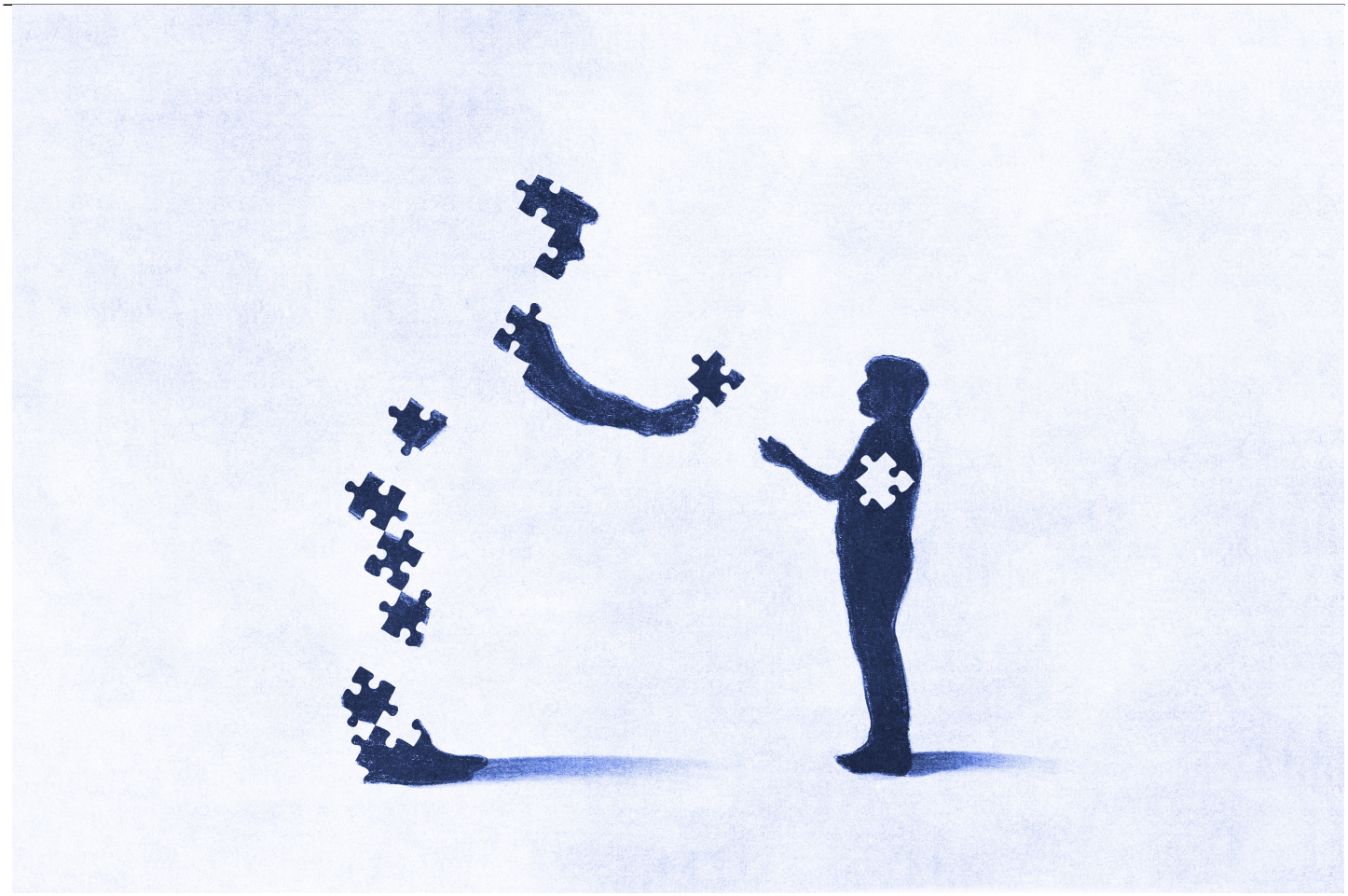


Career Path: Can Anything Save Corporations' Tainted Image?

Career Development

Corporate, Securities, and Governance



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Effective in-house counsel help their companies address many risks facing their businesses. Today, a key risk is societal doubt about the benefits of corporations themselves. If we want our companies to be free to pursue business without intrusive regulation, then we need to think carefully about corporate reputations. In-house lawyers can play a critical role in this evaluation.

Although there have been exceptionally bad actors, corporations' legacy is, on balance, overwhelmingly positive. Last time we talked about how corporations have contributed to the flourishing of humankind. Considering this, I want to explore today what it is that makes corporations so deeply unsympathetic in the public eye today. And as importantly, whether there is anything corporations can do to turn public sympathy to their side once more.

I think we can chalk corporations' bad image up to two things: Scope of influence and confirmation bias. Here's what I mean.

They've gotten bigger and bigger

Because of global networks, large corporations have been getting larger, particularly technology companies. It is easier for an incumbent to buy a small company and incorporate their novel technology than it is to compete with them. The more technologies and services a company

incorporates into its offerings, the more valuable it becomes to consumers. For their part, smaller companies have every incentive to sell to larger competitors. There is no guarantee they'll succeed on their own and being a public company today is burdensome.

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Society puts substantial regulations on companies for fear that the bad acts of a few will become the norm for all. Ironically, this heavy-handed approach has led to ever fewer companies either choosing to go public or remaining independent. In the last 25 years the number of US public companies has dropped by half. At the same time, our economies have grown, which means that fewer companies are dividing up ever-increasing markets. Hence, companies' scope of influence on our lives has increased visibly.

The bad rap is often exaggerated

This enhanced influence would be unproblematic but for the second point: Confirmation bias. We are now primed to expect bad behavior from corporations because of prominent examples that politicians and pundits make sure are publicly exposed. When you expect bad behavior, any example, no matter how isolated, will reinforce your belief and confirm your suspicions.

Thus, a tiny number of incidents has led to overblown concerns. To understand the point you need only consider the many people who are scared to fly but think nothing of hopping in their cars.

They need to do more than good deeds

What can corporations do? Having attained the reputation as the schoolyard bully or worse, it will not help for corporations to point out their many good deeds. A year of patient benevolence is undone by pushing down one kid in the playground and taking their lunch money.

I think of this when I read companies' sustainability reports. Page after page of good deeds, which have no effect on the reader, other than for some to suspect the company of greenwashing.

Know why corporations are important

The reason recitations of good deeds won't help is because society no longer considers the net positive impact corporations have had on society in the past two centuries. Partly this is a matter of short-termism, as in, "What have you done for me lately?"

Partly it is a matter of being spoiled by good times. We don't personally remember when our quality of life was materially worse and when products and services from household-name corporations changed all that.

Lastly as noted above, we are primed to think corporations are filled with selfish, bad actors, and so extrapolate the acts of a few to all.

Well, what about pointing out what happens in countries when private enterprise is squelched, and government steps in to provide basic goods and services? Cuba, Venezuela, and North Korea are clear warning signals for tampering with individual incentives. Surely a reminder of this would bring

an ungrateful public around, right?

> ... What about pointing out what happens in countries when private enterprise is squelched, and government steps in to provide basic goods and services?

Sadly, this hope is also misguided. People do not reliably learn from history; they rarely learn from their own experiences and almost never from those of others. Because of, again, confirmation bias, such as: “I believe corporations are evil and their function would be better performed by central government. Thus, any evidence to the contrary I simply dismiss. Cuba and Venezuela are a mess, true. But if we were running the show, we would avoid their obvious problems.”

Become a benefit corporation

No, corporations need a radical change of frame. Tinkering around the edges of society’s malcontent with a feel-good story in your next corporate responsibility report won’t do. I suggest that for corporations to survive for the next 50 years in a recognizable form, they need to reframe themselves as *operating primarily for the benefit of society*. Have shareholders vote on converting the company to a benefit corporation. Nothing short of this will snap a jaded public out of its negative view.

Societal benefit looks different today than when Milton Friedman advocated for shareholder primacy. Then, shareholders were expected to take net profits and reinvest them in further productive enterprises. Today, shareholders have reaped decades of gain from companies’ remarkable success and, considering overall wealth, further gains only go to fund lavish excesses.

If shareholders of the largest companies in the world voted to become B Corporations or similar according to the country’s law, individuals would believe companies once again represented a force for good in society. Short of that, don’t hold your breath.

Be well.

PS – If this sounds too drastic to you, don’t worry: Companies and shareholders also suffer from confirmation bias, which means they will convince themselves that the status quo is just fine.

Question, comment? Contact Career Path columnist James Bellerjeau.

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