

# The In-House World According to Ben Heineman, Jr., Part II

*Corporate Counsel*

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Below is the second and final installment of CorpCounsel.com's Q&A with former General Electric general counsel Ben Heineman, Jr. ([See part one here.](#)) In this edited conversation, Heineman discusses corporate regulation, anticorruption efforts, and the post-*Citizens United* role of U.S. companies in politics and elections.

**CorpCounsel: We hear frequent complaints that businesses are subject to increasing regulations. What do you think about today's regulatory framework? Are regulations bad for business?**

**Ben Heineman, Jr.:** The descriptive answer is that businesses are facing more regulation everywhere in the world. There clearly has been a trend of re-regulation in the United States, after a period of de-regulation. That is obviously true in financial services, but there's clearly increasing enforcement in the Foreign Corrupt Practices Act (FCPA) area, and strong environmental regulations, and so on.

But if you go to Europe, [the E.U. is the master of regulations](#). We used to laugh and call it a regulatory superpower. If you're in Europe, whether it's privacy laws or competition laws or any number of subjects under pan-European jurisdiction, there's going to be regulations there. And then as you go out into the world, even in a place like China there's been a tremendous outpouring of law and regulation in the last 10 years. Chinese labor law in its current complex form, for example, did not exist 10 years ago. Really, wherever you go in the world, there is both increasing regulation and some form of enforcement. Places like China are especially difficult, because there's lots of regulation but very episodic or erratic enforcement, and because the Communist Party still controls a system of rule of men, not rule of law.

Whether this is good or bad for business, you'd have to go subject matter by subject matter, and almost provision by provision. I believe deeply that regulations, number one, promote market efficiencies such as antitrust law and securities law—they basically deal with externalities that harm the social good if they're not regulated to some degree. And regulation is necessary to create the fundamentals of societal security, order, education, and infrastructure. They come in different shapes and forms and they serve different purposes, but I don't think there's much question that over the last 100 years we've evolved to a mixed economy, where the government promotes market efficiency, social goods, and societal fundamentals.

**CC: Some have argued that the Dodd-Frank whistleblower rule will have a negative impact on fostering a company culture of internal reporting.**

**BH:** I'm sympathetic with those who would argue that whistleblowers should exhaust internal remedies before going to the Securities and Exchange Commission. I have a lot of sympathy for that position. I would say it behooves all companies to have an internal reporting system that really works. To the extent that the whistleblower provisions degrade the internal program, they're not serving their purpose.

**CC: On the corruption front, do you think FCPA enforcement is an important part of fighting corruption on a global scale? Are corporations paying a fair price for being involved in bribery?**

**BH:** Early in my tenure at GE, general counsel from other multinationals came to me in the late 80s and said the FCPA is hurting us overseas, because other companies can bribe and we can't, and they get orders and we don't—will you help us go to Congress and weaken the FCPA? I said no. What we should do is level up, not level down. Rather than try to weaken the FCPA, we ought to have an international convention that makes it a crime in *all* countries to bribe overseas. So in fact, American companies and the United States were very instrumental in creating the Organisation for Economic Cooperation and Development convention against overseas bribery.

I deeply believe that corruption is a terrible scourge across the world. Something we can do—even if we can't transform Nigeria into being a rule-of-law, not rule-of-men, polity, for example—is we can certainly prohibit in law American and European companies from bribing the government. That will not solve the problem of corruption in Nigeria, but it will be a step forward.

**CC: What do you think should be done, if anything, about how corporate dollars are spent in elections?**

**BH:** One thing is we ought to have more disclosure. But the fact is, it's not happening. If you give to a PAC that's organized under the federal election laws, you have to disclose. But many corporations give to trade associations, which in turn give to Super PACs, and that's the real issue. If you give through trade associations, organized under the Internal Revenue Code and not the federal election laws, the donors are not required to be disclosed. So at a minimum, we ought to have more disclosure so people understand where the money given to that Super PAC comes from.

I also agree with the [Center for Political Accountability](#) that corporations should have a good process for making decisions, up to and including the board, on political giving out of the corporate treasury, because it's a very sensitive and important set of decisions for the company. The company should voluntarily disclose what it's giving, including to trade associations for political purposes, even if there aren't legal disclosure requirements. And there have been a number of companies in the S&P 100 that have agreed to these types of disclosure.

But we've got a problem that goes way beyond corporations, in terms of the length of campaigns and the amount of money spent on political ads. Disclosure would just have a small beneficial impact on what I think is a much larger problem of a strident and broken political culture.

**CC: How do you think companies can repair the trust deficit they have incurred post-2008 financial crisis, and what role do GCs have in that process?**

**BH:** I have to go back to my book [High Performance with High Integrity](#) [Harvard Business Press, 2008] and [a piece I wrote on this topic for the Committee on Economic Development \[PDF\]](#), which basically talks about redefining the role of the CEO. The CEO's role is not just about maximizing shareholder value. Indeed, their fundamental role is, number one, about economic performance, but defined much more broadly than just stock price. That includes risk management and integrity, as well as innovation and creativity.

We need to change how we select CEOs, how we compensate them, and what the mission of the corporation is. We need to make those kinds of fundamental changes and be explicit about them. It's really the active executives who need to speak out. I think the current CEOs, the current GCs, the

current CFOs, and the current boards need to wrestle with these fundamental questions—that we ought to be compensating for integrity and risk management, not just for financial performance.