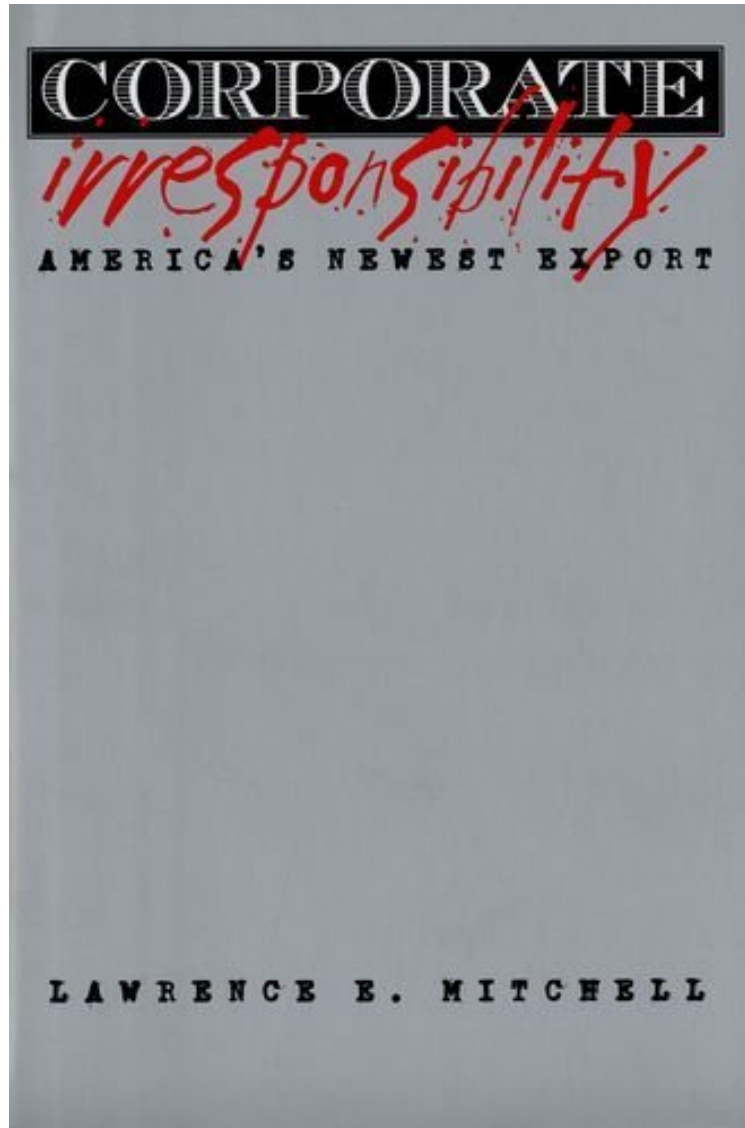


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Corporate Irresponsibility: America's Newest Export

Professor Lawrence E. Mitchell

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Professor Lawrence E. Mitchell : Corporate Irresponsibility: America's Newest Export before purchasing it in order to gage whether or not it would be worth my time, and all praised Corporate Irresponsibility: America's Newest Export:

15 of 15 people found the following review helpful. Lawyer-Author-Reformist: Double Oxymoron OverturnedBy Robert David STEELE VivasI just realized this is the third book by a lawyer I have absorbed in this month's reading, and that is somehow a scary thought. If lawyers are starting to write popular reformist tracts against unfettered capitalism and the export of the flawed U.S. approach to capitalism, something very interesting must be happening in

the dark recesses of our national mind. This is not an easy book to read but on balance it is a very important book and one that would appear to be essential to any discussion of how we might reform the relationship between the federal government with its 1950's concepts and regulations, corporations with their secularist and short-term profit and liquidation notions, and the people who ultimately are both the foundation and the beneficiaries (or losers) within the political economy of the nation and the world. The author lays out, from a business law perspective, all the legal and financial reasons why our corporate practices today sacrifice the long-term perspective and the creation of aggregate value, in favor of short-term profit-taking. He makes a number of suggestions for improvement. Toward the end of the book, citing Lipsett but adding his own observations, he digs deep and summarizes our corporate culture as one that threatens traditional forms of community and morality (Lipsett), while increasingly dominating--undermining--foreign governments and cultures. Elsewhere in the book the stunning failure of our form of capitalism in selected countries is explored. Although there are adequate notes, there is no bibliography and the index is extraordinarily mediocre--not containing, for example, the references in the book to oversight, political, or regulation. One star is deducted for this failure by the publisher to treat the book's content seriously.

1 of 1 people found the following review helpful. Profit Without Honor By C. W. Day Corporate Irresponsibility was probably destined never to be a popular book from the day it was written in 2001. Not only did it run counter to American business orthodoxy, but it takes a self-consciously scholarly approach from the outset. Any book the first third of which is devoted to a Kantian analysis of the deontological justification of the corporate form is unlikely to garner a wide audience outside academia. This is a shame, because this book is a thoughtful exploration of deep rooted flaws in American corporate law and practice, flaws which are considerably more apparent now than when the book appeared. From the outset, Mitchell questions the fiction of corporate personhood, a creation of the Supreme Court in the late nineteenth century that endowed the corporation with the same legal rights as individual persons. Mitchell sees this as a tragic mistake. A corporation possessing all the legal rights of a person may incorrectly be thought to share the motivations, inhibitions, and interests of a natural person. In fact, however, the corporation, particularly in its American form, owes but one loyalty and possesses but one motivation, the maximization of short term profits and stock prices. Mitchell questions the little examined assumption of American culture that short term profit and societal benefit are coterminous, formerly expressed in the notorious comment that what is good for General Motors is good for the country. (Not such a popular sentiment since the recent collapse of GM.) In fact, an exclusive focus on short term stock price not only blinds the corporation (and the people to run it) to such obvious externalities as pollution, but also even to the financial decisions that would be in the best interest of the corporation and its stockholders, much less employees, customers, and the public. One example (mine, not Mitchell's) might be the Walt Disney Corporation's relentless pursuit of extension of the copyright term in order to protect its proprietary interest in Mickey Mouse. It has long been recognized, and is acknowledged in the United States Constitution, that copyright is an appropriate temporary measure to ensure that artists and writers are compensated for their work and encouraged to produce more of it. In general, however, works should pass into the public domain as soon as possible so that ideas will be widely disseminated and older works can inspire new ones. (Shakespeare might never have written a line if he had been subjected to a rigorous enforcement of today's copyright laws. The author of the ur-Hamlet would no doubt have sued!) An individual artist only needs to have an artificial monopoly on his creative work for the duration of his lifetime, or perhaps a little longer to provide for his children. This is consistent with the principle of limited copyright, and flesh and blood is likely to demand little more. Only the corporation, which exists in perpetuity, or until dissolution do us part, is likely to demand a perpetual copyright with no regard for the free flow of information or the general welfare, although it may cloak itself in the rights of the very artists it exploits through draconian distribution contracts. The corporation knows no conscience, only profit. Under these circumstances, the incentives for corporate behavior (or misbehavior) make a real difference in light of the absence of the kind of restraint normally to be expected from individuals. Unfortunately, the corporation in its American form takes to extremes an emphasis on short term stock price and exclusive obligation to shareholders that exacerbates corporate asocial (or antisocial) tendencies. While there seems to be consensus that long-term planning is necessary for the long-term health of corporations, the insatiable demand of stockholders for short-term returns can clearly undermine the long-term health of the corporation. Obvious examples include such cost-cutting measures as slashing the research department and reductions-in-force of necessary personnel. On another level, the focus on short-term profit encourages America's takeover culture, in which companies that do not maximize their short-term stock price are susceptible to hostile takeover and leveraged buyouts that saddle them with massive debt. (The argument that performance is driven by takeover threats is, of course, tautological so long as performance is primarily measured in short-term returns.) To address the distortions that focusing on short-term stock price imposes on corporate behavior, a central reform that Mitchell proposes is to reduce the influence of stockholders on corporate governance. Ideally, Mitchell argues, one could largely eliminate it by making corporate boards self-perpetuating. The Yale Corporation, which governs Yale University, is largely run this way (although the alumni representative is elected). Shareholders would naturally, retain the power to invest or disinvest in the corporation so as to protect their investment, although on the investor side of the equation, Mitchell also proposes a variety of incentives to curb day trading and other short-term trading that distort the market rather than improving market efficiency. Mitchell's reform

of corporate law would ideally act to encourage longterm planning by corporate boards and long-term investing by stockholders. Recognizing that it is unlikely that stockholders would ever completely relinquish the power to elect the board, Mitchell offers as a compromise elections that would occur not annually, but only after the board had served a term of several years. At the same time, Mitchell proposes to extend the amount of time between reports, rather than issuing them quarterly, to encourage a longer view on the part of investors. (However, one might question whether modifying behavior by withholding information is an effective or desirable strategy.) Although the book is not long, Mitchell does deal with a host of other issues, including the disgusting tendency toward self-dealing that has lately so outraged the public, as managers award themselves massive bonuses even as their companies go under. Mitchell outlines the problem as inherent in the wide scope given board members under the "business judgment rule," under which conflicts of interest on the part of board members can be excused if they are approved by a majority of the "non-interested" board members. Given the reciprocity that characterizes corporate boards, allowing the Courts to abdicate their oversight responsibility in the name of the business judgment rule is a recipe for institutionalizing conflict of interest. Mitchell endorses stricter legal oversight of boards to regulate their conduct, but fundamentally is more concerned with how corporations behave within society than with oversight of the personal conduct of board members. A short review does not do justice to this dense but penetrating analysis of the tectonic flaws of America's corporate structure, an analysis that has proved as prescient as it is generally unheeded. Timely today, it would have been more timely reading for America's policymakers when it came out. 4 of 4 people found the following review helpful. Suggestive But Too Theoretical By A Customer This fascinating and suggestive book makes a strong argument that an undue emphasis on financial performance has caused American corporations to shirk their responsibilities to workers, creditors, communities, or any other group except stockholders. To prove his point, author Mitchell, a business law professor at George Washington University, tackles a vast range of topics, from industrial sociology and shareholders' derivative suits, to Enlightenment individualism and comparative corporate governance. This makes for fascinating reading, and is designed to show that capital markets force corporate managers to focus on short-term financial results. However, it also left me with the sense that Mitchell's theoretical stretch exceeds his empirical grasp: none of the issues is really developed in any depth. In particular, Mitchell fails to systematically compare the behavior of public and non-public corporations in the U.S., or to compare American corporations with corporations operating in less-individualistic legal and cultural environments abroad. Yet such comparisons would be crucial to testing his points about the harmful impact of financial markets on American corporate management. In reading the book, I also wondered whether the pressures to maximize short-term returns are less the result of "American individualism" and more the result of a business environment where hostile takeovers are easy and executive compensation is tied to stock prices. In any event, these issues can't be resolved by theorizing. Mitchell needed to interview some managers to find out what really makes corporations tick. This is a pity since Mitchell writes well, has common sense, and cares about ordinary Americans who spend most of their working lives in large business organizations. His concerns about warped corporate priorities were entirely vindicated by the scandals at Enron (where shareholders as well as workers were screwed by corporate managers bent on boosting short-term share values), which were exposed only AFTER his book appeared in 2001. We need more books pointing out that American-style capitalism isn't the last word on business and can take a heavy toll on humane values. I just wish that Mitchell had crossed his T's and dotted his I's.

Corporations are often so focused on making short-term profits for their stockholders that they behave in ways that adversely affect their employees, the environment, consumers, American politics, and even the long-term well-being of the corporation, says Lawrence Mitchell in this provocative book. This is a significant issue not only in the United States but also in the world, for many countries are beginning to emulate the American model of corporate governance. Mitchell criticises this emphasis on profit maximisation and the corporate legal structure that encourages it, and he offers concrete proposals to bring about more socially responsible corporate behavior. Mitchell declares that managers should be freed from the legal and structural constraints that make it difficult for them to exercise ordinary moral judgment and be held accountable for their actions. He suggests, for example, that earnings reports be required annually rather than quarterly, that the capital gains tax be increased on stocks held for fewer than thirty days, and that elections of corporate boards of directors be held every five years rather than every year. Mitchell places the problem of corporate irresponsibility within the broader context of American life and demonstrates the extent to which contemporary corporate behaviour represents a corruption of our cherished liberal values of personal freedom and individuality.