

The Open Corporation: Effective Self-Regulation and Democracy

Christine Parker

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The Open Corporation addresses one of the oldest conundrums in corporate regulation: how a soulless, bodiless entity — a nexus of contracts in the newspeak of law and economics scholars — can become accountable for its actions. In a lively and challenging work that is light years away from the received wisdom that the corporation is answerable only to the profit motive of its shareholders, Christine Parker seeks to explore the possibility of transforming the corporation from an object of external regulation to a subject capable of self-regulation.

She asks how, given the lingering ideological framework imposed by Regonomics with its dual presumptions of competition and small government, the state can move beyond command and control regulation to democratically accountable self-regulation internalised by corporate management. While we have yet to reach this promised land — as the recent spate of high-profile corporate collapses painfully reminds us — Parker provides a provocative map of the landscape of corporate self-accountability. She suggests that in devolving the provision of ‘public goods’ to the private sphere, the ‘minimal state’ — far from diminishing regulatory controls — has been forced to spawn new layered forms of compliance monitoring, effectively specifying desired outcomes and attempting to secure those outcomes through ‘audit, inspection, grievance-handling and judicial review’ (p 13).

The bulk of Parker’s analysis involves the increasing prevalence of formal ‘corporate compliance systems’ and the question of whether these internal regulatory mechanisms are capable of moving beyond ‘compliance’ with an externally generated agenda to ‘self-regulation’ and ‘meta-evaluation of self-regulation’ — the development of effective internal mechanisms capable of evaluating the corporation’s performance in self-regulation and establishing further goals together with the internal mechanisms needed to measure progress towards those goals. The ultimate goal is to provide efficient channels through which corporate stakeholders can provide effective input to internal compliance officers and to the board of directors. As Parker notes, internal commitment to effective self-regulation is essential, but inadequate on its own. If corporations are to be democratically accountable:

the private justice of internal management systems [must be connected] to the public justice of legal accountability, regulatory coordination and action, public debate and dialogue ... The most important standards for corporate self-regulation processes allow regulators, the public and the law to judge the companies’ own evaluations of their performance and whether they have improved it on the basis of those evaluations — meta-evaluation. (p 246)

While this reviewer has some concerns about the overall meta-theoretical framework within which Parker works — a framework which owes a great deal to the work of Braithwaite and others on restorative justice — her account of the potential of corporations for a practical form of social citizenship is elegantly written and finely argued. She does not shy away from detailing the pathologies of self-regulation and, for this reviewer, her chapter on the pathologies of self-regulation is among the most interesting and most telling. Companies, it is suggested, often use internal compliance systems and staff to bolster legitimacy without substantive change, to invoke disciplinary mechanisms to scapegoat individuals and deflect attention from management's failures, to obscure responsibility for non-compliance and to contain stakeholder dissent without modifying corporate behaviour (p 145). Given the well-documented pathologies, of course, the question is how internal compliance officers can, on the one hand, avoid co-option by corporate structures and values (in the process compromising their own professional credibility) and, on the other, achieve sufficient status and power within the corporation to act as an engine for change.

As Parker notes, using Valerie Braithwaite's quantitative work on Australian affirmative action professionals as a kind of bellwether, before a compliance officer — in EEO or elsewhere — will have any effect beyond window dressing, that person must have effective external networks with other compliance professionals, have formal and informal support within the company and ready access to the corridors of power, and have formed collegial relationships with corporate peers. Perhaps most critically, compliance professionals need effective access to 'an external normative environment that might apply sanctions of shame, publicity or financial penalty to the company' (p 191).

Sadly, there is little evidence that such an external normative environment exists, in Australia or elsewhere. Despite the current spate of breast-beating by the media, and by corporate regulators and government, and despite the almost inevitable legislative quick fix, history suggests that within a year or two the wailing will die down once again and it will be business as usual until the (equally inevitable) next spate of corporate collapses.

— SANDRA BERNIS
GRIFFITH UNIVERSITY