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28

**TWENTY-EIGHT
WORDS THAT COULD
CHANGE THE WORLD**

Robert Hinkley looks and acts just like everyone's image of a corporate lawyer. Impeccably dressed, polished in demeanor, and well-spoken, he bears all the marks of the world he inhabited for more than twenty years. But listen to him talk about revamping the corporation, and you'll discover you're in the presence of a revolutionary.

A fifty-two-year-old native of upstate New York, Hinkley has chosen to devote himself to eliminating corporate abuse of the environment, human rights, public health and safety, local communities, and employees. Unlike most who are committed to these causes, however, Hinkley is an insider. He has worked as a corporate attorney for Skadden Arps, one of the world's largest law firms, and he understands the intricacies of business culture in a way that many activists do not. "Too many activists," he says, "think that corporations pursue profit at the expense of the public interest because corporations and their executives are greedy. In my view, that's self-righteous and wrong." Hinkley says that corporations act the way they do for one simple reason: they are bound by corporate law to try to make a profit for shareholders. This, he believes, sometimes inhibits executives and corporations from being socially responsible.

"In 1886," Hinkley says, "the Supreme Court determined that corporations were entitled to the rights of citizenship under our Constitution. Since then, the corporation has developed into the worst kind of citizen: one that claims all the rights but shirks the responsibilities of citizenship."

Hinkley traces his career in business back to the paper route he began at age ten, some of whose proceeds he later invested (with his father's coaching) in the stock market. After receiving his law degree from New York City's Fordham University in 1978, Hinkley joined Wall Street powerhouse Skadden Arps. "We did things the other firms didn't do," he says, "such as handle hostile acquisitions. We had a real swagger in our step, and we were the best at that particular game." As a corporate attorney Hinkley advised companies from a wide variety of industries, including airlines, banks, telecommunications firms, and petrochemical and mining corporations. He saw firsthand what makes businesses successful and also came to understand how their pursuit of profit can damage the public interest. Unlike most corporate lawyers, Hinkley was not antigovernment. "From the time I was a teenager," Hinkley says, "I have believed that government is more than just an arena in which private interests settle their differences. I believe government exists to protect the public interest."

In 1981, Hinkley left Skadden Arps to work at a smaller firm, but he returned in 1989 after a former mentor invited him to manage the Sydney, Australia, office, which he did until 1996. Around that time, Hinkley became interested in the underlying assumptions behind corporate behavior and the idea of the corporation as citizen. He also discovered the ideas of man-



ROBERT HINKLEY

agement expert W. Edwards Deming and systems theorist Peter Senge. Deming taught him that "most of the time it's the system that causes the problem, not the people in the system." To change the system, Senge said, you should look to make "the smallest change possible that will generate the biggest effect."

For Hinkley, this means adding twenty-eight words to the Corporate Code, turning it into what he calls the Code for Corporate Citizenship. "As I've worked on this idea," he says, "it has occurred to me that corporations can do more for people than just pay an extra ten-cents-a-share dividend. I'd much rather see corporations stop polluting than have ten or fifteen cents on every share I own. And I think others would feel the same way." In June 2000 Hinkley decided to take some time out from his law practice so he could work on the code full time.

We spoke in September 2003 at Boston's Ritz-Carlton Hotel. Hinkley's passion for his work was obvious. He enthusiastically answered my questions for two and a half hours, giving no signs of tiring.

Cooper: What is the Code for Corporate Citizenship, and how did it come about?

Hinkley: There came a point in my practice when I realized that corporate managers aren't against the environment, human rights, and other elements of the public interest; they just don't see these things as relevant to their job. Why? Because the corporate law says that their job is simply to use their best efforts to pursue profit on behalf of the shareholders. Human rights, social justice, and the environment don't factor into that equation — at least, not directly.

We can't solve the problem of corporate irresponsibility by imposing volumes of laws and regulations that try to restrain the system, because the system is designed not to be restrained. I believe the solution lies in redesigning the corporation itself to build in some self-restraint. So I am suggesting that the

ROBERT HINKLEY'S PLAN TO TAME CORPORATE POWER

an interview by ARNIE COOPER

I DON'T LIKE TO CRITICIZE ACTIVISTS, BECAUSE THEY DO A LOT OF GOOD, HARD WORK, BUT THEY WON'T SOLVE THE PROBLEM OF CORPORATE ABUSE OF THE PUBLIC INTEREST FIGHTING ONE GARBAGE DUMP AT A TIME.

corporate law be changed to say: “The duty of directors henceforth shall be to make money for shareholders *but not at the expense of the environment, human rights, public health and safety, dignity of employees, and the welfare of the communities in which the company operates.*” Those final twenty-eight words are what I call the “Code for Corporate Citizenship.”

Once that change has been made, everything in the corporation will change. Today, when people go to work, they know that their only job is to help the company make money. It's not their job to be concerned with the public interest. Under the new code, though, their job will also be to pay attention to the public interest and to speak up on its behalf. Right now, most feel it's their job to keep quiet.

Cooper: What steps need to be taken to put your idea into practice?

Hinkley: It's simple: Corporations wouldn't exist if we didn't have laws that let them exist and specify how they are to operate. These laws are just statutes, like speed limits, and the way you change a statute is by going to the state legislature and getting a bill passed in both houses and signed by the governor.

All we have to do is get these twenty-eight words and their enforcement provisions added to the corporate law. It must be done on a state-by-state basis, but the change is the same in every state.

Cooper: Where do we start?

Hinkley: Well, you can't really start with the state legislature; you have to start with the people and make them aware of the problem. And we've begun doing that. Groups have already formed around this issue in Minnesota, California, and Maine.

Marjorie Kelly, who wrote *The Divine Right of Capital*, also advocates starting with the people to change the situation. This is because only they can fix it. She calls for a second “(r)evolution” — with parentheses around the *r* to suggest that it's also an evolution. In the first American Revolution, she points out, the colonists used pranks to grab people's attention — most famously, the Boston Tea Party.

Now, I don't like pranks. When I hear the word *prank*, it raises the hair on my corporate-lawyer neck.

Cooper: But that didn't stop you from carrying out one of your own.

Hinkley: That's right. In May 2003, we formed a corporation in Richmond, Virginia, called “Licensed to Kill, Inc.” We chose Virginia because it's the home of tobacco giant Phillip Morris.

When you set up a corporation, you have to obtain a charter from state government in which you specify the name of the company, how many shares it's going to issue, the company's purpose, the names of its directors, and how long the company will be around.

In its charter, Licensed to Kill, Inc., states: “The purpose of Licensed to Kill, Inc., is to engage in any business permitted under the laws of the Commonwealth of Virginia, including the marketing and manufacture of tobacco products in a way that kills four hundred thousand Americans and 4.5 million other people each year.”

When word got out about our company, the media demanded of the Virginia State Corporations Commission, “How could you let them do this?” The commission replied, “There was nothing we could do about it.” And that's exactly the point of this exercise: We think there should be something state government can do. It should not be required to stand by and allow companies to be formed under its auspices that are going to damage the public interest. State corporate law is meant to serve the people, not be used as a tool to hurt them.

Yes, it was a prank. But it captured people's imaginations and made them think. Public awareness has to be created — in this way and others — before legislators will act.

Cooper: What about the argument that consumers are driving the demand for harmful — and even deadly — products such as cigarettes?

Hinkley: Corporations often try to shift the blame for their abuse of the public interest onto their customers. The tobacco industry is a prime example. Cigarette manufacturers argue that they are simply providing a product their customers want: it's not their fault that smokers are killing themselves. The implementation of the code will prove the speciousness of this argument, which intentionally ignores the billions of dollars those companies spend every year on advertising and distribution in order to entice more people to become smokers, and to make their deadly and addictive products more available. They are doing more than just serving a market: they are creating and expanding it.

The code will not prohibit the sale of tobacco. It should, however, cause tobacco companies to get out of the tobacco business and into other businesses that do not harm the public interest. Some are already doing this. How many fewer premature deaths from smoking would there be in the world if there were no longer any mass-marketing or widespread distribution of tobacco?

Another good example of this it's-the-customers'-fault argument is the automobile industry's insistence that consumers are not willing to pay more for cars that pollute less.



But this ignores the fact that polluting vehicles cost less only because, over the past hundred years, hundreds of billions of dollars have been spent on finding ways to make them cheaper. In comparison, almost nothing has been spent on the development of affordable pollution-free vehicles. The problem is not consumers. The problem is that manufacturers aren't really giving consumers a choice. Currently, the only choice is between an affordable polluting automobile and an unaffordable nonpolluting one. That's no choice.

Under existing corporate law, companies have no incentive to risk investing in research and development that will eliminate pollution. Indeed, existing law encourages them not to take this risk. The code will change this, because the code will place the cost of pollution — a cost the automobile industry currently foists on the public — back onto the automobile companies. When this happens, companies will find ways to bring down the cost of pollution-free cars.

Cooper: How will this affect international trade? You can't enact the code just in the U.S. and expect it to work, can you?

Hinkley: Actually, I think you can. If U.S. businesses change, then I think businesses in Europe, Japan, China, and Southeast Asia will see that they have to change, as well, because they have to be competitive in the U.S. market. Also, once the technology becomes available, companies around

the world will want to take advantage of it.

I should point out, too, that the Europeans and the Japanese are already ahead of us on this. We're the ones dragging our feet on the Kyoto Protocol.

Finally, the corporate law is essentially the same overseas as it is in the United States. The code can be implemented there and will work just as well as it will here.

Cooper: Will implementation of the code have any effect on the third of the earth's people who are living on less than two dollars a day?

Hinkley: Yes, in many ways. For one thing, it will eliminate the pollution that's now endangering their health and lives. For another, it will guarantee that they get paid a living wage and are treated with dignity while working in the factories run by American companies. I believe it's a step toward providing a higher standard of living for everybody.

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