

# Corporate Responsibility And Product Safety

JAMES S. TURNER\*

The right of the public (citizens/consumers) to be protected from unsafe products has been affirmed by three Presidents.<sup>1</sup> The task now is to turn the announced goal into accepted practice: products must be made safe. Any effort to complete the task must deal with three fundamental realities and their implications.

First, massive economic power has passed into the control of major corporations which are routinely exercising *de facto* government power. Second, scientific and technological expertise has been harnessed to this corporate power in a way that makes the ability to predict hazards lag behind the ability to create new products. Third, the combination of these two factors has led to the development of a major technological tragedy which is threatening the quality of human life, if not life itself. The technological threat to people, the limitations on science as currently practiced, and the location of unprecedented social power in corporate institutions are

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\* Consultant to the Center for Study of Responsive Law; J.D., Ohio State University College of Law.

1. PUBLIC PAPERS OF THE PRESIDENTS, JOHN F. KENNEDY, 1962, at 263 (Document 93); PUBLIC PAPERS OF THE PRESIDENTS, LYNDON B. JOHNSON, 1963-4, at 263 (Document 173); "Protection of Interests of Consumers", Message from the President of the United States, Richard M. Nixon, October 30, 1960, H.R. Doc. No. 91-188, 91st Cong. 1st Sess. (1960).

the parameters within which an effort to insure product safety must proceed.

Adolf A. Berle has described the development of overwhelming corporate power:

The mid-twentieth century—the generation living now—has experienced one of the greatest shifts in economic power structure of which there is record. . . . In (the United States) the power has devolved in part on the state, but in greater part on the bureaucracies of the vast private collectives called corporations.<sup>2</sup>

These corporate “collectives” of power act as the engines of creation for the modern world. Their strength rests in large part on the power to accumulate and apply capital. In 1964 American corporations made \$69 billion in profit. They received \$34 billion in repayment for past capital investments—depreciation charges. They paid out \$27 billion in taxes to the government and \$17.2 billion to stockholders. Thus for the single year of 1964, American corporations “had in cool cash about \$59 billion . . . for direct application to expansion of old enterprises or the organization of new ones.”<sup>3</sup> Corporations tend to apply capital primarily to enterprises which will increase capital accumulation. Such a tendency has failed to produce the quality of life expected by large numbers of people.

In the past, Americans have attempted to deal with the misdirection of corporate power by attempting to overwhelm or redirect it with state power. At the turn of the century the Progressive Movement tried to block the blatant corporate disregard for individuals by the creation of agencies such as the Federal Trade Commission and the Food and Drug Administration. These agencies were the high point of the famous “muckraking” campaigns of the period which revealed the deplorable conditions of the nation’s market places.<sup>4</sup>

Harvey W. Wiley, father of the Pure Food and Drug Law, and one of the famous battlers of the period, described the thrust of the entire movement. The food and drug law should be properly enforced, he argued:

The principle that the right of the consumer is the first thing to be considered would be worth more to this country than the actual protection of health or the freedom from fraud. The object of all legislation of this kind is the same, no difference what its name may be, whether pure food, regulation of the public utilities, restraint of predatory corporations, the rights of the individual citizen

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2. A. BERLE, *POWER*, 190 (1969) [hereinafter cited as BERLE].

3. *Id.* at 203.

4. For a taste of the period, see A. & L. WEINBER, *THE MUCKRAKERS: THE ERA IN JOURNALISM THAT MOVED AMERICA TO REFORM—THE MOST SIGNIFICANT ARTICLES OF 1902-12* (1961).

against monopoly and corporation—all in principal are the same.<sup>5</sup>

In the 1930's the New Deal again attempted to bring corporate power under control by the massive use of state power. The National Recovery Act, the Agricultural Adjustment Act and a new set of regulatory agencies were its vehicles. In the mind of brain-truster Gardner Means, "the organized consumer could become the key to increased production and thus to the restoration of economic balance."<sup>6</sup> But even as the attempt was being made it seemed to hold limited promise. Another brain-truster, Rexford Tugwell, commented in 1934 that "perhaps the efforts which went into the building of these governmental consumers' agencies will prove not to have been justified by results."<sup>7</sup>

Neither of these regulatory attempts to control or direct corporate power toward improved social conditions has been particularly successful.<sup>8</sup> Viewing the failure, Simon Lazarus, executive director of New York City's Department of Consumer Affairs, suggests that more is wrong than superficial failures:

The problem is not simply with the present incumbents of the F.T.C., of the F.C.C., the I.C.C., the C.A.B. and others. The problem is not merely that the incumbent officials will not or cannot carry out the grand design of Progressives and New Dealers. In large measure, the problem is with the grand design itself. Something is fundamentally askew about the whole regulatory system which the nation adopted to control corporate power in the public interest. Many of the regulatory agencies were doomed to fail from the start.<sup>9</sup>

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5. H. Wiley (1908) (Unpublished speech, Wiley Collection, Library of Congress), *Quoted in* J. TURNER, *THE CHEMICAL FEAST* 109 (1970).

6. A. SCHLESINGER, *THE COMING OF THE NEW DEAL* 129 (1959).

7. R. Tugwell, *Consumer and the New Deal*, delivered before Consumers League of Ohio, Cleveland, 1934, *Reprinted in*, R. TUGWELL, *THE BATTLE FOR DEMOCRACY* 285-6 (1935).

8. See E. COX, R. FELLMETH & J. SCHULTZ, *THE NADER REPORT ON THE FEDERAL TRADE COMMISSION* (1969); R. FELLMETH, *THE INTERSTATE COMMERCE OMISSION* (1970); J. ESPOSITO, *VANISHING AIR* (1970) (For a later failure in the air pollution field); J. TURNER, *THE CHEMICAL FEAST* (1970) [*Ed. Note: Reviewed infra*, this Volume]; H. FRIENDLY, *THE FEDERAL ADMINISTRATIVE AGENCIES* (1962); J. LANDIS, *REPORT ON THE REGULATORY AGENCIES TO THE PRESIDENT ELECT* (1960); *REPORT OF THE AMERICAN BAR ASS'N TO STUDY THE FTC* (1969); Hearings on the Subcommittee on Economy in Government before the Subcommittee on Economy in Government, 91st Cong., 1st Sess. 58-64 (1969) (Statement of FCC Commissioner Nicholas Johnson).

9. Lazarus, "Review of the Nader Report on the Federal Trade Commission," *The New York Times Book Review*, Oct. 19, 1969, at 3.

The giant corporations running with little or no effective oversight from regulatory agencies determine the lives of millions.

The application of capital, plus innovation, goes far toward determining the next phase of civilization in the areas of its investment. Decisions as to where production shall be organized may cause cities to rise on empty land, or may exacerbate crowding in overfull urban areas. The decision to manufacture this product and push it into consumption through market channels may overflow wants of no great importance, leaving obvious needs unfilled. . . . The obvious failure is perhaps more ideologic than economic. No adequate idea system has yet been hammered out establishing principles and priorities to guide the application of capital and technique to American needs.<sup>10</sup>

Berle and Lazarus seem to agree that a fundamental lack of perception about national needs and goals has allowed giant corporations which wield massive financial power to create a life style that has little relation to human necessity.<sup>11</sup>

Professor Edward S. Mason has summed up the situation:

Almost every one now agrees that in the large corporation, the owner is, in general, a passive recipient; that, typically, control is in the hands of management; and that management normally selects its own replacements. It is, furthermore, generally recognized that in the United States, the large corporation undertakes a substantial part of the total economic activity, however measured; that power of corporations to act is by no means so thoroughly circumscribed by the market as was generally thought to be true of the nineteenth century enterprise; and that in addition to market power, the large corporation exercises a considerable degree of control over nonmarket activities of various sorts. What all this seems to add up to is the existence of important centers of private power in the hands of men whose authority is real but whose responsibilities are vague.<sup>12</sup>

According to Mason "the functioning of the corporate system has not to date been adequately explained, or, if certain explanations are accepted as adequate, it seems difficult to justify."<sup>13</sup> This failure to explain, or difficulty to justify, current corporate operations is intimately bound up with the 30,000 persons killed, 110,000 permanently disabled, 585,000 hospitalized, and 20 million injured in

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10. BERLE, *supra* note 2.

11. An important conceptual difficulty has begun to creep into the corporate responsibility debate. The basic problem is how to insure that corporate resources are invested in a socially responsible way—a way that has predominantly positive results with few bad side effects. That is, how can a corporation refrain from destroying the environment, endangering human life and producing unsafe products. Unfortunately, some commentators have confused this problem with the legality of a corporation's right to contribute to charities in an effort to relieve the suffering of society. See, Blumberg, *Corporate Responsibility and the Social Crisis*, 50 Bos. U.L. REV. 157 (1970).

12. E. MASON, *Introduction*, THE CORPORATION IN MODERN SOCIETY 4 (1969) [hereinafter cited as MASON].

13. *Id.*

home accidents involving appliances, cooking devices, kitchen gadgets and many other household products,<sup>14</sup> not to mention the approximately fifty thousand annual deaths caused by the automobile alone.<sup>15</sup> With massive power having moved to the private corporate sector and with the responsibility for the use of that power undefined, forces are released which victimize individuals as routinely as they advance corporate power. Coping with corporate forces and defining corporate responsibility are tasks central to the problem of creating safe products.

The second reality that effective product-safety activity must deal with is the subservient role that technology and science have come to play in the corporate society. Technology and science have been more effectively harnessed to the needs of corporations than to the needs of individuals. Lynn White, Jr. writes:

As a beginning (to understanding our current ecological crisis) we should try to clarify our thinking by looking, in some historical depth, at the presuppositions that underlie modern technology and science. Science was traditionally aristocratic, speculative, intellectual in intent; technology was lower class, empirical, action-oriented. The quite sudden fusion of these two towards the middle of the nineteenth century, is surely related to the slightly prior and contemporary democratic revolutions which, by reducing social barriers, tended to assert functional unity of brain and hand.<sup>16</sup>

The crucial uniting of the social "brain and hand"—science and technology—towards the middle of the nineteenth century coincided with the rise of the modern corporation.

Speculation, dishonesty and financial excesses caused the South Sea Bubble crash in 1720 and so discredited the corporation as an institution that for nearly one hundred years thereafter it was virtually outlawed in the English speaking world. Grudgingly its use was resumed as the nineteenth century opened, both in Britain and in the nascent United States, though under severe limitations. It won its way to wide use in the mid-nineteenth century. As the century drew to its close, it had become a commercial instrument of formidable effectiveness, feared because of its power, hated because of the excesses with which that power was used, suspect because of the extent of its political manipulations within the political state,

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14. Nat'l Comm'n on Product Safety, *Final Report to the President* 9-10 (1970) [hereinafter cited as Nat'l Comm'n].

15. G. Romney, *Introduction*, W. CURRAN & N. CHEYE, *TRAUMA AND THE AUTOMOBILE* (1966).

16. L. White, Jr., *The Historical Roots of Our Ecologic Crisis*, 155 *SCIENCE* 1203-07 (1967) Reprinted in G. DEBELL, *THE ENVIRONMENTAL HANDBOOK* 15 (1970) [hereinafter cited as White].

admired because of its capacity to get things done.<sup>17</sup>

The rise of the corporation concurred in time with the uniting of science and technology, a factor which built the prestige of both the corporation and scientific technology.

The result of this co-development is that "the modern corporation, most highly developed in the United States,"<sup>18</sup> is the predominant economic form in a society with the most highly developed science and technology. "One thing is so certain that it seems stupid to verbalize it: both modern technology and modern science are distinctively occidental . . . successful technology is Western."<sup>19</sup> American technological superiority began early and grew with its corporate sophistication.

Thus in 1851, in the very citadel of the industrial revolution itself, discussing the Exhibition of All Nations' Industry at the Crystal Palace in London, the *London Times* conceded, 'It is beyond all denial that every practical success of the season belongs to the American'.<sup>20</sup>

This wedding of science, technology and the corporate form has market place vitality.

One of Madison Avenue's favorite devices these days is to use a wise and benign-looking man in a laboratory smock to present 'the latest research findings'. The ad men thus capitalize on the public's belief in the ability of science to solve its problems, and help generate the notion that private enterprise wages unceasing battle to make science serve the public.<sup>21</sup>

One need only spend an evening before the television set to recognize how important science or pseudo-science is to the selling of corporate products for the creation of corporate income. The selling power of science plus its considerable capability to solve problems has made it a valued and highly-paid servant of corporate power. In fact, "the nation's business firms . . . are the principal source of contemporary technological progress."<sup>22</sup>

The fact that corporations are the source of technological progress and that by investment policies they decide where cities will be built, which products will be used, and what the quality of human life will be, makes them the most significant concentration of power within the modern society—more significant than government, universities, or private association of individuals. The fact that there

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17. A. Berle, *Foreword*, E.S. MASON, *THE CORPORATION IN MODERN SOCIETY* at X (1969).

18. *Id.*

19. White, *supra* note 16.

20. J. Schmookler, *Technological Progress and the Modern American Corporation*, in MASON, *supra* note 12, at 142.

21. *Id.*

22. *Id.*

is general agreement that corporations are without a solid ideological value base (or perhaps an unjustifiable value base) suggests that the system is running without real regard for consequences. The improper or undirected use of massive corporate power—both economic and technological—is the prime cause of unsafe and ineffective products.

A few case histories can illustrate how science has been subverted to the creation of income, creating a hazard for the consumer.

In car manufacturing plants, the production engineers analyze machine, design, operation, and work practices so they can anticipate and eliminate accident-injury risks to men working on the production of automobiles. The stated goal of General Motors of 'no injury producing accidents' is attained in a number of their plants each year. This plant safety has produced dividends in the form of greater quantity and consistency in production, less worker training, fewer breakdowns in the production process, and lower insurance costs.

But the dead and injured consumers of automobiles do not interfere with production and sales. They are outside the self-disciplining systems of plant safety, and when it comes to passenger safety the hard-headed empiricism of the production engineer does not apply. Rather, the so-called automotive safety engineer devotes himself to the defense of the automobile created by his colleagues in the styling and marketing departments.<sup>23</sup>

Between June 30, 1960 and June 30, 1961, the largest-selling prescription product of Richardson-Merrell pharmaceutical company was an anti-cholesterol drug called MER-29. On June 4, 1964, the company and the scientists who had developed the drug were convicted of having falsified the documents that showed the drug to be safe. In fact MER-29 had caused serious eye damage in some users as well as blood disorders, disruption of the reproductive cycle, death, and infant death and disability in monkey and rat studies conducted by the company. A federal grand jury charged that the company and its scientists had "knowingly and willfully concealed and covered up, and caused to be concealed and covered up, by trick and scheme, material facts" about the drug. Most important about the case, however, is the view of its causes as expressed by Washington, D. C. District Court Judge Matthew F. McGuire. He said, "I have taken the view that responsibility in the background of this case is a failure, for want of a better term, of proper execu-

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23. R. NADER, *UNSAFE AT ANY SPEED* 130 (1966).

tive, managerial and supervisory control and that the responsibility of what happened falls on the Company and its executive management.”<sup>24</sup> The clear subservience of science and technology to a corporate policy that has expansion of capital as its prime policy goal lead in this case, as it has in many, to the creation of a very profitable product that was also very dangerous.

In another case, reports on the dangers of the drug Tiernan were not given to the federal government, leading to a \$40,000 fine on the company and a one-year probation of its medical director. The widespread complicity of scientific knowledge with corporate economic power in the failure to insure the safety of drug products was described by Dr. Paul Lowinger, a medical drug investigator at Wayne State University. He reports that:

FDA had received only ten of the 26 reports on drug safety which had been submitted to 19 pharmaceutical manufacturers. The 14 companies which failed to submit toxicity reports included some of the largest and most scientifically capable pharmaceutical houses.<sup>25</sup>

The National Commission on Product Safety found that the market place ran with little regard to the dangers of its products. One of its witnesses, Hendrik S. Houthakker, a member of President Nixon’s Council of Economic Advisors said: “Safety involves human lives and human health—and to rely on the long-run workings of the market place may cause unneeded suffering for the poor individuals who make mistakes.”<sup>26</sup> The coalition of scientific and economic power controlled by corporate decision-makers, who have little or no social orientation to guide their policy-making, is the mechanism that insures that the safety of product users will be subordinated to the income of product producers.

Corporate power is the prime force deciding the form of American society. Science and technology have been harnessed to that force minimizing the availability of independent information. These two situations have led to a massive technological tragedy which is the third reality with which the task of creating safe products must deal. In describing the assaults on human health and well-being of the current stage of western civilization, Dr. René Dubos announces an important warning:

Knowledge is incredibly primitive with regard to the biological effects of the threats to health created by the new way of life. Crowding, environmental pollution, indirect and delayed effects of drugs and food additives, constant exposure to a multiplicity of new

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24. M. MINTZ, *THE THERAPEUTIC NIGHTMARE* 244 (1965).

25. Lowinger, *Toxicity of New Drugs*, 161 *SCIENCE* 632 (1968) [hereinafter cited as Lowinger].

26. Nat’l Comm’n, *supra* note 14.



physical and mental stimuli, alienation from natural biological rhythms are but a few of the aspects of modern life which certainly affect the well-being of many and even probably the future of the human race.<sup>27</sup>

Because of the primitiveness of scientific knowledge, apparent breakthroughs have been pursued vigorously, only to discover that widespread use leads to serious side effects. Sulfanilamide was the first "wonder drug", discovered in 1908, but not found useful until 1932.<sup>28</sup> In 1937 over one hundred people, many of them children, died from the effects of sulfanilamide, leading to the passage of the 1938 Pure Food and Drug Law.<sup>29</sup> Other wonder drugs have found wide favor for use in both animals and humans. Now after more than 25 years of widespread use they are beginning to raise serious questions. In animals, strains of bacteria have been created that are resistant to the drugs and therefore free to spread their diseases to both animals and humans.<sup>30</sup> Other antibiotics, those combined to form one medicine such as the widely used antibiotic combination Panalba, have been declared either unsafe or ineffective or both by the National Academy of Sciences. Isaac Asimov in his book on the history of science points out that between 1960 when he published the first edition of his book, and 1965 when he published the second, Rachel Carson raised serious questions about the usefulness and safety of pesticides in her book, *The Silent Spring*. "Miss Carson's book encourages a new hard look at this branch of biology," Asimov says.<sup>31</sup> A careful look at each scientific advance over the past hundred years would reveal that it was not made without a cost. That these costs have never been balanced against the general benefits is a primary reason for the deterioration of life.

René Dubos, in his book, *Man Adapting*, paints an ugly picture of what adapting-humanity now accepts as the good life.

Millions upon millions of human beings are so well-adjusted to the urban and industrial environment that they no longer mind the stench of automobile exhaust, or the ugliness generated by the urban sprawl; they regard it as normal to be trapped in automobile

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27. House Committee on Science and Astronautics, *The International Biological Program*, 90th Cong. 2d Sess. (1968) at 28 (Testimony of R. DuBos).

28. I. ASIMOV, *THE NEW INTELLIGENT MAN'S GUIDE TO SCIENCE* 600 (1965) [hereinafter cited as ASIMOV].

29. Lowinger, *supra* note 25.

30. N.Y. Times, Oct. 18, 1970, § E, at 8.

31. Asimov, *supra* note 28.

traffic, to spend much of a sunny afternoon on concrete highways among the dreariness of anonymous and amorphous streams of motor cars. Life in the modern city has become a symbol of the fact that man can become adapted to starless skies, treeless avenues, shapeless buildings, tasteless bread, joyless celebrations, spiritless pleasures—to a life without reverence for the past.<sup>32</sup>

A less poetic description of this situation is contained in the *Vital Statistics of the United States* printed by the Department of Health, Education, and Welfare. From 1900 to the present, only about four years has been added to the life expectancy of an American man reaching the age of forty. Infant mortality in the United States has dropped so slowly that it now ranks approximately 15th in infant mortality in the world. In 1950 the United States ranked 5th. A man in the United States will live a shorter period of time than men in 36 other countries. An American woman will live for a shorter period of time than women in 20 nations. The health statistics of the United States, combined with the widespread warnings against chemical and mechanical hazards which are rapidly increasing, suggest the magnitude of the technological tragedy sweeping the industrialized world—particularly the United States.

Clearly, there is a need for a re-evaluation and re-direction of economic and scientific energies if the technological tragedy is to be reversed. Dr. Dubos has made clear how profoundly he feels the situation has deteriorated:

What is needed is nothing less than a new methodology to acquire objective knowledge concerning the highest manifestation of life—the humanness of man . . . . It is almost certain, in fact, that medicine will eventually flounder in a sea of irrelevancy unless it learns more of the relations of the body machine to the total environment, as well as to the past and the aspirations of human beings.<sup>33</sup>

It would not be stretching the point too far to say that the same is true of all science. The crucial question is, can a science and technology harnessed to the engines of corporate giants designed primarily to make money, provide the new kind of knowledge needed? Past experience indicates that it cannot.

There is a need for new mechanisms to generate unbiased, scientific information useful to the entire population. To achieve such a goal, science, government, and industry will have to rearrange their relationships. The drug-testing field can be used as an example. Currently, the law requires that a manufacturer prove that his drug is safe and effective prior to getting approval from the Food and Drug Administration to market it.<sup>34</sup> This means that the com-

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32. R. DuBos, *MAN ADAPTING* 278 (1965).

33. *Id.*

34. Act of Oct. 10, 1962, Pub. L. No. 87-781 § 102, 76 Stat. 781, *amending* Food, Drug, & Cosmetic Act, 23 U.S.C. § 321 (p) (1) (1938).

pany either generates the needed research in its own laboratories or contracts out directly to an independent laboratory for the work. Once the proper information is obtained and evaluated by the company it is passed on to the FDA which evaluates it and lets the drug on the market, if satisfied. The problem is that often the information is biased, incomplete, altered or incorrect, resulting in an unsafe or ineffective drug being marketed. A mechanism must be devised to prevent this from continuing.

The alternative is not difficult. A government referral board should be established which would neither test nor evaluate drugs. Instead, it would receive requests from industry to arrange for the evaluation of a certain drug. The board would then refer the request to an independent laboratory by a prearranged formula that would make the selection a random one. If the same company had a second drug to be tested, the board would refer it to a different laboratory. The result would be a buffer between the manufacturers and laboratories doing the testing. This would eliminate the dependency that has built up between laboratories and manufacturers which leads to a bias of the data showing safety and usefulness. This system can be refined by the creation of a staff for the board that would inspect the laboratories and insure that they were using proper methods and were not subjected to illegal pressure by direct contacts from the manufacturer. This type of system would put government in the position of being an umpire between two private groups—laboratories and manufacturers. Hopefully, it would make scientists less dependent on corporate employers. Their ultimate responsibility would be to carry out the law under government supervision.

The same concept could be expanded to any other product group or industrial hazard. A new institution similar to certified public accountants could be created. It would be a certified public quality-control engineer. This individual would have the responsibility of inspecting and certifying either the process by which a product was made, the product itself, or both. He would have a professional status sanctioned by the state, but he would be in business for himself. He would be assigned to inspection jobs in the same way as the drug scientists. A referral board would then be approached by a business which desired to have the quality control audit. The board would, by pre-arranged formula, make a random selection of

a quality control engineer to evaluate the manufacturer or his product. Sanctions could range from the addition of a product seal to complete exclusion from the market place. Such a system would again be designed to allow expert evaluation of safety and effectiveness of products by individuals who are not dependent upon corporate managers for their livelihood.<sup>35</sup>

The way that sanctions can be applied to unsafe products has often been misunderstood. Many people, including government officials, often find themselves arguing for or against banning the sale of an unsafe product. However, there are a number of other alternatives. The sanctions that can be applied to products to insure safety actually can form a continuum: some products are so unsafe that they are banned from sale (carbon tetrachloride); others are under strict licensing (prescription drugs) and review control; still others are less hazardous, but perform an important function and are marketed with detailed instructions for use and warnings about hazards (over the counter drugs); still further those which carry only a mild warning (cigarettes), and those that present no hazard at all (vinegar). Product safety should be designed so that all products are subject to this kind of ranking. If this were done regulators would no longer be faced with the constant problem of ruling a product on or off the market; instead they could determine the safety category of the product.

An additional mechanism to insure unbiased scientific information could be adopted by the current regulatory agencies. The FDA has a program of science advisors who are university professors advising the agency's district laboratories on procedures and publications. This group has been helpful in highlighting weaknesses in the agency's local scientific practices. However, the FDA Commissioner has not given the group much authority or paid it much heed. The science advisors of the agency should form a committee that would meet quarterly to report on the scientific failures of the agency directly to the Commissioner. Such an external evaluation of the agency's scientific activities could be an important independent check on its scientific determinations. This refined program could become a part of any agency making scientific or technological determinations.

Providing unbiased scientific information is a beginning, but in itself it will not eliminate the current problems created by products that cause more harm than help. In addition, new mechanisms are

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35. The Government Buffer concept will appear in an upcoming article by Dr. Samuel Epstein in *Nature*, which is currently in press.

needed to force corporate power to fulfill its responsibilities. It might be possible to develop a concept of public responsibility receivership. This would be analogous to economic receivership. If a company finds that it cannot obey the laws that govern it then it might be necessary to appoint a new board of directors to revise the policy of the company. Moreover, the concept of the corporation as an institution licensed by the state through the granting of a charter, should be revitalized. It might be possible to spell out more clearly what is expected of a manufacturer regarding product safety, environmental cleanliness and general social responsibility.

All of these concepts are theoretical and require a good deal of research and development before they become commonplace aspects of the corporate landscape. Underlying each of them, however, is a basic tenant of Theoretical American Capitalism most clearly enunciated by Adam Smith in *The Wealth of Nations*:

Consumption is the sole end and purpose of all production; and the interest of the producer ought to be attended to, only so far as it may be necessary for promoting that of the consumer. The maxim is so perfectly self-evident, that it would be absurd to attempt to prove it.<sup>36</sup>

All corporate activity should be examined and evaluated against this fundamental purpose.

All of these proposals are conceptual goals. Between now and their development, less dramatic efforts to insure product safety need to be undertaken. The Product Safety Commission has provided a number of innovations in its Proposed Consumer Product Safety Act. The proposed act creates a five-man commission with a number of important responsibilities. Primarily, it will be able to issue consumer product safety standards and consumer product safety regulations. To do this task effectively the act requires the appointment of a Consumer Safety Advocate and the conducting of proceedings to establish standards and regulations.

The thrust of the Proposed Consumer Product Safety Act is to eliminate hazardous products from the market before they cause damage, as well as to provide or reinforce a wide range of remedies for persons injured by products. The first responsibility of the Commission will be to establish an Injury Information Clearinghouse. To establish this Clearinghouse the Commission is given the

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36. A. SMITH, *WEALTH OF NATIONS* 625-26 (Modern Library Ed. 1937).

authority to build test equipment, offer training in safety investigation, and conduct research and investigation into product safety. Based on this activity the Commission is to set yearly priorities of products requiring special regulatory supervision.

At the same time the proposed Act will allow interested parties (any consumer) to petition for standards or regulations to promulgate or alter safety standards. Any injury that results from the violation of the Act can subject the manufacturer to a treble-damage suit. In addition, the Commission itself can initiate injunctive relief against the marketing of unsafe products. The Act also requires manufacturers to certify that their products comply with its provisions, allows the Commission to hold hearings throughout the nation, requires manufacturers to notify the Commission of defects it discovers, and allows the Commissioner to conduct inspections of factories, warehouses, and establishments engaged in the production or sale of consumer products.

The Act makes a good beginning toward improving the safety of consumer products. It is based on the premise that the consumer's right to safety takes precedence over producer's rights. It also explicitly recognizes, in its findings and purposes section, that this right is not now being exercised because of the existence of "unacceptable numbers of hazardous consumer products."<sup>37</sup> However, the Act is designed to fit into the current system of corporate power and to subordinate science. The effort to establish and develop independent and unbiased sources of scientific and technological information is modelled on that of the current regulatory agencies which has not been notably effective. No effort is made to encourage the development of new and independent sources of information economically isolated from the consumer product industries. In addition, the Act skirts the problem of concentrated corporate power by trying to prevent corporations from acting destructively and not by requiring them to act constructively. Specifically, that act speaks of "imminent hazard" or "unreasonable risk" and not of product usefulness or efficacy.

Of course an act of this kind is not designed, and could not be designed, to cause a social revolution. It will at best be able to take the rough edges off an insensitive system—much as the current regulatory agencies would have done if they had reached their potential. At worst it will become just another moribund regulatory agency itself, leaving even the minor product safety problems un-

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37. The proposed Consumer Product Safety Act can be found at the end of the Final Report of the Nat'l Comm'n on Product Safety, *supra* note 14.

touched. In either case, the major reforms will remain to be carried out even if the Act is adopted.

The current evidence of technological breakdown, established in pollution statistics, health indicators, and death and injuries resulting from automobile and other product failures, is creating widespread public support for fundamental social reform. If properly organized this support can alter the form of corporate power, requiring it to place consumers ahead of income. It can also force a separation of science and economic power by demanding that major social decisions be based on unbiased scientific information. These are the goals that underlie current social ferment fanned by, for example, the lack of safety of thousands of consumer products. It is likely that these goals will play a decisive role in defining the nature of the future.