11-134
June 15, 2012

Corporate Personhood, Business Leadership, and the U.S. Presidential Election of 2012

Leigh Hafrey, Cate Reavis

Lead the people by laws and regulate them by penalties, and the people will try to keep out of jail, but will have no sense of shame. Lead the people by virtue and restrain them by the rules of decorum, and the people will have a sense of shame, and moreover will become good.

—Confucius, *The Analects* (II:3)[1]

The corporation's status as a legal person might seem an arcane matter, relative to the dire individual and organizational circumstances that set in following the subprime mortgage crisis of 2007. That crisis had evolved into the "Great Recession," which still weighed on many real, flesh-and-blood human beings in the U.S. and global economies in 2012. Yet by 2012, corporate personhood had become an issue in no less an event than the election of a U.S. president. Former Massachusetts Governor, Republican presidential candidate, and former Bain Capital CEO Mitt Romney commented to an interlocutor at the Iowa State Fair, in August 2011: "Corporations are people, my friend. . . . Everything corporations earn ultimately goes to people. Where do you think it goes?"[2] Incumbent President and Democratic candidate for re-election Barack Obama responded with equal certainty the following spring, telling an audience at a campaign stop in Ohio in May: "I don't care how many ways you explain it, corporations are not people. People are people."[3] If the debate over corporate personhood mattered to the American electorate as much as the candidates appeared to believe it should, how might businesspeople and the business community at large assess a core structural element of global business practice: the corporation?

[1] Simon Leys, *The Analects of Confucius* (New York: W.W. Norton & Company, Inc., 1997).

[2] Philip Rucker, "Mitt Romney Says 'Corporations Are People' at Iowa State Fair," *The Washington Post*, August 11, 2011.

[3] http://www.youtube.com/watch?v=mt1E6CMRzpM (accessed May 23, 2012).

This case was prepared by Cate Reavis, Associate Director, Curriculum Development, under the supervision of Senior Lecturer Leigh Hafrey.

The Great Recession and Corporate Free Speech

In early 2012, after five years of economic turmoil, glimmers of light indicated that the United States was emerging from the long dark tunnel that it had entered five years earlier.[4] The stock market was nearing 13,000, unemployment had inched its way down to 8.3%–after hitting a high of 10% in October 2009–[5]and the home foreclosure rate for the year (at 1.9 million homes, according to RealtyTrac) was the lowest since 2007. Banks were showing signs of renewed confidence. Commercial and industrial lending was up 10% in the third quarter of 2011, compared to a 1.7% decline the previous four years.[6] However, the country's debt-to-GDP ratio remained a matter of deep concern: it had started a steep upward climb right at the time the U.S. Government began bailing out financial institutions, with a ratio of 40% in 2008, and over 70% at the end of 2011.

As the economy appeared to improve, public attention focused on who should be held responsible for a crisis that had nearly brought down not only the U.S., but the entire global financial system. Heightened by a number of best selling books, including *The Big Short*, *Too Big To Fail*, and *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown*; investigative pieces broadcast on the television news program *60 Minutes*; feature films including *Inside Job* and *Margin Call*; and the Occupy Wall Street protest movement, the public's interest turned to the role that financial corporations had played in the crisis. While many firms faced civil charges,[7] no firm had been criminally charged for its involvement, no executives prosecuted.[8] Beyond the possibility of criminal action lay the question of ethical responsibility: what curbs might corporations, or the boards and executives who ran them, have placed upon their operations during the run-up to the crisis? Could they themselves, as well as the society in which they operated, expect them to exercise such care, and if so, by what mechanism?

Under U.S. law, corporations had rights and responsibilities, like natural persons. In the *Santa Clara County vs. Southern Pacific Railroad Company* ruling in 1886, the chief justice of the U.S. Supreme Court, Morrison Waite, is reported to have begun oral arguments by stating, "The court does not wish to hear argument on the question whether the provision in the Fourteenth Amendment to the Constitution, which forbids a State to deny to any person within its jurisdiction the equal protection of

[4] "The Global Financial Crisis of 2008-2009: The Role of Fear, Greed and Oligarchs," provides a more detailed description of the financial crisis. The note can be accessed at https://mitsloan.mit.edu/MSTIR/world-economy/Crisis-2008-2009/Pages/default.aspx.

[5] U.S. Bureau of Labor Statistics, http://www.bls.gov/cps/tables.htm#empstat.

[6] Steve Matthews and Ilan Kolet, "Bank Credit Highest Since Before Lehman as U.S. Growth Continues," *Bloomberg*, December 11, 2011.

[7]A number of firms had paid fines for misleading investors without denying or admitting guilt. In 2011, Goldman Sachs settled a lawsuit with the Securities and Exchange Commission (SEC) agreeing to pay $550 million (4.1% of its 2010 net income) and JP Morgan agreed to pay the SEC $153.6 million (.9% of its 2010 net income). That same year, Citigroup agreed to pay $285 million (2.7% of its 2010 net income), to settle civil charges that it had defrauded customers during the housing bubble. As part of the settlement, the company made a pledge to the SEC that it would never again violate one of the main antifraud provisions of the nation's securities laws. The company had made the same pledge in July 2010, May 2006, March 2005, and April 2000. In September 2011 the Federal Housing Finance Agency, Fannie Mae and Freddie Mac's conservator since 2008, filed a lawsuit against 17 financial institutions—Ally Financial, Inc., Bank of America, Barclays Bank, Citigroup, Inc.; Countrywide Financial Corporation; Credit Suisse Holdings, Inc.; Deutsche Bank. AG; First Horizon National Corporation; Goldman Sachs & Co.; HSBC North America Holdings, Inc.; JPMorgan Chase & Co.; Merrill Lynch & Co./First Franklin Financial Corp.; Morgan Stanley; Nomura Holding America Inc.; The Royal Bank of Scotland PLC; Société Générale—alleging violations of securities laws and common law in the sale of mortgage-backed securities. Seeking damages of $200 billion the FHFA alleged that "the loans had different and more risky characteristics than the descriptions contained in the marketing and sales materials provided to the Enterprises for those securities."

[8] Jean Eaglesham, "Financial Crimes Bedevil Prosecutors," *The Wall Street Journal*, December 6, 2011.

the laws, applies to these corporations. We are all of the opinion that it does."[9] Though the legal standing of Justice Waite's statement has been questioned,[10] the opinion has been widely taken to confirm corporate personhood in U.S. law. In 2010, the concept of the corporation as a fictitious person gained new complexity when the U.S. Supreme Court, in *Citizens United v. Federal Election Commission*, prohibited the government from banning corporate and union expenditures related to political campaigns; in the Court's opinion, the ban violated the First Amendment right to free speech. As Gov. Romney and President Obama's opposing views suggested, public opinion was sharply divided—often along political party lines—on whether corporations were indeed people, and if they were, what values they might choose to voice by exercising their right to free speech.

The Accountability Question

Ultimately, the question of personhood underlay the leadership role that both individuals at the top of the corporation and the corporations themselves had played or failed to play in the downturn. Those who believed that financial firms should be held accountable for their actions, including liability for harms committed by their agents,[11] argued that, like people, corporations were granted rights, but also held to responsibilities that extended beyond the law to moral or ethical commitments to certain values. People who fell into this group believed that financial institutions needed to be held legally accountable for their actions leading up to the financial crisis. Others, who also blamed the financial firms, were wary of holding entire firms responsible for their actions at a time when the economy was still recovering. They remembered what had happened to Arthur Andersen during the Enron scandal[12]: the thought of punishing, and ultimately destroying, an entire firm for the bad behavior of a minority didn't sit well.

At the same time, many observers and industry players saw the banks and other financial services providers as victims or innocent bystanders rather than culprits. Some felt that the public sector had precipitated the crisis when it deliberately eased banking regulations starting in the late 1990's, with the goal of making homeownership a reality for more Americans. In essence, they thought that government hadn't done its job, and it wasn't fair or right to blame financial institutions. Still others believed that responsibility for the crisis should be placed on the society as a whole. Financial firms, Congress, regulators, credit agencies, accounting firms, and consumers — all had played a role in the downturn; in other words, we were all to blame.

[9] Santa Clara County v. Southern Pacific R.Co. 118 U.S. 394 (1886), http://supreme.justia.com/cases/federal/us/118/394/case.html (accessed June 4, 2012).

[10] Jack Beatty, *Age of Betrayal* (New York: Alfred A. Knopf, 2007), p. 110.

[11] Susan Farbstein and Tyler Giannini, "Liability for Harms," *The New York Times*, February 28, 2012.

[12] In June 2002, a federal jury convicted the accounting firm Arthur Andersen of obstruction of justice for destroying documents pertaining to its accounting work with Enron. In addition to being fined $500,000 and sentenced to five years probation, the firm agreed to stop auditing public companies, which led to the demise of the business. In the United States alone, 28,000 people lost their jobs. In 2005, the United States Supreme Court overturned the conviction finding fatal flaws in the jury instructions on which the conviction was based. For more on this see Elizabeth K. Ainslie, "Indicting Corporations Revisited: Lessons of the Arthur Andersen Prosecution," *American Criminial Law Review*, Vol. 43:107, 2006.

1. Corporations

Among those who believed that financial firms should be held responsible for the financial crisis was William K. Black, a professor of economics and law at the University of Missouri and a senior regulator for the Federal Home Loan Board during the savings and loan banking crisis of the 1980's. "I think this crisis was driven by fraud and I believe it was systemic," he stated. Furthermore, he believed, the fraud had begun in CEOs' offices and boardrooms.[13]

According to Black, certain firms had participated in accounting-control fraud, a term Black himself had coined. A control fraud occurs when a person in a position of responsibility in a company or state subverts the organization and engages in extensive fraud for personal gain. The savings and loan crisis and Enron were examples of control frauds as was, in Black's opinion, the subprime mortgage crisis.

Black believed that compensation was a key factor in creating what he called the criminogenic environment at many Wall Street banks and even the government-sponsored entities Fannie Mae and Freddie Mac. The latter were responsible for purchasing and securitizing mortgages, thereby ensuring that funds were consistently available to the institutions that lent money to home buyers. In his view, compensation schemes in these firms created perverse incentives not only at the executive, but also at the lower levels of the company hierarchy. For example, loan officers at Washington Mutual and the brokers they hired were put on volume commissions. Black commented:

> Now that's insane. We know it will produce intense adverse selection. And we know that it will produce a negative expected value. Even the brokers were tempted with commissions of $20,000 for every loan that was approved, which perpetuated false reporting of income and assets on millions of loan applications. Now the broker doesn't believe they are doing anything wrong. They're helping the client get a loan and be able to become a homeowner. They know the lender is in on it and they're not cheating the lender, or at least the lender's management.

Black believed the control fraud, motivated by perverse compensation systems, extended to major investment firms like Goldman Sachs. "The investment banks all knew that the asset values of the CDOs were massively overstated, because the incredible problems in asset quality were deliberately being covered up," Black explained. As Black noted, the industry was warned several times that mortgage fraud was "epidemic" and would likely cause an economic crisis. The FBI issued its first warnings in September 2004, in open testimony to the House of Representatives, and the industry's anti-fraud experts released a warning in early 2006 that liar's loans[14] had a fraud incidence rate of 90%. The banks, however, continued to issue these loans. Credit Suisse reported that 49% of new

[13] Interview with Bill Moyers on *Bill Moyers Journal*, April 3, 2009, http://www.pbs.org/moyers/journal/04032009/transcript4.htm.

[14] A liar loan described a category of mortgages that required little if any documentation verifying the borrower's income and assets. These loans helped encourage unethical behavior by both borrowers and lenders. For more on this see William K. Black, "When 'Liar's Loans' Flourish," *The New York Times*, January 30, 2011.

originations in 2006 (more than 1 million) were liar's loans.[15]

Jeff Shames, former CEO and chairman of MFS Investment Management and a senior lecturer in finance at the MIT Sloan School of Management, believed the large Wall Street banks bore a good deal of responsibility. As he put it, "Nothing would have happened without the CDO vehicle in place that Wall Street firms and financial engineers created. CDOs allowed banks to make instant profits on risky securities by converting them into riskless securities."[16]

Unlike Black, however, Shames didn't accuse the banks of fraud. "No corporation sets out to lie. Everything starts out legitimate. And some risky type of business gets created that some people have qualms about but the quantitative models show that it's risky, but within the bounds. And if the firm diversifies enough, it will work. So nobody in these firms believes they are doing anything fraudulent or unethical. They think 'This is the industry norm right now. It's working fine.'"

Like Black, Shames placed blame on the industry's compensation system, which rewarded people for short-term gains, not long-term growth:

> Wall Street's broken in the sense that the compensation system doesn't work for what's good for society. Financial corporations should have a bigger obligation to society. You could drive the Internet off a cliff, and nothing happens to society. You can't drive the financial industry off a cliff. As a result, a financial company can't be treated like an Internet company or a manufacturing company. Financial firms have to be held to higher standards because of their effect on the financial system and on society. Do we want finance people to be the highest paid people in society? Definitely not. The compensation structure has got to be restructured in a dramatic way or else we need to make the business less profitable by forcing banks to keep a lot more of their capital.

Many believed that expecting financial firms to act with high moral standards was unrealistic. As Leo Strine, Chancellor of the Delaware Court of Chancery,[17] remarked:

> Instead of recognizing that for-profit corporations will seek profit for their stockholders using all legal means available, we imbue these corporations with a personality and assume they are moral beings capable of being 'better' in some way in the long-run than the lowest common denominator. We act as if entities in which only capital has a vote will, when a choice has to be

[15] William K. Black, "When 'Liar's Loans' Flourish," *The New York Times*, January 30, 2011.

[16] For a more detailed description of the CDO market see Michael Lewis, *The Big Short: Inside the Doomsday Machine* (W.W. Norton & Company, 2010).

[17] The Delaware Court of Chancery is a non-jury trial court that serves as Delaware's court of original and exclusive equity jurisdiction, and adjudicates a wide variety of cases involving trusts, real property, guardianships, civil rights, and commercial litigation.

> made between profit for those who control the board's re-election prospects and employees and communities who don't, somehow be able to deny the stockholders their desires.[18]

Robert Reich, former labor secretary under President Clinton, believed that endowing corporations with moral compasses was misguided:

> Corporate executives are not authorized by anyone—least of all by their investors—to balance profits against the public good. Nor do they have any expertise in making such moral calculations. Democracy is supposed to represent the public in drawing such lines. And the message that companies are moral beings with social responsibilities diverts public attention from the task of establishing such laws and rules in the first place.... By pretending that the economic success corporations enjoy saddles them with particular social duties only serves to distract the public from democracy's responsibility to set the rules of the game and thereby protect the common good.[19]

Milton Friedman, the Nobel Laureate in economics, had argued precisely Reich's points in an article he published in the *New York Times Magazine* on September 13, 1970: "The Social Responsibility of Business Is to Increase Its Profits." Enormously influential in the U.S. and abroad during the last decades of the 20th century, Friedman saw government as the umpire to the games businesses play. Hadn't the corporation changed during that time, though? What to make of the retort to Friedman implicit in management guru Charles Handy's 21st-century comment that "It used to be said that the business of business was business, but that was before those businesses became larger than countries"?[20] One might argue that the burden of responsibility on the business community had moved it beyond the freedom to play games with other people's money, let alone their lives: the analogy of controls on big finance, like the ones that the Federal Drug Administration applied to pharmaceutical companies, had begun to proliferate.

2. Government

The size and reach of 21st-century corporations notwithstanding, many believed that government was largely responsible for the financial crisis. David Schmittlein, John C Head Dean of the MIT Sloan School of Management, commented:

> I think a lot of people would like to make it about a few big banks that got together and did something naughty. And it isn't fair, and it's barely even true. The banks were not the root cause of the problem. They did not inflate housing prices. The housing bubble was first and foremost the result of an expansive monetary policy by the federal government, under multiple presidential

[18] Leo E. Strine, Jr., "Bailed Out Bankers, Oil Spills, Online Classifieds, Dairy Milk, and Potash: Our Continuing Struggle with the Idea that For-Profit Firms Seek Profit," *The University of Western Ontario, The Beattie Family Lecture in Business Law*, March 8, 2011.

[19] Robert Reich, "How Capitalism Is Killing Democracy," *Foreign Policy*, September/October, 2007.

[20] Charles Handy, "Tocqueville Revisited: the Meaning of American Prosperity," *Harvard Business Review* (Reprint # R0101C), January 1, 2001, p. 10.

> administrations, and secondly the result of federal government policies and institutions aimed at expanding home ownership.

Many argued that financial institutions, under extreme pressure to deliver short term results, were merely pushing boundaries that government had set too loose. As Leo Strine noted:

> It is well known that businesses aggressively seeking profit will tend to push right up against, and too often blow right through, the rules of the game as established by positive law. The more pressure business leaders are under to deliver high returns, the greater the danger that they will violate the law and shift costs to society generally, in the form of externalities. In that circumstance, if the rules of the game themselves are too loosely drawn to protect society adequately, businesses are free to engage in behavior that is socially costly without violating any legal obligations.[21]

Nouriel Roubini, an economist at New York University, was more assertive in blaming the government decision to loosen regulations. He believed the financial crisis represented a massive failure of public policy:

> There was an ideology for the last decade in Washington that was critical to this financial crisis. [It] was an ideology of laissez-faire, Wild West unregulated capitalists. The base of this ideology was the idea that banks and financial institutions will self-regulate. And as we know, self-regulation means no regulation. It was the ideology of relying on market discipline, and we know when there is irrational exuberance, there is zero market discipline….
>
> The job of the Fed is to take away the punchbowl when the party gets going but unfortunately not only did the Fed not take away the punchbowl, it added vodka, whiskey, gin and every toxic stuff to it. Greenspan was the biggest cheerleader of this kind of financial innovation: zero down payment, no verification of income, assets and jobs, interest-only mortgages, negative amortization, teaser rates, all this toxic stuff. [22]

Why didn't Alan Greenspan, then head of the Federal Reserve, "take away the punchbowl"? Simon Johnson, the former IMF chief economist and a professor at the MIT Sloan School of Management, believed that the government had fallen victim to regulatory capture. In essence, the government had allowed a few big financial institutions to use their size and power to reshape the political and regulatory landscape to their advantage. As a result, they had become too big to fail:

> The political influence of Wall Street helped create the laissez-faire environment in which the big banks became bigger and riskier until by 2008 the threat of their failure could hold the rest of the

[21] Leo E. Strine, Jr., "Why Excessive Risk-Taking Is Not Unexpected," *The New York Times*, October 5, 2009.
[22] "Blame Washington More Than Wall Street for the Financial Crisis," *Intelligence Squared US*, March 17, 2009.

> economy hostage. That political influence also meant that when the government did rescue the financial system, it did so on terms that were favorable to the banks. What 'we're all in this together' really meant was that the major banks were already entrenched at the heart of the political system, and the government had decided it needed the banks as much as the banks needed government. So long as the political establishment remained captive to the idea that America needs big, sophisticated, risk-seeking, highly profitable banks, they had the upper hand in any negotiation. Politicians may come and go, but Goldman Sachs remains.[23]

3. Society

Andrew Lo, a professor of finance at the MIT Sloan School of Management and the director of MIT's Laboratory of Financial Engineering, believed that responsibility for the crisis could not be placed on one group or even shared among financial corporations and the government:

> When you have society-wide disregard for certain practices, then effectively what's happening is that the rules are being rewritten. I think this is about a broader set of issues that interact between ethics and sociology and economic behavior.
>
> This is not just about one group that fell asleep at the wheel. It was systemic. And the reason it was systemic is pretty simple. When things go well—politicians are getting reelected, regulators are getting kudos for how stable the markets are, shareholders are making money, mortgage brokers are making money, homeowners are making money—nobody wants to leave the party early. It takes an enormous amount of courage to stand up to that. And people did and they were crushed. The whistle-blowers at Citi and Countrywide were fired.[24] We have to think much more expansively then simply saying corporations were irresponsible. There are plenty of people that were irresponsible in addition to corporations.

Americans' cozy relationship with consumption and, therefore, debt, also bore a share of the blame. As David Beim, a finance professor at Columbia Business School, argued in early 2009:

> The ongoing recent global economic collapse is so monstrous, so broad and so deep that it requires a big-picture explanation. This isn't just about some stupid moves by mortgage brokers in California—how could that have such a vast impact on the global economy? It isn't just about Wall Street greed—hasn't Wall Street been greedy forever?
>
> For the past 25 years we have been over-consuming and over-borrowing…The problem is debt itself. All that borrowing by individuals had a powerful stimulatory effect on the economy. Business sales grew, and production increased to meet improved demand. But debt was growing

[23] Simon Johnson and James Kwak, *13 Bankers: The Wall Street Takeover and the Next Financial Meltdown* (New York: Pantheon, 2010), p. 6.

[24] For more on this see: "Prosecuting Wall Street," *60 Minutes*, December 4, 2011, http://www.cbsnews.com/8301-18560_162-57336042/prosecuting-wall-street/?tag=contentMain;cbsCarousel.

> faster than income, so the aggregate 'credit ratio' of household debt to median household income steadily deteriorated. People maxed out their credit cards and pulled the equity out of their houses. And most people stopped worrying about ever paying the debt back, since the abundant liquidity in our system made it seem that debt could always be rolled over and refinanced. More of our prosperity than we have been willing to admit has been driven by debt.[25]

A Business Solution?

If "we" were the cause, if all of us were to blame, what was the proper response to the crisis? Was it a matter of, in Beim's words, ending our addiction to overindulgence?[26] What clinic would or could coordinate such a collective detoxification? Andrew Lo believed that significant societal change might be in order:

> I think we have come to the conclusion that we cannot conduct business as usual any longer because our society has gotten so complex and it just doesn't work anymore. It's fine for the financial sector to do what it did when there were 1.5 billion people on this planet back in 1900. But we are now 7 billion people. And we may be at a point in our evolution where our technological advances have gotten a bit ahead of our ability to manage them responsibly. We may have to reinvent not just the corporation, but the way that we deal with regulatory issues, the way we handle social and political interactions.

But again, who were "we"? What role might corporations—and more specifically, financial institutions—play in the voluntary and many-faceted change that Lo envisioned? Could or should corporations step up to the complex role that their "personhood" implied, and that the sector leadership roles of AIG, J.P. Morgan Chase, Goldman Sachs and others brought with them?

The absence of swift and significant corporate punishment resulting from the financial crisis, together with the high-profile Supreme Court decision on Citizens United, suggested that corporate rights were being given precedence over responsibilities, and not just by the corporations. Yet Leo Strine argued that, whatever the implications of the Fourteenth Amendment for corporate freedoms, corporations likely could not claim First Amendment—free speech—rights:

> The standing, bipartisan statement of the federal judiciary had been that corporations are creatures of the state and have only such authority as is entrusted to them. The problem with Citizens United is that it ignores this. No one ever believed that the corporation was a human being for first amendment purposes. I don't think we should be treating corporations as if they're human beings. And I think it's incredibly important that we don't, precisely because the whole reason that you have for-profit corporations is to fuel economic growth. And there are great dangers in that, and that's why they have to be regulated.

[25] David. O. Beim, "It's All About Debt," *Forbes*, March 19, 2009.

[26] Karen Ingraham, "Anatomy of a Meltdown: Table Talk with David O. Beim, '58," *The Exeter Bulletin*, Spring 2009, p. 10.

It was hard to imagine where one might draw a line on the kind of adjustment Strine invoked, given the hostility towards corporations expressed by some citizens on the political spectrum, and the politicians who represented them. The repeal of corporate personhood was supported by a number of national and local lawmakers, [27] [28] [29] as well as Move to Amend, a social and economic justice coalition made up of hundreds of organizations.[30] One could conceivably reverse the legal precedents establishing corporate personhood, and eliminate the protections that firms had gradually acquired through them to enhance their operating freedom. Doing so might undo the structural benefits, such as lower transaction costs, that Ronald Coase had identified, in his influential 1937 essay "The Theory of the Firm," as a motivation for forming business entities: groups of people doing together what no individual or group of unaffiliated individuals could hope to achieve alone. It would likely entail a massive redefinition of the corporate entity and rethinking of the incorporation process, with a return to state chartering of corporations in a narrowly defined public interest; with that would come, at least in principle, much tighter state monitoring of corporate activity. As Robert Reich argued, "If the purpose of capitalism is to allow corporations to play the market as aggressively as possible, the challenge for citizens is to stop these economic entities from being the authors of the rules by which we live."[31]

The most obvious alternative had its own strong advocates and detractors. One might keep to the concept of "corporate personhood" and, recognizing that corporations had too often, sometimes inadvertently, sometimes for the best of motives, turned privilege into presumption, put in place a more structured system of responsibilities that were enforced as vigorously as corporate rights were protected. This approach underlay the renewed interest, as the 21st century began, in seeing business as a profession, with the commitment to service and expertise idealized in occupations like the law and medicine.[32] To translate individual into organizational responsibility, the business community would need to develop the commitment to a code, and a willingness among business people to monitor themselves through an organization of their own devising. This would allow corporations to maintain their current legal status, with the understanding that, as H.D. Thoreau had put it in *Civil Disobedience* over a century and-a-half before, "It is truly enough said that a corporation has no conscience; but a corporation of conscientious men is a corporation with a conscience."[33] With that shift in emphasis, corporate ethics would become a necessity, rather than the luxury for which it was too often mistaken, in both the corporation and society at large. The shift might also force a

[27] Supreme Court Justice Sonia Sotomayor hinted at her support for a repeal when she said, during a campaign-finance case, that the court should reconsider the 19th century rulings that first afforded corporations the same rights flesh-and-blood people have (Jess Bravin, "Sotomayor Issues Challenge to a Century of Corporate Law," *The Wall Street Journal*, September 17, 2009).

[28] Senator Bernie Sanders of Vermont and Representative Jim McGovern of Massachusetts had both introduced constitutional amendments in their respective legislative bodies calling for the repeal of corporate personhood (Steven Rosenfeld, "The Hard Truth About Citizens United," *Salon.com*, January 21, 2012).

[29] The cities of New York, Los Angeles, Albany, Boulder, and Oakland had all passed resolutions urging Congress to overturn corporate personhood ("New York City Council Passes Resolution Opposing Corporate Personhood," *The Huffington Post*, January 5, 2012).

[30] http://movetoamend.org/mta-coalition.

[31] Robert Reich, "How Capitalism Is Killing Democracy," *Foreign Policy*, September/October, 2007.

[32] Rakesh Khurana and Nitin Nohria, "It's Time to Make Management a True Profession," *Havard Business Review*, October 2008.

[33] Henry David Thoreau, "Civil Disobedience," Part 1, Paragraph 4. This essay was originally published in 1849 as "Resistance to Civil Government." (http://thoreau.eserver.org/civil1.html, accessed March 13, 2012).

redefinition of corporate leadership, one that aligned with the general social perception that leaders should demonstrate a higher-order self-discipline in their dealings, even as they took higher-order risks to insure the well-being of those they led.

Behind both choices, of course, lay the possibility of a systemic status quo: by 2012, the financial services community had become more powerful than it was before the downturn began,[34] with all of the attendant benefits and risks of its operations magnified. The election of 2012 would take place regardless of action on the part of the business community—some would say, *because* of that community's actions. Yet, as of mid-2012, the Great Recession continued not to yield the real gains in employment, overall economic growth, and social stability that constituents were seeking: other responsible parties to these events aside, who in the business community might step up to offer what an effective majority considered a sustainable path forward, and on what terms?

[34] David Lynch, "Banks Seen Dangerous Defying Obama's Too-Big-to-Fail Move," *Bloomberg*, April 16, 2012.