The Role of Social Enterprise - Part II.

Socially Responsible Businesses, Social Enterprise, and Sustainability

Professor Robert A. Katz
Weekend U:
Social Entrepreneurship
Indianapolis
March 3, 2012
Outline of talk

I. Two models of socially responsible businesses
II. CSR for nonprofit organizations?
III. Is for-profit SE the New CSR?
IV. CSR and sustainability: Emergence of triple bottom line
Part I:

Two models of socially responsible businesses:
Nonprofit vs. For-profit
What is a nonprofit organization?

1) Controllers must advance NPO’s goals
2) Asset lock (non-distribution constraint)
Commercial nonprofits

- Definitions
  - Nonprofit
  - charitable
  - tax-exempt
  - tax-deductible contributions
  - Donative, commercial
  - Related versus unrelated business income
socially responsible nonprofit business

1. Privately owned (non-governmental)
2. Nonprofit (no residual owners)
3. Charitable (trust law)
4. Tax-exempt (incorporates charitable trust law)
5. Commercial (versus donative_)
6. Mission-related earned income
7. No charitable deduction (for portion above FMV)
Earned income activity

**Mission-unrelated**
- NYU School of Law’s pasta factory
- Wholly private good
- Corporate income taxed
- No charitable deduction

**Mission-related**
- Weekend University
- Mixed public/private good
  - Private good
  - positive externalities
- Corporate income NOT taxed
- No charitable deduction for portion above FMV
Socially-responsible for-profit businesses

- Privately-owned
- Residual owners
- Practice CSR
What is CSR?

- a kind of *noblesse oblige* for "businessmen"
- A classic statement of CSR
  - "the social responsibility of business encompasses the economic, legal, ethical, and discretionary expectations that society has of organizations at a given point in time"
  - A bit tautological

Progressive Corporate Law

- Most robust/ambitious iteration of stakeholderism
- A corporation enlists a team whose members invest resources (provide inputs) to produce wealth
  - These are the stakeholders
  - Some stakeholders’ investments are more liquid than others;
    - Shareholders’ investments are the most liquid
- PCL seeks more equitable distribution of corporation’s surplus wealth among team members
- How?
  - Expanding directors’ fiduciary duties
  - Expanding rights and participation of non-shareholder stakeholders
Part II

For-profit Social Enterprise versus Corporate Social Responsibility (CSR)
Guayaki Yerbe Mate
Part III.

CSR for Non-profits?
The Hershey Controversy

- Milton Hershey (1857-1945)
- Hershey factory (opened 1904)
- Hershey, PA (renamed 1906)
  - Population 22,400 in 2002
  - 6,200 employed by Hershey Foods
- Milton Hershey School
  - founded 1909
  - Endowed 1918
Milton Hershey School Trust

- Majority of its assets in Hershey Foods stock
- Majority shareholder of Hershey Foods
July 25, 2002
(Black Thursday)

- AG (aspiring governor) sought injunction
- Court enjoined sale citing
  - Donor intent
  - Potential impact of sale on local community
  - Duties beyond those of maximizing resources to spend on orphans
  - Broader public trust
The Hershey controversy

**Nonprofit law persp.**
- Duty of care (prudent investment)
- Parochialism
- Paternalism
- Appropriation of nongovernmental assets

**CSR perspective**
- Like plant closing legislation
- Controllers did not adequately consult stakeholders or consider their interests and legitimate expectations
CSR for nonprofits?

- Are nonprofit organizations socially responsible by definition?
- What role if any for CSR?
- What difference, if any, does nonprofit status of Hershey Trust affect analysis?
Part IV.

CSR

versus

Corporate Sustainability
Two terminological trends

Proliferating bottom lines

Single-bottom-line ➔

double-bottom-line ➔

triple-bottom-line

“Sustainability” supplants “Responsibility”

Corporate Social Responsibility (CSR) ➔

Corporate Sustainability (CS)
“bottom-line”

1. “the last line of a profit-and-loss account, showing the final profit (or loss); also loosely, the net profit”

2. “the final analysis or determining factor; the point, the crux of the argument.”
"the stakeholder view of the firm is strongly integrated into most CSR definitions"

<table>
<thead>
<tr>
<th>Author(s)</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mears and Smith (1977)</td>
<td>Social Responsibility. Responsibility of the firm to the public, employee, and consumer and responsibility of the employee to the firm.</td>
</tr>
<tr>
<td>Maignan and Ralston (2002)</td>
<td>Corporate Social Responsibility. Conceptualized as motivating principles (driven by values, stakeholders, performance); processes (programs and activities aimed at implementing CSR principles and/or addressing specific stakeholder issues, including philanthropic, sponsorships, volunteer, code of ethics, quality, health and safety, and managing environmental impacts); and stakeholder issues (community, customer, employee, shareholders, suppliers).</td>
</tr>
<tr>
<td>Boal and Peery (1985)</td>
<td>Corporate Social Responsibility. A three-dimensional construct: 1. Economic, noneconomic, human outcomes; 2. Ethical considerations; 3. Consequences for relevant interest groups. Describes four CSR outcomes for each Zenisek four-celled partition of social responsibility: 1. Organizational owner-manager (promotes economic interests of business, maintains high levels of productivity, promotes long-range survival of business, and promotes interests of stockholders); 2. Employees-organizational participants (safe working conditions, jobs that allow employees to use valued skills and abilities, promotes employee rights, job security for employees); 3. Task environment-consumers (produces products desired by customers, prices products fairly, maintains high quality of products and services, produces safe products); 4. Societal (company obeys the law, promotes social justice, supports social and cultural activities, does not degrade the environment).</td>
</tr>
</tbody>
</table>
The TBL business: a.k.a. the “sustainable” business

1. **Profits**: creates profit for its shareholders &
2. **People**: improves the lives of those with whom it interacts,
3. **Planet**: advances the goal of environmental sustainability
The TBL idea is part of a long-standing conversation over proper role of private for-profit business in society.
The bottom line(s) back in the day

1. One
   - For profit
   - Maximize shareholder wealth

2. Not just one
"there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits"
Not just one

- Controllers obliged to do more than simply maximize shareholder wealth
- Evaluate firm -- not simply on ability to generate profit
CSR’s dominant paradigm: *stakeholderism*

- A “business firm ought to be managed in a way that achieves a balance among the interests of all who bear a substantial relationship to the firm—its stakeholders.” (SEP)
- In first major account, the very purpose of the firm is coordination of and joint service to its stakeholders.
- “environmental issues are a subset of a broader social performance dimensions.” (anthropo-centric)
Progressive Corporate Law as stakeholderism on steroids

• **Who are the stakeholders?**
  – members of the team who help generate corporation’s wealth
  – investors, shareholders, customers, suppliers, employees, and the community,

• **What stakeholder interests count? What is balance?**
  – More equitable share firm-specific investments

• **How are stakeholder interests advanced?**
  – Modify fiduciary duties of directors to permit consideration interests of “other constituencies”
  – put stakeholder representatives on board
How can law help?
The social entrepreneurial “turn”

“Can we use organizational law to get non-shareholder stakeholders a more equitable share of corporate surplus, and more say in decisionmaking?

• “Can we use organizational law to promote social innovation?”
• Use organization law to (a) help social entrepreneurs pre-commit to pursuing dual goals;
• (b) Provide others with credible assurance of their commitment
New Hybrid Forms
Hybrid or dual goal businesses, a.k.a.,

- Socially responsible businesses
- For-profit social enterprises
- Social businesses
- Blended value organizations
- For-benefit businesses
- *Not* just-for-profit business
- Fourth Sector organizations
- “for-profits with a nonprofit soul”
A seemingly seamless transition *from* hybrid/dual purpose/DBL to
Virginia Benefit Corporation Statute requires

• Positive environmental outcomes:
  – “a material positive impact on society and the environment taken as a whole…from the business and operations of a benefit corporation.”

• Consider environmental impact of decisions
  – Directors [s]hall consider the effects of any corporate action upon…[t]he local and global environment;

• Environmental reporting:
  – Annual report must include “an assessment of its social and environmental performance” as measured by a third party standard
Consequences

• Curtails social entrepreneurs’ autonomy
  – A mandatory rule -- It’s a package deal
  – Assumes all social entrepreneurs are green
  – Protect the environment PLUS your idiosyncratic but plausible conception of public benefit

• Potentially inefficient
  – Requiring every benefit corporation green
  – Cf. cap-and-trade
Self-evident: A ‘natural’ progression?
A neat idea?

Andrew Savitz, The Triple Bottom Line
“Spirituality as the Fourth Bottom Line”

• “Business executives and economists are coming to understand the importance of spirituality in evaluating the performance of business.”
SOME OTHER NEAT IDEAS....
Corporate Social Responsibility and Corporate Sustainability
Separate Pasts, Common Futures

Ivan Montiel
The University of Texas, Pan American

This article reviews the different definitions of corporate social responsibility (CSR) and corporate sustainability (CS) used over time to reveal points of difference and congruence between the two terms. Management literature uses both CSR and CS to refer to social and environmental management issues, but there is no clear distinction between the two terms. First, the author quantifies the articles published about CSR and CS in both general management and specialized journals. Second, the author summarizes the different CSR- and CS-related definitions to identify the definitional differences between CSR and CS. Finally, the author identifies opportunities to reshape a rapidly changing field by enhancing collaboration among scholars devoted to studying CSR and CS issues.

Keywords: corporate social responsibility; social performance; sustainability; sustainable development; environmental management
Dissolution of stakeholderism?

• Is “nature” or “the planet” a non-shareholding stakeholder (or moral agent) that is receiving an unfairly small portion of corporation’s surplus?

• Cf. PETA sought protection for whales under 13th Amendment
  – Amendment ending slavery refers only to persons' - judge
  – Feb 8 (Reuters) - A federal judge on Wednesday threw out an animal rights group's lawsuit accusing SeaWorld of enslaving captive killer whales, ruling that orcas had no standing to seek the same constitutional rights as people.
“Sustainable development”

• Defined as development in a way that meets present needs "without compromising the ability of future generations to meet their own needs”

• “Unlike CSR, it is possible to identify the exact point in history when interest in CS surged.”

World Commission on Economic Development (WCED) 1987 report Our Common Future.
Sustainable Development will lift all ships \textit{without} raising the tide
(i.e., without global warming or other lasting environmental harm)

**IMPLICIT PROMISE:**
Global Reporting Initiative

• An NPO that “promotes economic, environmental and social sustainability.”
• GRI provides a “comprehensive sustainability reporting framework” for corporations
• widely used around the world.

https://www.globalreporting.org/Information/about-gri/Pages/default.aspx
Anthro- vs. eco-centric

- CSR is more anthro-centric
- “the CSR vision of the natural environment falls into the use value” or instrumental value paradigm”, i.e.,”relates to the benefits that natural areas provide for humans through direct extractive use and through indirect or passive use

- CS is more “eco-centric”
- “The CS vision is more aligned with the intrinsic value paradigm” of nature for its own sake
"Once you admit ... that nature is not just wilderness or the ancient forest, you've got to decide whether you should care about the wilderness ... at all, and how high up ... [it] should be on the list of your moral priorities”

clarifies our moral predicament.

• Profits, People, Planet.
• What should be sustained, for whom, why, and in what order of priority?
• People, People, People.
• If you agree, which classes?
• What are our moral obligations to global poor, as compared to fellow citizens (team members)?
• What do we owe future generations?
• What’s the right trade-off between people presently cohabitating the planet, versus future generations?
Is SD wishful thinking?

• “The bumper sticker could read, ‘If you want sustainability, work for justice’”
• BUT “the pursuit of environmental sustainability may conflict with the pursuit of social justice,” and vice versa.

John M. Meyer, review essay of Dobson, Fairness & Futurity
Profits, People, Pluto?

- In 2006, the International Astronomical Union (IAU) re-defined “planet” to exclude Pluto
- “34340 Pluto”: MPD or “minor planet designation”
Why add “planet” as a third bottom line?

1. Market failure
   – Externalities go beyond team members

2. Global social justice
   – CSR’s focus is too parochial

“Planet” is a proxy for (more) people
3. Combating speciesism?
Why add “planet” as a third bottom line?

4. Intergenerational equity
5. Deep ecology?
Environmental Ethics (a.k.a., “deep ecology”)

• It studies the moral relationship between human beings and the natural environment, including:
  • the value and moral status of the environment and its nonhuman contents,
  • the ethical challenge of anthropocentrism (i.e., human-centeredness).
• The planet versus people!