1992, at D6; BEN & JERRY'S HOMEMADE, INC., PROSPECTUS 22 (1992).

company's products. Along with publicizing her social agenda, the book probably helped promote Body Shop products as well.

To cut through consumer cynicism about advertising and promotion and to differentiate The Body Shop from its traditional and, more recently, its "green" competitors, the firm has pursued a two-fold marketing strategy: truth and concern for social and environmental issues.

First, the company seeks to provide factual information that enables a consumer to make an informed buying decision. In her first store, Anita Roddick provided abstracts and information on product ingredients because the lotions looked or smelled "bizarre." The firm now establishes credibility by avoiding extravagant product claims and educating its customers. The firm fully informs its customers about the various products—the ingredients and even the centuries old history of some lotions—with a light touch, relying on container labels, anecdotes, humor, and bright graphics to present documentation about the origins of different ingredients, how the product works, and for what type of hair or skin type. Leaflets offer tips about skin and hair care. A reference book, *The Product Information Manual*, which provides background on everything the company sells, is available at each store.[89]

The Body Shop's marketing strategy focuses on engaging customers in a conversation by means of leaflets and posters and information boards in each store.[90] As Anita Roddick puts it, "Advertising is, in any case, a monologue; in The Body Shop we prefer dialogue."[91] In a refreshing change, salespeople are trained to answer questions, but not to be forceful with customers. Anita Roddick notes,

> We do not, for example, train our staff to sell. I hate high-pressure sales techniques. The idea that everyone should walk out of our shops having bought something is anathema to me. We prefer to give staff information about the products, anecdotes about the history and derivation of the ingredients, and any funny stories about how they come on to Body Shop shelves. We want to spark conversations with our customers, not browbeat them to buy.[92]

Customers can, in turn, communicate with the company through suggestion boxes found in each store. Six employees work full time, cataloging customer suggestions and replying to them.[93] In short, by facilitating a dialogue with consumers, The Body Shop's customers spread the firm's

89. Bo Burlingham, *This Woman Has Changed Business Forever*, INC., June 1990, at 34, 37; Rahul Jacob, *Body Shop International; What Selling Will Be Like in the '90s*, FORTUNE, Jan. 13, 1992, at 63; Arbose, *supra* note 54, at 38.

90. Tom Peters, *Explanations: Gossip A Feast for Info-Hungry*, CHI. TRIB., Feb. 17, 1992, Business Section, at 6.

91. RODDICK, *supra* note 54, at 248.

92. *Id.* at 25.

93. *Id.* at 146.

message and its reputation by word of mouth. In turn, customers promote the company and its products to their friends and relatives.[94]

Second, The Body Shop, similar to Ben & Jerry's, has pioneered the development of customer loyalty by portraying the corporation as a responsible corporate citizen. Customers understand that their purchases support "good" causes.[95] The Body Shop links its products to political and social causes. Each store attempts to take a high profile in its community. The corporation's highly visible campaigns, which use its stores as a base, generate priceless publicity for The Body Shop. The firm milks these campaigns for all they are worth. The Body Shop uses the power of the media to promote the cause and firm. Anita Roddick forthrightly stated the rationale for the firm's campaigns as follows:

> First, our environmental campaigning raised the profile of the company considerably, attracted a great deal of media attention and brought more potential customers into our shops. On that basis alone it could be justified as a sensible commercial decision. And much more important, in my view, was the tremendous spin-off for our staff, enabling them to get involved in things that really matter. . . . You can be proud to work for The Body Shop—and, boy, does that have an effect on morale and motivation!
>
> Then, of course, there was my own psyche. . . .
>
> I was less sure of my role and was beginning to feel more and more uncomfortable about being part of the cosmetics industry. I felt a lot happier and a lot more excited mixing with environmentalists rather than financial analysts and stockbrokers.[96]

She also notes that "when people talk about The Body Shop they talk about our philosophy, our campaigning, our social and educational policies and the way we have managed to humanize business practices."[97]

The Body Shop conducted its first campaigns in the mid-1980s jointly with "politically correct" activist organizations. In 1985, the firm sponsored posters for a Greenpeace campaign against dumping hazardous waste in the North Sea. In 1986, the firm used its United Kingdom shops to protest against the slaughter of whales—The Save the Wales campaign—again in conjunction with Greenpeace. The Body Shop also joined with the Friends of the Earth on acid rain, recycling, and ozone layer campaigns and with Amnesty International to raise awareness of human rights violations.[98]

Beginning in the late 1980s and continuing into the 1990s, the firm, having gained confidence in its abilities, now runs its own campaigns. The notable 1989 Rain Forest campaign involved a massive undertaking. Every

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94. *Id.* at 217-18.

95. Connie Wallace, *Lessons in Marketing—From a Maverick*, WORKING WOMAN, Oct. 1990, at 81, 82.

96. RODDICK, *supra* note 54, at 115-16.

97. *Id.* at 129.

98. *Id.* at 111-20.

store was transformed into a rainforest campaign base with posters and leaflets in support of the "cause" and protest letters addressed to the President of Brazil for customers to sign. The firm also printed bags, as well as T-shirts with campaign slogans, for store employees, and its delivery trucks "rolled out" with the message. The firm also collected one million signatures in the United Kingdom on a letter addressed to the President of Brazil which Anita Roddick delivered to the Brazilian Embassy in London.[99]

The firm has fine-tuned its campaigns to an art form. The campaigns are now viewed as a part of a carefully researched, designed, and executed business strategy. Anita Roddick wants causes that will generate real excitement and enthusiasm in the firm's stores.

With military-like precision, the firm runs shop window campaigns for two week periods throughout the year. The Body Shop turns its delivery trucks into mobile billboards. The firm produces educational leaflets and posters for global distribution. Messages are printed on recycled paper bags.[100]

Despite the emphasis on social consciousness, The Body Shop strives to balance its business and campaigning objectives. The firm now mounts just two major international campaigns each year—one on human rights and a second on the environment.[101] The corporation mandates that its company-owned and franchised shops concentrate on only one company-approved campaign at a time.

Anita Roddick wants to use the firm's stores as "arenas of education" to proselytize customers and passers-by on diverse social and political issues and more generally to empower people.[102] As Roddick states, "We'll provide an arena for debate and discussion—a chance for people to make their voices heard. We will be a vehicle for challenge and change."[103] Obviously, the campaigns and the accompanying education and empowerment of customers facilitate the amplification of Anita Roddick's voice far beyond the expectations of a 1960s student activist. Think of the "politically correct" power of the former school teacher controlling 900 classrooms worldwide, with millions of people passing The Body Shop stores throughout the world each month.

Ben & Jerry's and The Body Shop represent consumer-oriented companies that want to use their communications power to affect social change. Both firms signal a real change in business marketing.[104]

Traditionally, executives viewed activism as a prescription for business suicide. Activism ran the risk of generating hostility among consumers who

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99. *Id.* at 197, 200-02.

100. *Id.* at 120-24.

101. *Id.* at 126.

102. *Id.* at 23; *see also* Martha T. Moore, *Selling the Social Ethic in Soap, Shampoo,* USA TODAY, Mar. 20, 1992, at 4B.

103. RODDICK, *supra* note 54, at 129; Don Oldenburg, *Socially Correct Marketing,* WASH. POST, June 23, 1992, at C5.

104. Stuart Elliott, *When Products Are Tied to Causes,* N.Y. TIMES, Apr. 18, 1992, at 33, 37.

resented corporate proselytizing in general or who disagreed with the firm's specific opinion. However, a change in marketing has occurred from mass marketing—trying to be all things to all people—to market segmentation—smaller piece or "niche" marketing to people who believe in "controversial" causes. Increasingly, consumers, particularly the twenty million Americans who consider themselves morally conscious, feel good supporting people who believe in the same things. Ben & Jerry's and The Body Shop are riding the wave of making opinions known in their advertising, on packages, and at cash registers (so-called point of purchase politics).

These firms are willing to act on their values. They move from the premise that consumers will buy from a company with known business values and practices. But problems exist in mingling merchandising and politics. How often can these corporations go to the political or social well with their customers? How effective are the campaigns in empowering as opposed to broadcasting the founders' messages? In the 1990s, campaigns may be more restrained, more "centerist," more tame. Noting the need to balance business and campaign, Roddick states, "I could never allow us to begin to lose our edge in the shops. I am instinctively aware of the danger of people being put off coming into our shops if we go too far and make them feel guilty."[105]

Also, each firm will become more focused. For example, Ben & Jerry's announced that in 1992 it would narrow its social and political focus on one issue: children.[106]

In 1993, Ben & Jerry's and The Body Shop joined together with two other entrepreneurial companies in the "Have a Heart Campaign."[107] The companies gave literature, prepared by the nonprofit group Campaign for New Priorities, to customers about the U.S. budget.[108] The companies also encouraged their customers to contact congressional representatives to ask them to support cuts in military spending and spend more on helping children, the elderly, the sick, the homeless, and the unemployed. The campaign marked the first time the four firms banded together in a nationwide effort in the United States.[109]

2. Socially Responsible Business Operations

Ben & Jerry's and The Body Shop appear to be making an effort to operate their businesses in a manner that is most beneficial and least

105. RODDICK, *supra* note 54, at 124. The firm's 1992 campaign to use its mail order catalog to ask customers to read and subscribe to "Mother Jones" apparently cost it one potential franchise which disliked the magazine's politics. Also, southern mall operators asked the firm to conduct its 1992 voter registration drive inside its stores to avoid turning their malls into citizen action centers. Udayn Gupta, *Four Companies Hope to Turn Customers Into Activists*, WALL ST. J., Jan. 21, 1993, at B2.

106. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 10-11 (1992).

107. Gupta, *supra* note 105.

108. *Id.*

109. *Id.*

burdensome to the global society. Going beyond charitable giving, they have managed to integrate their social concern in their business decisions in a variety of specific instances. They represent the use of business as an instrument for social change, a device to make a better world.

a. Ben & Jerry's Homemade, Inc.

Ben & Jerry's is one of the leaders in charitable giving by an American corporation. As previously noted, the corporation gives 7.5% of its pre-tax earnings each year to Ben & Jerry's Foundation, Inc., a tax-exempt charitable organization. The company's annual donation to the Foundation in 1991, for example, amounted to $528,000.[110] What has emerged since the formation of the Foundation in 1985 is an ever clearer vision of the Foundation as a model for social change. To implement this objective, the Foundation supports imaginative, innovative grassroot groups working "for social change, not simple social service maintenance efforts."[111] The Foundation channels its funds to various local organizations concerned with environmental issues, child welfare, and disadvantaged groups.[112]

Charitable giving also enables Ben & Jerry's to maintain strong ties to the Vermont community. The firm makes substantial charitable donations to organizations in the Vermont area. These donations take three forms. First, during 1991, it donated about $31,000 of first and second-quality ice cream products to organizations in the Vermont area. Second, through its Employee Community Fund, which receives one-half of the funds from admission paid for plant tours,[113] the Company made cash donations of about $61,000 in 1991 to various environmental and community organizations in the Vermont area. All of these funding decisions were made by voluntary committees of employees. Third, the company, as agent for participating retail stores, also transferred funds derived from the sale of factory "second" ice cream to charitable organizations throughout Vermont. In 1991, for instance, the company transferred about $162,000 to over one hundred Vermont charitable organizations designated by participating Vermont retail grocers.[114]

Beyond its exceedingly generous charitable giving, Ben & Jerry's evidences "socially responsible" conduct that does not always comport with bottom line profitability. Purchasing decisions can have tremendous ramifications. The following international and domestic examples illustrate these ramifications.

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110. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 2-3 (1992).

111. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 3 (1991); *see also id.* at 4.

112. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 13.

113. The other half of the tour revenues go to an Entrepreneurial Fund, which the corporation established to give low-interest loans to people, including Ben & Jerry's employees, interested in starting a new business. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12 (1992).

114. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 2 (1992).

The firm purchases ingredients for its products through harvesters living in the Amazon rain forest. Rainforest Crunch candy, an ingredient in the company's ice cream of that name, uses Brazil and cashew nuts harvested "sustainably" from the Amazon rain forest and purchased directly from native peoples.[115] More specifically, Ben & Jerry's buys the candy from Community Products, Inc. (Ben Cohen and Jeffrey Furman, a director of and consultant to the company, are the principal shareholders) at competitive prices.[116] This purchasing transaction reflects the firm's desire to help stimulate a cash economy in an Amazon basin without destroying the rain forests. According to a Ben & Jerry's employee, "The whole idea is to cut out the middleman . . . to benefit indigenous tribes and pickers as much as possible."[117]

Domestically, some purchasing decisions are not profit maximizing. One example is Ben & Jerry's decision to pay above-market prices for dairy ingredients, except yogurt cultures, it purchases from its dairy supplier, the St. Albans (Vermont) Cooperative Creamery with 500 member farm families. The firm took this step when federal price support programs for dairy farmers were cut in 1991. The company sought to insure a long-term supply of its Vermont dairy products against the continuing trend of decreasing family dairy farms in Vermont.[118]

The corporate policy of paying higher prices to support family dairy farmers in Vermont has a financial cost to the firm. As Ben Cohen put it, $500,000 annually will come out of "'our profits, where it doesn't belong, and into farmers' pockets, where it does belong. We refuse to prop up our bottomline with bankrupt family farms.'"[119]

When purchasing ingredients for its Chocolate Fudge Brownie ice cream, Ben & Jerry's buys brownies from Greyston Bakery, which provides full-time employment for previously unemployed and unskilled individuals.

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115. Initially, Ben & Jerry's, in conjunction with Cultural Survival, purchased Brazil nuts through the Rubber Tappers Cooperative. Cecilia Viseman, "Weekend Edition," *National Public Radio*, July 26, 1992, *available in* LEXIS, Nexis Library, NPR File. However, the co-op raised prices in the first half of 1992, forcing the organizations to buy from commercial harvesters in Bolivia. *Id.*

116. Community Products, Inc. gives 60% of its profits to environmental and peace organizations. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 7 (1991).

117. Peter Eisner, *The Plight of the Amazon Has Drawn Scientists From Around the World There To Devise Rain Forest Rescue Strategies with Global Implications*, NEWSDAY, July 16, 1991, at 59 (quoting Peter Lind, Ben & Jerry's employee).

118. BEN & JERRY'S HOMEMADE, INC., 1991 Form 10-K 4; *see also* Elizabeth Kolbert, An 'Inspirational' Ice Cream Factory, N.Y. TIMES, Sept. 11, 1991, at A16.

119. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 7 (1992). Cohen has also indicated, "'We refuse to profit off the misfortune of our dairy suppliers due to some antiquated, misguided, convoluted federal system.'" Daniel Seligman, *Ben & Jerry Save the World*, FORTUNE, June 3, 1991, at 247. This decision comports with a basic corporate value of supporting family farms. The company put it this way: "Family farming, the core institution of rural life, is under tremendous threat, and our commitment to economic models that directly benefit farm families is a fundamental company value." BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 8 (1991).

Greyston also reinvests its profits in housing programs, child care, job training, and counselling for the homeless.[120] Ben & Jerry's also buys fresh blueberries from the Passamaquoddy Indians of Maine for its Wild Maine Blueberry ice cream. The company notes, "This supplier relationship tangibly benefits a traditionally excluded economic group. . . ."[121] There is no evidence that the company pays a premium for such purchases, although the firm must necessarily make some expenditures in order to determine who the "worthy" suppliers are.

Environmental considerations must, of course, enter into any analysis of a socially responsible corporation. Ben & Jerry's has a very positive, but not unblemished, environmental record. Ben & Jerry's has implemented a number of recycling programs in its offices, plants, and company-owned stores. For example, the firm receives its raw materials in recyclable pails. Because the company uses about 100,000 pounds of pails per year, the use of recyclable pails has reduced drastically its waste stream.[122] The company's ice cream cartons and packages are made from recycled material, as is its annual report. However, the company has noted forthrightly that its pint container, which consists of a paperboard and plastic combination, "is the package most difficult to make environmentally acceptable."[123]

The environmental record of Ben & Jerry's is not perfect. For two consecutive years, the company, while bringing a new treatment plant online, exceeded its permit for dumping waste into the Waterbury, Vermont, waste treatment plant and was fined by the Vermont Agency for Natural Resources. The firm's spillage of chocolate and butterfat placed a considerable strain on the local sewage system. The town was forced to invest $200,000 to upgrade its sewage plant and many residents blamed Ben & Jerry's for the expense. When the firm installed its own sewage system, relations with local residents improved.[124]

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120. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 7 (1991); Ellen Dexheimer, *Ben & Jerry's Homemade, Inc., Movers & Shakers*, DAIRY FOODS, Apr. 1990, at 37, 38.

Greyston Bakery makes high-priced (and high-profit) gourmet pies and cakes of chef-level quality, providing jobs and training to more than 200 people, many of whom were considered unemployable. Greyston sells its products through specialty outlets. Greystone renovated a converted lasagna factory in Yonkers, New York, which offered Bernard Glassman, the founder of Greyston, a low-interest start-up loan. After Glassman hired an outside financial manager to run the business, it then turned profitable. The manager helped reduce the bakery's training costs and introduced new managerial ideas—paying bonuses to employees who met production targets. Udayan Gupta, *Blending Zen and the Art of Philanthropic Pastry Chefs*, WALL ST. J., Jan. 2, 1992, at 12; Robert O'Malley, *Inner City Zen Master*, NEW AGE J., July-Aug. 1993, at 67, 68, 237-39; Paul M. Salvati, *Zen and Baking: A Recipe for Social Change*, US AIR SPOTLIGHT, May 1992, at 42.

121. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 7 (1991).

122. Dexheimer, *supra* note 120, at 37, 38. The company is supplying a nearby pig farm with 500 to 700 gallons of ice cream spillage per day. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 15 (1992).

123. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 11 (1991).

124. *Id.*; Kolbert, *supra* note 118, A16; Therese R. Welter, *Industry and the Environment: A Farewell to Arms*, INDUS. WK., Aug. 20, 1990, at 36, 42.

Looking to enhance its environmental record, the firm has taken two significant steps. First, the firm has established three "green teams" that are responsible for assessing the company's impact on the environment in its factories, offices, and company-owned stores (but not its franchised stores).[125] More significantly, Ben & Jerry's has signed the Valdez Principles, committing itself to ten standards of environment practice, including an annual environmental audit, "an annual disclosure of information about how its operations affect the environment," and the following pledge: "'We will promptly and responsibly correct conditions we have caused that endanger health, safety, or the environment. To the extent feasible, we will redress injuries we have caused to persons or damage we have caused to the environment and will restore the environment.'"[126]

Finally, as a holistic expression of its concept of social responsibility, the corporation, according to Ben Cohen, tries "'to integrate a concern for the community into as many day-to-day activities as possible.'"[127] Examples include using the Working Assets credit card as its corporate charge card because the credit card firm contributes five cents to social causes for every charge made, and switching Ben & Jerry's group health and dental plans to Consumers United Insurance Company, which offers a broad, flexible plan. In addition, the insurance company's philosophy is in line with Ben & Jerry's notions of social responsibility, particularly the carrier's three-to-one ratio between its highest and lowest paid employees.[128]

b. The Body Shop International PLC

Ben & Jerry's donates significantly more to charitable causes than The Body Shop does. The 1991 charitable donations of Ben & Jerry's (both in cash and in kind) totalled approximately $589,000,[129] while The Body Shop's totalled approximately £224,000.[130] Considering that The Body Shop's annual income was more than six times the annual income of Ben & Jerry's, the difference becomes even more significant.

But, like Ben Cohen, Anita Roddick has a view of corporate responsibility that transcends charitable giving. According to one observer, Anita Roddick sees her corporation as creating a global community. This writer continues,

> [I]t is a belief that business should do more than make money, create decent jobs, or sell good products. The members of this community believe that companies should actually help solve major

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125. *More Than an Ice Cream . . . Ben & Jerry's Is Social Responsibility; Recycling Program*, Chain Store Age Exec., Aug. 1991, at 81.

126. Ben & Jerry's Homemade, Inc., 1991 Annual Report 15 (1992).

127. David M. Katz, *How Ben & Jerry's Mingles Conscience With Profit Motive*, Nat'l Underwriter, June 3, 1991, at 9.

128. *Id.*

129. Ben & Jerry's Homemade, Inc., 1991 Annual Report 11-12 (1992).

130. The Body Shop International PLC, 1991 Annual Report and Accounts 9.

> social problems—not by contributing a percentage of their profits to charity but by using all their resources to come up with real answers.
>
> . . . [Anita] believes that there is only one thing stopping business from solving many of the most pressing problems in the world, and it has to do with the way most of us think companies must be managed. This is precisely what she wants to change.[131]

In the context of the corporation and the global community, three Body Shop initiatives are noteworthy: (1) Implementation of "trade not aid" principles; (2) environmental and energy conservation measures; and (3) community outreach by franchisees.

The Body Shop, pursuing a "trade not aid" policy, encourages communities in the Third World to use their renewable resources and trade with the firm to help alleviate local poverty.[132] The corporation wants to engage in honest business dealings with these economically fragile communities, to reward primary raw materials producers as much as possible, yet not destroy (or change) the local environment or culture.[133] According to Anita Roddick, concern with microenterprises in the Third World also will help protect The Body Shop from "the perils of giantism and the inhumanity of big business."[134]

Successful small-scale Third World projects include a papermaking project in Nepal and a Brazil nut rain forest endeavor.[135] The papermaking project produces handmade paper goods from banana leaves and water hyacinths. The project provides employment for women, giving them a sense of self-empowerment in what is regarded as a repressive society. Use of water hyacinths enables Nepal to clear its clogged rivers. The Body Shop also sells hair conditioner made with oil from nuts harvested by the Kayapo tribe in Brazil, which lives in the Amazon rain forest.[136]

Another illustration of the integration of social concerns with business decisions involves the creation of The Body Shop's subsidiary, Soapworks Limited. In 1988, The Body Shop decided to open up a soap factory in Glasgow, Scotland, in an effort to mitigate the area's astonishingly high

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131. Burlingham, *supra* note 89, at 42-44.

132. THE BODY SHOP, TRADE NOT AID (1992).

133. RODDICK, *supra* note 54, at 213. The Body Shop's "trade not aid" principles include: (1) respecting all environments, cultures and religions; (2) utilizing traditional skills and materials; (3) creating successful, sustainable trade links; (4) trading in replenishable raw materials; (5) encouraging small scale, easily duplicated projects; and (6) providing long-term commitment to all projects. *Id.* at 165.

134. *Id.* at 176.

135. *Id.*

136. *Id.* at 172-78, 202-09; Hilary De Boerr, *Business in the Rainforest*, FIN. TIMES, Dec. 16, 1992, at 9. Three Hopi tribes and the Santa Ana Pueblos in the United States grind corn for a line of Blue Corn Range projects sold in Body Shop stores, thereby providing a revenue source for the tribes. Accompanied by an in-store information campaign, the project also educates consumers. Jeffrey L. Hiday, *Cosmetics Company's Profits Promote Social Action*, PROVIDENCE JOURNAL-BULLETIN, March 31, 1992, at D3.

(70%) unemployment rate.[137] The factory currently employs about 100 workers and produces over one-half of the company's worldwide soap requirements.[138] It is not clear whether The Body Shop's costs were increased or reduced as a result of its decision to locate the factory in Glasgow, but the firm has justified the decision to do so on humanitarian grounds. Specifically, 25% of the subsidiary's funds go into a charitable trust under the control of Soapworks Limited for the purpose of benefitting local people, particularly by creating new jobs.[139]

When asked about the possibility of forming a union in the Glasgow plant, Anita Roddick replied that unions "were only needed when the management were bastards."[140] Questions exist concerning whether the Roddicks felt they might have more control over workers from a disadvantaged area and, if so, whether this was a factor in choosing a location for the production facility. The Body Shop also received a government grant to assist in financing the project; however, the amount received would have been the same regardless of the development area selected in the United Kingdom.[141]

In the area of ecology, the firm uses minimal packaging and biodegradable bags for its products. The Body Shop urges customers to return empty containers, including plastic bottles, and packaging to the store for recycling. The company offers customers a refill service that cuts down on waste packaging and it provides discounts to customers who bring back containers for refills. The Body Shop uses recycled paper throughout the company, even for leaflets and pamphlets. The Body Shop tries to promote awareness of recycling opportunities and concern for the environment through printed messages on its bags.[142]

Beyond its traditional approach to reuse, refill, and recycle, the corporation has sought to institutionalize its approach to environmental matters. In 1984, The Body Shop established an Environmental Projects Department that monitors the firm's practices and products to ensure their environmental soundness. In addition to overseeing and coordinating the firm's campaigns, this department fulfills the corporation's commitment to its customers that Body Shop products do not consume a "disproportionate" amount of energy during manufacture or disposal, do not cause unnecessary waste, do not use materials from threatened species or threatened environments, and do not involve cruelty to animals.[143]

Beginning in 1989, the corporation has commissioned an annual environmental audit of all of its practices, focusing particularly on energy,

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137. RODDICK, *supra* note 54, at 155-59 (discussing Soapworks project in detail).

138. THE BODY SHOP, SOAPWORKS PROFILE (Mar. 27, 1991).

139. THE BODY SHOP INTERNATIONAL PLC, 1991 ANNUAL REPORT AND ACCOUNTS 7, 19; RODDICK, *supra* note 54, at 155-58.

140. RODDICK, *supra* note 54, at 157.

141. *Id.* at 158.

142. *Id.* at 243; THE BODY SHOP, REUSE REFILL RECYCLE (1991); THE BODY SHOP, BROADSHEET: ENVIRONMENT (1991).

143. RODDICK, *supra* note 54, at 118.

waste, packaging, and effluents.[144] The Body Shop publishes "green" accounts (The Green Book), a comprehensive and independently audited corporate environmental statement that describes the environmental impact of its business.[145] The purpose of The Green Book is to identify both the environmental achievements and shortcomings of the business in order to set new targets and improve performance.[146]

The Body Shop is also striving to become self-sufficient in terms of the firm's energy needs. The corporation has teamed together with two other firms to build a windmill project. Initially, The Body Shop took a stake in the project to provide a renewable means to generate electricity consumed at its manufacturing plant in Littlehampton, England. The firm subsequently hopes in the future to generate electricity by renewable means for its shops in the United Kingdom.[147]

Finally, every store (unless a franchise refuses) has undertaken and retained a long-term interest in a community project of its own choice in its own area. Typical projects have included environmental matters, as well as care for the elderly, children, and the sick. In corporate-owned stores, the firm's contribution is time. Employees can work on projects during the store's open hours. Also, at the corporate-level, the firm has opened a charity franchise in an inner city area in London, dedicated to a group that provides training for minorities.[148]

Stepping back from the details of the various socially responsible activities undertaken by both corporations, one point is clear—Ben & Jerry's and The Body Shop evidence a genuine belief in a multi-dimensional approach to corporate social responsibility. However, both firms face the same fact of capitalist life: their existence and their growth depends on the continued consumption of goods—ice cream products and skin and hair products. Both businesses prepare "glop" (whether ice cream or shampoo, for example) in big vats and sell the glop in the form of high grade, expensive products in small packages at a huge markup. Ben & Jerry's sells

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144. The 1991-92 environmental statement was based on the U.K. headquarters in Watersmead, Littlehampton. The Body Shop International PLC, The Green Book 1 (1992). The requirements of the European Commission's proposed eco-audit regulation were used as the terms of reference for the audit. *Id.* at 48. Auditors pointed out top management's commitment to sound environmental policy and to raising the awareness of employees, suppliers, contractors, and customers. They also found two areas in which The Body Shop did not meet the requirements of the proposed regulation: (1) shipping manufacturing wastes off-site and discharging wastewater by public sewer into the English Channel, and (2) not identifying and quantifying potential harmful pollutants in emissions to water, air, and in wastes shipped off-site. *Id.*

145. *Id.* at 1; Jane Merriman, *Body Shop Cosmetics Retailer Admits It Is Not Squeaky Clean*, Reuter Bus. Rep., June 4, 1992, *available in* LEXIS, Nexis Library,.Busrpt File; *The Body Shop Calls for Ecological Imperatives for Business*, Press Association Newsfile, May 26, 1993, *available in* LEXIS, Nexis Library, PANEWS File.

146. The Body Shop International PLC, The Green Book 1 (1992).j

147. *Body Shop Turns to Windmills for Energy*, Reuter Bus. Rep., May 27, 1992, *available in* LEXIS, Nexis Library, Busrpt File.

148. Roddick, *supra* note 54, at 23, 152-54, 160.

its superpremium ice cream at twice the price of ordinary brands, leading one observer to quip that inner city residents would need a bridge loan to take home a pint.[149] The Body Shop generates profit margins estimated at 15 to 20% on its natural brands, compared with 5 to 8% margins on mainstream brands.[150] This type of profit margin enables these successful firms to easily integrate social responsibility and community concern into their day-to-day business decisions. Ben & Jerry's also has a fundamental corporate problem—superpremium ice cream is not only a frivolous product, it is also a sugar-laden, high-fat, high-cholesterol product. It is a delight for physicians, dentists, and the purveyors.

Both corporations use sincere and socially responsible activities as marketing aids. As discussed earlier, they obtain brand awareness without advertising or promotion expenditures. When questioned about how shareholders view its charitable giving, among other socially responsible activities, Ben Cohen stated,

> We've never taken a formal vote of all the shareholders, but at our annual meetings I usually ask them—just a show of hands, it's nonbinding—if they support the company's supporting the community and giving away what are really their profits. And they're all in favor of it.[151]

If Ben & Jerry's ever encounters difficult times or shrinking profit margins it (as The Body Shop has recently) may want to ponder the fact that a public corporation is no more than a fictional entity owned by its shareholders, almost all of whom have no significant control over the operations of the business. Thus, it may be unfair for those who control the business operations to use the shareholders' funds in ways they may not approve. Warren Buffet, CEO of Berkshire Hathaway, Inc., has devised a corporate policy on charitable donations that appears to comport with this notion. Pursuant to this policy, each shareholder is permitted to direct the corporation to donate a certain amount, as determined by the corporation and in proportion to the number of shares owned, to a charity of the shareholder's choice.[152]

Buffet's approach may not apply to the activities of Ben & Jerry's and The Body Shop. First, the companies have clearly disclosed their agendas through their annual reports and public statements. Therefore, a shareholder would have made her decision to invest in one of the companies either *because* of its agenda or in *spite* of it! Second, the companies may have indeed benefitted economically from their socially responsible activities. And no evidence currently exists that either company has ever received any

149. Joe Queenan, *Purveying Yuppie Porn*, FORBES, Nov. 13, 1989, at 60, 60-64.

150. Chatzky, *supra* note 62, at 84; Sharon Edelson, *Facing the Competition*, HOUSTON CHRON., May 20, 1993, Fashion Section, at 4.

151. Adolph & Graves, *supra* note 42, at 72.

152. David Elsner, *It Works: Buying $1 for 40%*, CHI. TRIB., Dec. 8, 1985, § 7, at 1, 6.

complaints from their shareholders about their socially responsible activities. This is not surprising, given the fact that the shareholders who invested in the companies when they first went public have seen their investments multiply significantly.

As mature corporations, increasingly run by professional managers, will they undertake new social programs or risky projects? Will a project that does not optimize profits be viewed increasingly as unworthy of pursuit?

3. Treatment of Employees

By treating their employees as an integral part of the business enterprise and by offering them generous benefits, both companies are creating positive work environments in which the employees feel that their own interests are being considered. Likewise, employees are apt to identify more strongly with the interests of the corporation and thus are encouraged to work harder and more efficiently.

a. Ben & Jerry's Homemade, Inc.

The firm strives to ensure the well-being of their employees in various ways. In a traditional vein, Ben & Jerry's offers a variety of employee benefits, including generous life, health, and disability insurance plans, an employee stock purchase plan, and an employee profit sharing plan to which Ben & Jerry's contributes five percent of its pre-tax earnings, as well as free health club memberships and affordable day care. The employees also are allowed to take home three free pints of ice cream every workday. However, the firm lacks a flextime or job sharing policy.[153]

The corporation has sought to diversify its workforce. About 40% of its employees are female. Three of six senior managers (department heads) are women, females hold five of twelve positions on its Quality Council, and one of its nine directors is a woman.[154] However, the firm falls short in the employment of minorities, largely because of the demographic situation in Vermont. It only has one member of a minority group in a senior management position.[155]

The corporation has evidenced concern for its employees in tough economic times. For instance, in the summer and fall of 1991, the second shift production line at the corporation's Springfield, Vermont, plant was shut down for three-and-one-half months. Instead of laying off personnel, thirty-five employees were kept on the payroll to do odd jobs around the

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153. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 9 (1991); BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12-13 (1992).

154. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 1, 14 (1992); *Crier & Company (CNN Broadcast, Nov. 17, 1992)* (interviewing Ben Cohen, chairman, Chuck Lacy, president, and unidentified employee of Ben & Jerry's); Telephone interview with Mitch Curren, P.R. Info Queen, Ben & Jerry's Homemade, Inc. (Sept. 9, 1993).

155. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 15 (1991) (Independent Review of Social Performance Report).

plant and to do community work, for example, painting fire hydrants, doing yard work, and winterizing homes for elderly, disabled people.[156]

In short, by traditional measures, the company treats its employees very well. The firm's employees recognize this. An independent survey of the attitudes of the employees of Ben & Jerry's (commissioned in 1989) indicated that its employees have a far more favorable view of their jobs, supervision, and the company than American corporate employees in general. Satisfaction with pay, benefits, and the overall job equals the "best of the best."[157]

In addition to these "progressive" human resource management practices and the favorable employee responses they generate, lower-level employees at Ben & Jerry's are likely to appreciate the company's seven-to-one compensation policy, which may ameliorate to some extent the perceived divisions between them and the higher-level executives. Under this salary policy, which is based on the salary ratio used by the Mondragon cooperatives in Spain,[158] the base pay (including benefits) of the highest paid employee cannot exceed seven times the base pay (including benefits) of the lowest paid worker with one year's employment.[159] Furthermore, despite the high financial success of Ben & Jerry's, the firm's top salaries are capped at $100,000 until the company's base wage reaches $8.25 per hour.[160]

Although the salary ratio makes hiring and retaining managers and top executives difficult, as demonstrated by the firm's arduous search for a chief financial officer in the late 1980s, the ratio helps the corporation recognize the role of, among others, the workers who make the ice cream.[161] In striving to more equitably reward all employees for the firm's growth

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156. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12 (1992).

157. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 10 (1992).

158. As Ben Cohen stated, "There's a guy on our board of directors who was familiar with the [Mondragon] co-ops in Spain, which use a type of salary ratio like that [five to one ratio]. That's kind of what we modeled it after." Adolph & Graves, *supra* note 42, at 38. For an analysis of the Mondragon cooperatives, see generally WILLIAM F. WHYTE & KATHLEEN K. WHYTE, MAKING MONDRAGON: THE GROWTH AND DYNAMICS OF THE MONDRAGON COOPERATIVE COMPLEX (1988); ROY MORRISON, WE BUILD THE ROAD AS WE TRAVEL (1991).

159. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 3, 27; BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12 (1992). In 1990, Ben & Jerry's changed the ratio from five-to-one to seven-to-one, acknowledging that the five-to-one ratio no longer met the needs of a larger and more complex organization. The ratio is based on the aggregate of: (1) the lowest wage for a full-time employee with one year of employment and (2) the value of the company-paid benefits. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12 (1992). The salary ratio position is subject to change at the discretion of the company's board of directors. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 27. To stay in compliance with the seven-to-one ratio, the firm chose to ignore the issuance of restricted stock to its president in 1991 when calculating the pay of president, Charles Lacey. Norris, *supra* note 88.

160. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 12 (1992). In 1991 the salaries for Cohen (chairman and CEO) and Greenfield (vice-chairman) were limited to, respectively, approximately $100,000 and $95,000. BEN & JERRY'S HOMEMADE, INC., 1991 FORM 10-K 27.

161. N.R. Kleinfield, *Wntd: C.F.O. With Flair for Funk*, N.Y. TIMES, Mar. 26, 1989, § 3, at 4.

and financial success, the ratio embodies Ben Cohen's "linked prosperity" concept. As Cohen has stated in discussing the salary ratio:

> That's a statement that all the people who are working in this organization are very valuable and that the person who's on the line making the ice cream and filling the pints is an incredibly important person because that person really is the one who determines the quality of the product.
>
> And just because one person's skill happens to be talking on the phone and selling ice cream and another person's skill happens to be working on the machine making ice cream doesn't mean that there should be all that big a spread in these persons' salaries.[162]

The salary ratio also comports with Cohen's notion of redistributing wealth and the need to overcome the traditional division between management and labor. Cohen notes:

> The other interesting thing about that salary ratio is that we are making a statement that we're interested in redistributing wealth and that we believe wealth is improperly distributed in the country now—and that within the business environment salaries are too polarized, and that the upper people are valued too highly in terms of finance and the lower people are valued too little.[163]

He continues:

> In our company the constituencies are the employees, the shareholders, and the community. Essentially we've eliminated the division between management and employees through that [seven-to-one] ratio, so that they've always got to move together and they become one. And then you've got the shareholders and the community, so we're always trying to see that all those parties receive the mutual benefit.[164]

Despite its long-standing salary ratio policy, Ben & Jerry's faces the need to overcome the sense of alienation experienced by employees in modern corporations and provide for the personal growth and development of employees within its workplace. In the 1990s, Ben & Jerry's faces these challenges that stem from its expansion to a fairly large, multi-state firm. In 1988, the firm had one major site and 150 employees; by the end of 1994, it expects to have five major sites and about 600 employees.[165]

After going public and enjoying continued corporate growth and success, there came controls, departments, memos, and professional managers. The

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162. Adolph & Graves, *supra* note 42, at 38. The salary ratio and the concept of "linked prosperity" is discussed in BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 9 (1991).

163. Adolph & Graves, *supra* note 42, at 38.

164. *Id.* at 72.

165. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 2 (1992); Telephone interview with Mitch Curren, P.R. Info Queen, Ben & Jerry's Homemade, Inc. (Sept. 9, 1993).

1989 independent survey of employee attitudes indicated that supervisory communication and participation in decisionmaking was somewhat lower at Ben & Jerry's compared with other "progressive" corporations surveyed.[166] In one striking example of a communications breakdown, Ben & Jerry's employees found out about a new plant from newspaper accounts.[167]

The 1990 Independent Review of Social Performance Report recommended that the corporation establish corporate-wide and department-level social performance goals, clear communication of these goals, measurement of ongoing social performance, and reward and recognition of such social performance. The independent observer saw a need to overcome uneven social performance throughout the organization and what was characterized as "a sense of uncertainty among employees about the [firm's] social mission and the role they should play in defining and implementing" its social mission.[168]

Ben & Jerry's accepted this constructive criticism. The firm responded: "We see opportunities to improve in this area by communicating better to our staff the reasons behind the efforts we undertake, by creating ways for employees to participate in the development of these efforts, and by understanding more fully the effect our efforts have on our worklife."[169] The firm also candidly admitted that it had "often not adequately informed our own employees about the stands the company takes or provided chances for education throughout the company on the issues behind the positions we adopt."[170]

Beyond corporate rhetoric, in 1991 Ben & Jerry's appointed Liz Bankowski as Director of Social Mission Development, a corporate executive who ranks on a par with the company's chief financial officer. As a social mission leader, Bankowski acts as a facilitator to spur other people in the organization to carry out the firm's social mission activities. As Bankowski put it, she hopes "'employees will feel they are doing more here than just making a pint of ice cream.'"[171]

Under Bankowski's auspices, employees have become more involved in the firm's social mission. For example, in 1991, seven employees made a weeklong visit to Northern Quebec to see a $60 billion project—the world's biggest hydroelectric power complex. They spent a week living with the Indians who are being displaced from the land they have occupied for thousands of years. On their return, the team members related their experiences at a company meeting, raised doubts about whether the project

166. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 10 (1991). The survey also noted that the job challenge for the firm's hourly employees was lower than for the corporations surveyed. *Id.*

167. Erik Larson, *Forever Young*, INC., July 1988, at 50, 56.

168. BEN & JERRY'S HOMEMADE, INC., 1990 ANNUAL REPORT 15 (1992) (Independent Review of Social Performance Report).

169. *Id.* at 10.

170. *Id.* at 13.

171. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 10 (1992).

made social or environmental sense, and questioned Vermont's agreement to buy power from the complex. They also drafted a statement the corporation ran as a full page advertisement.[172]

To encourage personal growth and development, the firm is learning to work in teams. According to the corporation, the use of teams is "bringing a whole new level of talent to the surface."[173]

The corporation must also face the nagging question of employee participation in decisionmaking—at what level, on what decisions, with what information, and what input. One writer expressed the "empowerment" quandary as follows:

> In the old days, Ben kept himself informed and in touch through the monthly staff meetings. Employees would break into small groups, mull over a specific problem, then return with solutions. This was genuine two-way communication. But over time the meetings had changed—'degenerated,' Ben says. They became one-way affairs with him talking at the crowd. Last September [1987], after the production crunch, Ben brought back the old format to ask a simple question: What are the most pressing problems confronting us?
>
> . . . .
>
> Whereas once employees had been privy to every decision management made, now they felt left out. No one knew what anyone else was doing. And where, by the way, was Ben & Jerry's headed?[174]

b. The Body Shop International PLC

In contrast to Ben & Jerry's, The Body Shop has evinced a much longer and more sustained interest in employee communication and participation. Gordon Roddick has asserted that all its employees are taking "an increased share in the responsibility and day-to-day running of the business."[175]

First and foremost, The Body Shop emphasizes employee communication and education, basically, in a noncynical manner and without a hidden agenda. As Anita Roddick states, "The absolute truth is that nothing of what we do in terms of education or communication or staff relations or community care is undertaken with an eye on our 'image', or how it will be viewed in the City, or by our competitors, or by anyone else."[176]

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172. *Id.* In addition, three employees witnessed rural poverty when they visited a coffee cooperative in Mexico on an inspection visit to ascertain if it could become a supplier for Ben & Jerry's. *Id.*

173. BEN & JERRY'S HOMEMADE, INC., 1991 ANNUAL REPORT 3 (1992).

174. Larson, *supra* note 165, at 58. Prior to its emergence as a multi-plant firm, at the all-staff gatherings, the employees broke into small groups to discuss various topics, such as techniques to improve communication. Adolph & Graves, *supra* note 42, at 36.

175. THE BODY SHOP INTERNATIONAL PLC, 1991 ANNUAL REPORT AND ACCOUNTS 5.

176. RODDICK, *supra* note 54, at 161.

The Body Shop aggressively keeps its lines of communication open with its employees. It attacks employee cynicism with information. The firm strives to keep its employees informed on matters affecting them through formal and informal briefings, departmental meetings, multi-lingual monthly video magazines, mailings that inform employees of the firm's latest crusade, and a regular employee newsletter.[177]

One commentator noted that the firm's newsletter reads like an underground newspaper with more space, for instance, devoted to the company's campaign to save the rain forest than to the opening of a new branch. Anita Roddick micromanages this key communication link. She suggests articles, checks copy, chooses illustrations, and changes designs. For Anita Roddick, the newsletter is a direct line of communication from the corporate leader to the rest of the organization. She wants each and every employee to feel the same sense of excitement she feels.[178]

In addition to the use of print media as an employee communications tool, in 1987, the corporation set up its own independent video production company, Jacaranda Productions, to produce, among other items, training and monthly videos for employees. The production unit also generates weekly television information, campaign materials, and documentary information.[179]

The Body Shop also has spent money on employee education and training that Anita Roddick views as an "investment."[180] The corporation opened a training school in London in 1985 to increase employee knowledge and teach employees that business does not have to be boring. In addition to providing information on its products' natural ingredients, their history and present uses and future potential, the school offers courses in the areas of human development and "consciousness raising." Topics offered include environmental issues, community action, drug and alcohol abuse, Acquired Immune Deficiency Syndrome, and homelessness. According to Anita Roddick, "[W]hat we wanted to do was *educate* and help people realize their own potential."[181]

Communication and ultimately empowerment is, however, a two-way street. In the spirit of a 1960s rebel, Anita Roddick constantly invites employees to speak up and challenge the status quo whenever they are unhappy about something. She invites employee suggestions to the "Department of Damned Good Ideas."[182] The Roddicks try to get feedback from the grass roots—what's happening on factory floors—by walking around and chatting with everyone. At corporate headquarters, employees are encouraged to write their gripes anonymously, graffiti style, on restroom walls. The management team answers any charges or questions once a week.

177. *Id.* at 145.

178. Burlingham, *supra* note 89, at 40-41.

179. RODDICK, *supra* note 54, at 146.

180. *Id.* at 144.

181. *Id.* at 143; *see also* Burlingham, *supra* note 89, at 34, 37.

182. RODDICK, *supra* note 54, at 148.

Dinners have been organized, at Anita Roddick's initiative, for the corporation's directors and employees selected at random. All prospective managers and supervisors are interviewed by employees who will work under them. Using a two-way assessment system, employees assess managers, as well as managers evaluating employees. For bashful personnel, the corporation set up a "Red Letter" system that enables employees to bypass the normal managerial hierarchy and go directly to the firm's directors.[183]

Employee empowerment has many different levels and degrees. Anita Roddick speaks glowingly of empowerment as follows: "An essential part of The Body Shop ethos is to *empower* our staff; we encourage debate, encourage employees to speak out and state their views."[184] She also stated:

> One of our main responsibilities is to allow our employees to grow, to give them a chance of fulfilling themselves and enhancing the world around them. . . . We want our employees to be empowered to make their voices heard in the running of the company, to be involved in everything we do.[185]

However, the results of employee empowerment seem quite minimal, perhaps "puny." For instance, store employees forced the discontinuance of a type of uniform. The "Red Letter" system, which permits employees to communicate with directors, produced a change in the company's maternity benefit plan.[186] On the other hand, Roddick, along with her husband and six senior executives, usually make the final decisions on which issues the corporation promotes in its campaigns.[187]

Two efforts at empowerment are, however, noteworthy. The Body Shop's charter,[188] prepared by its corporate employees, strives to set down what the company is, and what the employees believe. Anita Roddick notes, "Getting it written was tied up with our efforts to try and convince our staff, as shareholders, to think of themselves as the true owners of The Body Shop."[189] Yet, neither the involvement of a few employees in the preparation of a charter nor giving employees the option to buy shares in the corporation[190] can enable them to change their perspective as salaried workers, particularly, given the Roddick's significant (30%) ownership stake in the firm.

183. *Id.* at 148-49, 228-29; Mary Gottschalk, *Makeup Mogul Takes a Hard Line on Soft Products*, San Jose Mercury News, Nov. 5, 1991, at 1D.

184. Roddick, *supra* note 54, at 125.

185. *Id.* at 251.

186. *Id.* at 149.

187. *Id.* at 125-26.

188. The Body Shop Charter sets out the company's values: humanity in the marketplace, family, integrity, caring, creating, celebrating life, and respecting the world, fellow human beings and animals. The Body Shop, The Body Shop Charter (1990). In part, the charter states, "[W]e will continue to show that success and profits can go hand in hand with ideals and values." *Id.*

189. Roddick, *supra* note 54, at 141.

190. The Body Shop International PLC, 1991 Annual Report and Accounts 9.

More significant than the preparation of a corporate charter is the ongoing corporate program of giving employees a paid half-day each week for community work and requiring its franchisees to do the same. By giving employees a somewhat more significant societal role than, for example, a sales clerk, these volunteer endeavors likely raise employees' status and self-esteem, thereby enhancing their working lives.[191] The corporation also helps employee development through its volunteer corps. For example, The Body Shop sent employees to renovate three orphanages in Romania. From Anita Roddick's viewpoint, "These folks came back transformed. They are concerned citizens. They were shown the source of their power, which is responsibility through service. They're not just cashiers and wrappers anymore. Their perception of who they are and how they feel about their work has changed."[192]

But helping employees realize that everyone has the ability to change the world, hopefully for the better, is a long way from giving employees a greater say in corporate decision making. As Anita Roddick has written, "From being mindless and soul-less bureaucracies, large corporations will now have to take a look at the growth of human potential, of education, of making the workplace a social centre, of taking the drudgery out of work."[193] However, it is not sufficient to have a "Department of Joy" or a "Department of Surprises." More is needed to create a truly challenging atmosphere and a fun place to work. This may be impossible to achieve in a multi-plant firm, let alone a global corporation, where business life is quite complicated. A full-fledged, major league corporation, such as The Body Shop, is characterized by the creation of management structures, the development of a sophisticated, financially-based management system, the delegation of responsibilities, and the development of controls and reporting systems. Despite the view of visionaries, such as Anita Roddick, that corporations should not become something other than a human enterprise by making decisions by numbers, corporate growth spawns big, bureaucratic, monolithic entities. Along the way, much is lost. Despite Anita Roddick's worst fears,[194] The Body Shop may wind up an ordinary corporation by the end of the decade. Time will tell.

Self-actualization of humanomics is a potential goal for publicly held corporations. The goal of self-actualization is clearly one that is holistic, aimed at empowering employees on virtually all levels and spheres. And, although Ben & Jerry's and particularly The Body Shop have made steps towards implementing the goal, both companies are far from fully realizing the vast potential of empowerment through self-actualization. Corporations need to give substance and meaning to jobs. On one level, day care and flextime help employees meet their personal needs. On another level, work

191. RODDICK, *supra* note 54, at 150-53.

192. Anita Roddick, *Make Morality the Goal*, FORTUNE, Dec. 30, 1991, at 28.

193. RODDICK, *supra* note 54, at 251.

194. Burlingham, *supra* note 89, at 34.

teams in offices and factories give increased substance and meaning to jobs. However, corporations need to promote a greater spirit of cooperation and give workers a greater say in decisionmaking. Corporate executives must consider the impact of growth and size on a corporation's vision and its values. These criticisms point the way to a need for smaller, decentralized firms.

IV. Conclusion

The goal of an open, democratic society composed of economic organizations that fulfill the need of individuals to grow and develop, yet which promote an ecological sustainability raises a number of difficult and thought provoking issues.

The 1970s and 1980s witnessed numerous efforts at horizontal and vertical job redesign and the decentralization of authority through the creation of self-managed work teams. The opportunity to control the process and organization of work at the shop or office level generates competence, heightens confidence, and invokes interest in wider areas of responsibility. This happens first at the plant, then at the store or office-wide level, and ultimately at the corporate level.

In large organizations, however, workers may lack sufficient information for meaningful involvement in macro-level decisionmaking. Although corporations may alleviate this barrier to empowerment by an improved flow of information and the use of technical advisors to provide consistency in analyzing complex business issues, surmounting these obstacles likely will require a far-reaching revamping of the corporate structure. Thus, a key prerequisite for establishing an effective plan for attaining meaningful empowerment of workers may turn on the development of new economic institutions. Meaningful work and participation may be impossible to attain in large scale, bureaucratic economic organizations. This realization fueled the growing trend to small businesses and entrepreneurship, at least in the United States.

Even assuming a down-sizing and decentralizing of economic institutions, one should not underestimate the difficulties of greater participation for employees in the work place. First, we must ascertain a sense of the appropriate scope and scale of worker participation. In which decisions will workers demand a say? Second, the time demands of a greater involvement in decisionmaking would be enormous. A significant commitment to the work place may engulf other spheres of life, including leisure and family time. However, work commitments are currently made at the expense of leisure and family with little in return. Empowerment-oriented economic organizations likely would provide rewards that will carry over and make leisure and family time more enjoyable and fulfilling. Third, the encouragement of participation faces the obstacles of workers who view the empowerment oriented economic organizations as shams or manipulations. Workers may fear that the new participating methods will significantly increase productivity and decrease the number of employees needed. A vocal, small minority of workers with high security needs may be unwilling to accept a greater degree of responsibility. Although individuals would not want to join start-up situations, existing businesses would likely face a recalcitrant minority. In addition, unions may oppose empowerment programs. These new arrangements may be perceived as an anti-union strategy that will increase productivity without additional compensation, reduce the size of the workforce, and lessen the loyalty of workers to unions. Reliance on a traditional adversary labor-management system also increases opposition to measures designed to reduce employee-employer discord.

Fourth, executives may promote micro-level programs that heighten productivity and enhance the quality of goods and services, but stop short of full-scale macro-level empowerment for workers. These programs would prevent employees and their representatives from participating in high-level corporate planning and decisionmaking. The implementation of a participatory system engenders a fear that loss of control over subordinates may result in significant power-sharing arrangements. Furthermore, managers may find worker participation in the higher levels of decisionmaking demoralizing because they must continually secure worker involvement in and approval of decisions. The need for worker involvement and consensus in decisionmaking may affect adversely managerial leadership and risk-taking. Executives may shun these tasks knowing that their power depends on consensus building. In short, economic elites may not want to share power.

Even if a successful participating system of worker decision making in smaller, more decentralized business organization could be implemented, at least three additional questions exist: (1) Is a change in the ownership of economic institutions required? (2) Will elites develop in the new structures? (3) Will the new arrangements solely promote the interests of workers?

The concept of risk-taking shareholders who provide capital and participate in the management of publicly held corporations is a dream long past. Shareholders are usually passive investors who have abandoned managerial functions in return for a portion of an enterprise's profits in the form of dividends and the hope that their investments will appreciate in value. To overcome the gap between passive investors and workers, the worker-owned cooperatives will likely receive increased attention in coming years.

Workers, in addition to managing the firm, should also own the enterprise. Elimination of outside shareholder claimants will solidify worker control and participation.

In the United States, attention has focused on Employee Stock Ownership Plans (ESOPs), which provide employees with the opportunity to become shareholders in their employer corporations. Typically, a corporation sets up an ESOP that borrows funds from a bank; the ESOP in turn lends the funds to the firm in return for the company's stock. The ESOP holds the shares in trust for the firm's employees. The ESOP receives payments from the corporation sufficient to cover its interest and principal payments to the bank. After the ESOP repays the bank loan, the ESOP shares are allocated to the employee accounts. However, the employees acquire the shares (and the attendant voting rights) only when they retire or leave the corporation.

Although ESOPs are viewed as promoting worker interest in enhancing corporate efficiency because the employee-shareholder has a vested interest in corporate profitability, ESOPs are unlikely to prove an effective vehicle for providing meaningful work and restructuring corporations. This is true because they are directed more toward ownership and less toward self-management. For example, until the ESOP repays the bank loan, the ESOP trustee votes the stock according to management's recommendations. Thus, the forces of alienation remain present. The duty of the corporate manager to maximize shareholder and even employee-shareholder profits will not necessarily coincide with the objective of maximizing the human potential of employees in an ecologically sound manner.

The model of the Mondragon cooperatives provides a worldwide beacon for worker self-management. Rather than using an ESOP system, Mondragon has implemented a system of individualized internal capital accounts that represent a share in the firm's net book value. Membership in a co-op entails a specified threshold payment by a worker, which involves a down payment and payment of the remainder by means of salary deductions over several years. Each year the value of each member's capital account is adjusted for inflation; and each member receives a share of the enterprise's profits, after certain mandatory national deductions, which automatically increases the member's capital account balance. In other words, each member reinvests the profit share in the firm until he or she retires or leaves the firm. Each member can use his or her capital accounts as collateral for pre-retirement; and each member receives an annual interest payment on his or her contributed (loaned) capital.[195] To provide external financing, the founder of Mondragon established a cooperative bank, which attracts deposits from nonmembers and lends the funds to Mondragon cooperatives.[196]

In striving to diffuse economic power through worker empowerment and self-management, the establishment of a fixed ratio (as used by Mondragon and Ben & Jerry's) between the highest and lowest salaries paid by an enterprise, but not a maximum or minimum dollar amount, may facilitate worker involvement in decisionmaking. Smaller wage differentials, reflecting the fact that corporate managers and executives perform administrative, not innovative or entrepreneurial functions, may reduce status differentials. Workers may no longer feel subordinate to corporate executives. However, because of the need to promote innovation (which hopefully will serve "sound," socially desirable needs) and to act as a leavening agent for change, rewards for this type of activity probably should be exempted from the ratio system. Executives, who are also "substantial" shareholders in a

195. LUTZ & LUX, *supra* note 14, at 259-62.
196. *Id.* at 263-65.

corporation, may also be entitled to a larger share of the pie as payment for their entrepreneurial endeavors.

In the end, however, is meaningful worker participation a dream, subject to manipulation by the real power holders? Will an oligarchy inevitably develop in business organizations as a result of knowledge and information advantages, technical expertise, and financial factors? A more highly educated work force, together with on-the-job education and training, may permit workers to handle technological matters. However, even if employees look to technical advisory experts to assist them in performing the planning and decisionmaking functions, what values will these experts serve and where will these workers obtain their information on which to base their recommendations? Perhaps the salary ratio system and a program of job rotation that requires managerial, professional, and technical personnel to spend part of the year in more mundane tasks may facilitate the equalization of power and control within economic institutions.

The quest for participation and a greater degree of leveling may conflict with the notion that merit should be encouraged and rewarded. One person or a group of individuals may rise to a position of power in an economic organization because of superiority in a given field that flows from innate ability, education, or technical (or other) skills. Thus, the requirements of merit and leadership should evolve and fit within the overall participatory framework.

It may be argued that the proposed participatory organizations would not, broadly speaking, serve the "public interest." Self-managed workers may, for example, continue to exploit the environment and customers. As the political scientist Robert Dahl notes:

> I shall not pause to argue with any reader, if there be one, who is so unworldly as to suppose that once "the workers" control an enterprise they will spontaneously act "in the interests of all." Let me simply remind this hypothetical and I hope nonexistent reader that if self-management were introduced today, tomorrow's citizens in the enterprise would be yesterday's employees. Is their moral redemption and purification so near at hand?[197]

How should these other interests be represented in restricted form so that their claims may be asserted in the corporate decisionmaking process?

Traditionally, the American political and economic system has relied on governmental regulatory bodies to check corporate power. Moving from the premise that various nonworker groups, such as customers and environmentalists, should participate in decisions affecting their interests, it must be recognized that these interests may vary depending on the decision to be made. Even if the difficult problems of the representation of interest groups and the relative proportions of representation could be resolved, how would

197. ROBERT A. DAHL, AFTER THE REVOLUTION? AUTHORITY IN A GOOD SOCIETY 137 (1970).

these representatives be chosen and held accountable (i.e., through what unit or mechanism)?

This overview of the obstacles to greater employee participation in the workforce highlights the difficulties of implementation and possible impracticabilities. Complex organizations in a conventional market setting require technical specialization that implies oligarchy. Workers may lack sufficient information and a system of representative decisionmaking (for example, the German codetermination system) may prove inadequate. Discontinuities of communication and interaction also exist in large-scale organizations. Surmounting these obstacles may require deep revamping of the political economy along two lines: a reduction in the current patterns of consumption and economic growth and the development of smaller, more decentralized economic and political organizations.

It is easy to say people should lead less gadget-ridden lives; but change in the cycle of consumption and economic growth may not come voluntarily through rational persuasion. Rather, it may be necessary for a massive discontinuity to occur, such as climate changes brought about by the greenhouse effect or energy scarcities, which forces individuals to confront their values and the existing economic institutions.

If individuals turn away from (or were forced to turn away from) consumption and economic growth, smaller organizations could meet diminished production requirements. The vision of smaller economic (and political) communities, encompassing a reduction in the size of urban centers, as well as the decentralization of industry and administration, would facilitate a greater degree of citizen self-management in all areas of life. These more humane (human scale) communities would strive to meet human and ecological needs in a variety of ways. Smaller scale economic units would enable workers, basically, as nonexperts, not only to be more informed but also to assume responsibility for a wider range of decisions and the social consequences of enterprises.