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PROXY POWER AND SOCIAL GOALS — HOW CAMPAIGN GM SUCCEEDED

DONALD E. SCHWARTZ*

On August 31, 1970, General Motors announced the establishment of a public policy committee, consisting of five outside directors, to advise management on matters which concern the public interest. Chairman James Roche said that the purpose of the committee was to give matters of community concern “a permanent place on the highest level of management.”¹

About a week earlier, GM shareholders received their second quarterly report for 1970. A mere three pages of the report was devoted to business news, as compared to five pages which dealt with such subjects as environmental problems, product safety, aid to minorities, and the fact that Ralph Nader had dispatched a group of students to study the corporation and prepare a report.²

These expressions of concern for community problems ostensibly responded to the efforts made earlier in the year by the *Campaign to Make General Motors Responsible* — better known as Campaign GM. While General Motors management declined to elaborate on why it had formed a public responsibility committee, the press seemed not to be in doubt. Thus, one commentator observed that “the committee, which will report directly to the Board of Directors, is GM’s apparent answer to demands made by a group of critics at the last stockholder meeting on May 22.”³

Campaign GM criticized GM management through a proxy contest mainly on behalf of two proposals.⁴ Under the first — amendment of the by-laws to authorize three additional directors — Campaign GM hoped to place three persons representing public viewpoints presently unrepresented on GM’s Board. The persons it intended to nominate, if the proposal passed, were Dr. Rene Dubos, a professor of biology at Rockefeller University and a leading ecologist, Miss Betty

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¹ N.Y. Times, Sept. 1, 1970, at 1, col. 3.

² GM QUARTERLY REP., AUG. 1970.

³ N.Y. Times, Sept. 1, 1970, at 1, col. 3. Another response was the election to the board of Rev. Leon Sullivan, the first black so chosen. Wall St. J., Jan. 6, 1971, at 6, col. 3. See Stern, *At Least One Share of Stock for the Public*, N.Y. Times, Mar. 7, 1971, § 4 (Review of the Week), at 10, col. 1.

⁴ Proxy Statement of Campaign GM (Mar. 25, 1970).

Furness, adviser to President Johnson on consumer affairs, and Reverend Channing Phillips, a community leader in Washington, D.C. and the first black man nominated for President at a national party convention. Pursuant to the second proposal, there was to be created an ad hoc shareholder committee on corporate responsibility, which would report directly to the shareholders by the next spring on the manner in which the corporation had discharged its social responsibilities. In effect, the group was to make a "social audit" of GM and recommend ways of dealing with current social problems. The membership of this group was to be chosen by a three-man panel, consisting of a representative of the management, a representative of the UAW, and John D. Rockefeller, IV, who was designated by Campaign GM as its representative on the selection panel. Members of the committee would reflect a broad base of community interests and not merely those of the business community.

While GM's public responsibility committee may have been in response to these proposals, it surely is not the same. Again, showing that there was no doubt as to what impelled GM's decision, leading newspapers sought Campaign GM's opinion of the GM action. The company was commended for its decision, but there was no mistaking the fact that Campaign GM thought the response inadequate. Thus, it noted that the Chairman of the committee is John A. Mayer, Chairman of the Mellon National Bank and Trust Company in Pittsburgh, which has significant financial relations with the Gulf Oil Company. His objectivity in dealing with any possible recommendation to scrap the internal combustion engine is, at least, questionable. Another director who serves on the committee is John T. Connor, former Secretary of Commerce, who, following the annual meeting last May 22, expressed great irritation with the questions raised by Campaign GM and others about public policy matters discussed at directors' meetings. Mr. Connor suggested that Board proceedings were none of the shareholder's affairs,⁵ which makes one wonder whose business it is.

Campaign GM's efforts gained less than three percent of the votes at the annual meeting.⁶ While it was able to return to the proxy wars again in the spring of 1971, it could not present the same proposals, by reason of the proxy rules.⁷ Moreover, it is entirely possible that it will not obtain a significant amount of additional votes this time. This state

⁵ BUS. WEEK, May 30, 1970, at 84.

⁶ See Wall St. J., May 25, 1970, at 4, col. 3; N.Y. Times, May 23, 1970, at 15, col. 1.

⁷ Rule 14a-8(c)(4), 17 C.F.R. § 240.14a-8(c)(4) (1970).

of affairs surely leads one to the following question: Is there any point to waging a proxy contest to gain social objectives?

SOCIAL AWARENESS AND BIG BUSINESS

To view the matter another way, many persons, particularly young people, are distressed about what they perceive to be deteriorating conditions in American life. They point to the corporation as being largely responsible for this fact. They want change and many of them feel that change is not possible within the framework of our existing economic system. Some regard the destruction of the environment, racism, and the Southeast Asian war all to be functions of the free enterprise system. Nor do they believe that shareholders can be expected to make their companies more responsible because the shareholders profit from these acts of irresponsibility. Furthermore, as any corporation lawyer or student of corporations realizes, little power is in fact possessed by the shareholders. As Ralph Nader commented in the speech which served as a kickoff for Campaign GM:

Nearly a million and a half of these citizens and institutions are shareholders in the company. In theory they own the company; in fact, they have about the same rights as the owner of company debentures. The procedures, the information, the organization, the manpower and the funds are management's to deploy. But the fiction of shareholder democracy continues to plague the reality. By highlighting the fiction, a new reality can be borne that will tame the corporate tiger.⁸

Notwithstanding the fact that formal shareholder power may be a fiction, much can be gained by arguing with management through the established forms of shareholder democracy. Probably the belief held most consistently among the participants of Campaign GM was that their main quarrel with corporations concerned the decision-making structure of modern corporations. They felt that what was most seriously lacking was an input of different approaches to economic life which would be provided by persons of varying experiences and viewpoints. Thus, the General Motors Board might well include persons who honestly believe they represent the public interest, but who in fact do not represent the public. By this reasoning, it is not sufficient that the Board include persons who have concerned themselves with problems of black people; the Board needed a black person. The same is true of a woman, as we develop an increased consciousness of dis-

⁸ N.Y. Times, Feb. 8, 1970, at 44, col. 1.

crimination against women. Of course, the Board included persons of a scientific background, but their concern was technology not ecology. Consequently, it was believed that the massive power that General Motors possesses was used too single-mindedly for the pursuit of profits without sufficient recognition of the public impact of this power.

The proxy contest infuses a new input into the decision-making process. It brings heretofore unspoken decisions into the open. While it is true that a debate about corporate policy could ensue at any time, such a debate gains heightened focus when it is put into the time frame and the specific language of a proxy contest. The public is likely to be much more interested, and it will follow closely a debate which occurs within the relatively short space of time allowed for a proxy contest, rather than one which drifts endlessly and without specific focus. Injecting the public's interest into a corporate debate on public policy may produce the "new reality" to which Mr. Nader referred.

The public's role, and the public interest, is seen most clearly in the context of financial institutions. Universities, particularly, faced hard decisions in Campaign GM. Students at various universities (*e.g.*, Harvard, MIT, and Michigan) urged university officials to vote their shares with Campaign GM.⁹ The university treasurer's dilemma is perplexing, however. He must find the funds for the university to successfully operate. At the same time, universities have power to use which could be influential in shaping corporate policy, and thus, because of the nature of the university, there might be an obligation to do so even if it results in some cost.¹⁰ In addition, the right of the student constituency to be heard on the matter is also at issue, as is the right of other constituency groups of other institutions (*e.g.*, pensioners, insurance policy holders).

One of the main problems is that hard-headed businessmen simply assume that corporate responsibility costs the shareholder more than corporate irresponsibility and, even more, they really assume that the shareholder can make money only if the business is conducted without regard to social obligations. Little effort has been made to try to calculate just how much of a loss there would be to shareholders by the adoption of certain policies advocated by reformers. Significantly, as a result of the proxy contest, future choices will probably be made in the open, with competing views being aired.

⁹ See, *e.g.*, N.Y. Times, May 19, 1970, at 30, col. 7; *id.*, May 1, 1970, at 13, col. 1; *id.*, Mar. 15, 1970, at 62, col. 4.

¹⁰ This is the recommendation of a special panel appointed by Harvard President Nathan Pusey. See Washington Post, Mar. 5, 1971, at 3, col. 4.

THE AFTERMATH OF THE CAMPAIGN

Doubtless the proxy contest has stirred others into thinking about ways of achieving more representative decision-making bodies. For example, the First Pennsylvania Banking and Trust Company, the largest bank in Philadelphia, has recently considered restructuring its Board, *i.e.*, turning over one-third of its twenty-four seats to consumer representatives, young people, employees, blacks, poor people, and, perhaps, militant women.¹¹ Additionally, it has been noted that First Pennsylvania contemplated voting its shares for Campaign GM during the proxy contest but decided not to do so because they did not want to ask General Motors to do something which they were not willing to do themselves.¹² The fact that they are now willing to do it themselves perhaps indicates the likelihood of a different result the next time the bank votes in a proxy contest similar to Campaign GM.

The Campaign GM leaders indicated on a number of occasions that they believed that they had achieved success in the campaign because they had forced General Motors into a debate on public policy issues. This is indeed an inevitable feature of a public interest proxy contest because management must respond in a manner that will appeal to the public and not merely to profit instincts of the shareholders. Politicians, too, are aware of the need to identify with the broader public concerns in this kind of a proxy contest. During the course of Campaign GM, a number of congressmen and senators vocalized their support on behalf of Campaign GM. Indeed, Senator Muskie introduced the Corporate Participation Bill¹³ a month after the GM annual meeting in order to facilitate such future proxy contests. In September, Senator Gaylord Nelson introduced a bill which would require automobile companies to produce a pollution-free engine by 1975.¹⁴ A resolution in almost identical terms was presented to the General Motors management for inclusion in the proxy statement, but they excluded it and the SEC indicated that it would take no action on the matter.¹⁵ Nonetheless, the point was frequently made, during the campaign, that management should proceed to do this, and, in any event, that it was irresponsible in not doing it.

It seems a fair conclusion that such a proxy contest can serve a useful purpose to the objectives of reformers and success of such a con-

¹¹ Wall St. J., Aug. 5, 1970, at 14, col. 4.

¹² *Id.*

¹³ S. 4003, 91st Cong., 2d Sess. (1970). See also N.Y. Times, June 23, 1970, at 59, col. 2.

¹⁴ S. 4358, 91st Cong., 2d Sess. (1970). Congress eventually adopted the Cleaner Air Act of 1970, 42 U.S.C. § 1857 *et seq.*, 84 Stat. 1876.

¹⁵ Wall St. J., Apr. 7, 1970, at 40, col. 2; N.Y. Times, Mar. 20, 1970, at 1, col. 5.

test should not be judged on the basis of how many votes it obtains. It is more important to consider the effect that such a contest has both on the decisions which are made by corporations and the process by which such decisions are made. As reporter Jerry Flint observed on the day of the General Motors meeting, "[t]he Campaign may not have won many votes, but it may have captured the high moral ground and the fight may just be beginning."¹⁶

CONCLUSION

The growing social awareness characteristic of the late sixties has finally hit the corporate structure in this country, as illustrated by the Campaign GM proxy struggle. Indeed, America's business has a sizeable backlog of serious problems only now emerging into the limelight. Environmental destruction, the racial situation, the critical neglect of housing, schools and mass transportation are among the more prominent ones. And all of the problems and conditions are, in some measure, the outgrowth of the phenomenal development of our economic system.

The American system is based upon private ownership. Although organizations do not directly wield power, they are no less powerful because they contain the elements of power. In our large corporations, the power is wielded by managers who are sometimes reluctant to admit the great power they possess — largely unrestrained by the free market system, labor unions or the federal government.

The root of society's problems is the manner in which myraid decisions affecting men's lives are made. These decisions determine how our resources are to be allocated. The realization of the power possessed by the strong has led many businessmen to speak of the need for corporate responsibility — a concept presumably indicating that some corporate resources, including time and assets, will be dedicated to the problems of the community. While clearly a step in the right direction, it is not bold enough for it tries to alter the results of the use of power without changing the power wielders. However, a corporate management sensitive to all the needs of the people — as distinguished from only the acquisitive needs of the people — could produce different corporate priorities. As corporate management is presently selected, we are not likely to see represented within the decision-making

¹⁶ N.Y. Times, May 22, 1970, at 18, col. 3. The prediction has been borne out — not only by the launching of Campaign GM — Round II, Wall St. J., Nov. 20, 1970, at 5, col. 3, but by other proxy contests as well. *Social Activists Switch to Proxy Power*, BUS. WEEK, Feb. 13, 1971, at 86.

councils the views of minorities, poor people, young people committed to a new life-style or the special viewpoint of women. The selection of managers brings into focus the selection of directors, since they choose the management and supposedly determine policy; but the selection of directors, in effect, is left to the managers. This circular process in our major corporations allows no real room for new voices to be heard. It is small wonder that growing numbers of persons perceiving the great power amassed in the corporation and exercised by a few, have become totally disaffected with our corporate state, and see little point in discussing its reform.

Nonetheless, the system is workable and we must not reject it. It is, however, necessary to re-think our concept of the model of the decision-making apparatus of the corporation. Corporate economic planning must be influenced by considerations other than those which predominate at this time. Socially responsible conduct by a corporation cannot be an afterthought, like a quarter in a blind man's cup. It must be a basic ingredient in the conduct of the corporation's mission. It must work towards assuring the end of racism. It must mean forsaking planned ugliness and mediocrity in the ongoing creation of our cities. Corporate responsibility could mean seeking alternatives to the internal combustion engine. The tasks are obviously very difficult to achieve; at present we are barely moving towards the solution. Can we find a way, whereby the decisions on the corporate level stand a better chance of serving society? The persons affected by the corporation must be allowed to influence its decisions. This should mean that they can participate in the selection of the governors. Reform of the electoral process is needed.

We can approach this problem through revisions of state corporation law and enactment of a different method for the selection of directors, or we can seek voluntary acceptance by major corporations of new approaches. To suggest several possibilities: the election process could permit candidates nominated by persons other than management to appear on the corporation's proxy statement;¹⁷ representation on the board from non-shareholders constituencies (such as employees and consumers), can be accomplished;¹⁸ or a corporate responsibility committee made up of varied community interests could be formed, which would monitor corporate decisions.

The law should require corporations to furnish greater information to shareholders about the areas of corporate activity which have

¹⁷ Proxy Statement of Campaign GM — Round II, Proposal No. 1 (Nov. 19, 1970).

¹⁸ *Id.* Proposal No. 2.

significant social impact. Just as financial information is essential to an investor, so is the information needed to enable assessment of managers' social performance.¹⁹ Presumably changes in the proxy rules can be utilized for this purpose.²⁰

Such are the problems which Campaign GM brought into focus. The suggestions outlined above would go a long way toward resolution of the dilemma. Absent implementation of some progressive program, which would help the corporate system adapt itself to the changing needs of a country in peril, the utilization of the proxy contest will become increasingly ostensible, admittedly as a poor substitute.

Nevertheless, the fight is just beginning. Not even General Motors claimed victory after last spring's meeting. Mr. Roche concluded his post-meeting press conference with the following observation:

I don't think we won a victory. I think we won a vote of confidence from our shareholders. I think we could lose that vote of confidence very quickly unless we respond in the way our shareholders expect us to do to these problems, and that is what we intend to do.²¹

For the future, it is hoped that reform will be quickly forthcoming. In the alternative, the proxy contest has proved itself to be a viable device in the battle against corporate irresponsibility.

¹⁹ *Id.* Proposal No. 3.

²⁰ Schwartz, *The Public Interest Proxy Contest: Reflections on Campaign GM*, 69 MICH. L. REV. 419, 520 (1971).

²¹ N.Y. Times, May 23, 1970, at 15, col. 1.