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A New Model of Corporate Social Responsibility in the 21st Century

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OPENING REMARKS

A NEW MODEL OF CORPORATE SOCIAL RESPONSIBILITY IN THE 21ST CENTURY

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Globalization has brought a large expansion of trade in goods and services across borders, resulting in increased economic connectivity across the worldwide market. Countries that have successfully embraced globalization have seen unprecedented economic growth and poverty reduction. However, we have seen negative side effects, such as environmental degradation and conflicts of interest over the commercialization of the world's natural resources in both developed and developing nations alike. In addition, abuse of corporations' workforce in poor nations, resulting in sweatshops and child labor, the removal of impoverished countries' natural resources for the benefit of shareholders in the developed world, such as by oil and gas companies in mineral-rich regions in Africa, are all examples of the type of human rights and environmental crimes we are working to eliminate.

There is an ongoing debate among legal scholars regarding whether corporations should broaden their interests beyond the "bottom line," to consider the ethical consequences of their business practices.[1] Should companies expand their accountability beyond the

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1. *See, e.g.*, Joshua D. Margolis & James P. Walsh, *Misery Loves Companies: Rethinking Social Initiatives by Business*, 48 ADMIN. SCI. Q. 268, 278 (2003);

scope of shareholders to include stakeholders, such as employees and consumers, the earth and the local communities in which they conduct business? By contributing to economic growth and social development in the countries and communities in which they operate, corporations could have a tremendous positive impact on stakeholders' quality of life.

In 1994, John Elkington, founder of British consulting firm SustainAbility, coined the phrase "triple bottom line," or TBL.[2] The theory underlying the triple bottom line is that the true cost of doing business is reflected in three dimensions of accountability: accountability to profits, or shareholders, accountability to people, or stakeholders, and accountability to the planet.[3] Since then, the question of how to measure and regulate corporate social responsibility programming has engendered fiercely controversial discourse among scholars in the private and public sectors alike.

A new kind of corporation, focused on incorporating Corporate Social Responsibility (CSR) programs into the corporate charter from the ground-up, has been gaining popularity in the private sector; the Benefit Corporation, or B-Corps are hybrid entities with a mission statement that incorporates ideals of accountability to the community and the planet, pursuant to the laws of the state in which benefit corporation legislation has passed. Today, twelve states, including New York, have passed legislation mandating that corporations provide value not only to shareholders, but also to society, and at least seven more states are considering adopting such legislation.[4]

This new type of corporation exemplifies the cutting-edge of CSR initiatives and raises provocative questions regarding how far we can go with social responsibility in the private sector. What are our

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Michael C. Jensen, *Value Maximization, Stakeholder Theory, and the Corporate Objective Function*, 12 BUS. ETHICS Q. 235 (2002); Cynthia A. Williams, *Corporate Social Responsibility in an Era of Economic Globalization*, 35 U.C. DAVIS L. REV. 705 (2002).

2. *From the Triple Bottom Line to Zero*, JOHN ELKINGTON, http://www.johnelkington.com/activities/ideas.asp (last visited Dec. 11, 2013); *Triple Bottom Line*, ECONOMIST (Nov. 17, 2009), http://www.economist.com/node/14301663.

3. *See Triple Bottom Line*, *supra* note 2.

4. Sarah A. Altschuller, *Benefit Corporations: Twelve States and Counting*, CORP. SOC. RESP. & L. (Dec. 19, 2012), http://www.csrandthelaw.com/2012/12/benefit-corporations-twelve-states-and-counting.

boundaries? To what extent does CSR conflict with out bottom-line to shareholders? Perhaps we have a broader liberty to "give back" to the community than we imagined. We can do more.

CSR policies range from enhancing consumer brand loyalty, to improving the quality of life for all stakeholders, to mitigating the negative environmental externalities inevitable in production and manufacturing processes in factories around the world. In short, CSR covers all manner of public interest concerns including women's rights, children's rights, labor rights, and environmental justice.

During this symposium we will focus on the topic of CSR and the impact of corporations on our Global Commons. In particular, we will re-examine the existing normative framework governing the debate over whether CSR adds value to the marketplace, or distracts from truer, more effective solutions to climate change, pollution, and all manner of social ills associated with the activities of the "corporation," and its impact on the planet. To what values, if any at all, should the private sector adhere? Who decides what environmental justice entails?

CSR has the power to shape the identity of a company in the eyes of the public, and if properly developed, has the power to influence consumer loyalty and brand identity in the marketplace. But CSR has also drawn harsh criticism from those who are concerned that corporations do not have their heart in the right place, or that the policy governing CSR is weak or toothless in preventing greenwashing, fairwashing, and other types of false or misleading claims of social responsibility.[5]

The current regulatory landscape governing CSR policy ranges in specificity from broad mandates in international law to specific requirements in domestic policy. For example, in 2011 the United Nations Human Rights Council endorsed a set of ground-breaking principles to explicate the organization's expectations of corporate accountability and efforts to tend to the tripartite UN Principle, "Protect, Respect, and Remedy," by the private sector around the

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5. *See, e.g.*, Miriam A. Cherry & Judd F. Sneirson, *Beyond Profit: Rethinking Corporate Social Responsibility and Greenwashing after the BP Oil Disaster*, 85 TUL. L. REV. 983 (2011).

world.[6] The *Guiding Principles on Business and Human Rights*, or the "Ruggie Principles," have received praise from such companies as Coca-Cola Company and General Electric (GE). GE stated that the Principles would serve as a "lasting beacon for business entities seeking to grow their service and product offerings while respecting human rights."[7]

The effects of our domestic efforts can be seen by new disclosure requirements in the Dodd-Frank Act regarding conflict minerals, released in August 2012,[8] and in recent revisions to the Federal Trade Commission Green Guides governing false or deceptive "green" advertising claims. But we can still do more.

There are many examples today of corporations that have taken on the challenge of maintaining their fiduciary obligations to shareholders, while improving their impact on society and the planet. For example, Johnson and Johnson Company has developed a set of goals to reduce their environmental impact. To accomplish these goals, the company has established a variety of programs, most notably their initiative, "Earthwards." Earthwards describes a process by which a third-party conducts an audit of Johnson and Johnson products to ensure a ten percent improvement in at least three of seven goal areas, including: materials used, packaging reduction, energy reduction, waste reduction water reduction, positive social impact or benefit, and product innovation.

Business Insider recently named Ford Motor Company one of the ten hottest brands in the world.[9] The magazine reported that Ford was the only car company to sell over two million units in 2012, which is attributed to the success of the "Ford Focus" in the market. The Focus was designed using Ford's own product sustainability index, or

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6. OFFICE OF THE HIGH COMM'R, U.N. HUMAN RIGHTS., GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK (2011), http://www.ohchr.org/Documents/Publications/GuidingPrinciplesBusinessHR_EN.pdf.

7. Letter from Bob Corcoran, Vice President Corp. Citizenship, G.E., to John Ruggie, U.N. Special Representative on Bus. & Hum. Rts. (May 20, 2011).

8. Dodd-Frank Wall Street Reform and Consumer Protection Act, § 1502, 124 Stat. 1376 (2010) (codified as amended at 15 U.S.C. § 78m(p) (2012)).

9. Christina Austin, *Apple Is No Longer One of the Hottest Brands in America*, BUS. INSIDER (Jan. 24, 2013, 8:30 PM), http://www.businessinsider.com/the-10-best-perceived-brands-of-2012—apples-not-one-of-them-2013-1.

PSI. The PSI accounts for eight sustainability factors, including: CO_2 emissions levels, air quality damage potential, and use of sustainable materials, among other things.

Consumers and investors are increasingly concerned with the moral stance of corporations, and make purchasing decisions in part based on the information they have about a company's social responsibility. Studies suggest that there is demand in the marketplace for corporations to compete in how they "give back," to society.

According to market research published by Ford in 2013, consumers, "weary of misinformation [in the marketplace], are reappraising their relationships with companies and brands, making integrity a new form of competitive advantage."[10] Conversely, there are some corporations that are working from the ground up. Some companies are working to provide value to the community as part of their business model, rather than just as a supplement to their business model.

Another emerging business model is impact investing, in which companies invest in social capital, grooming startups that pursue "meaningful social and financial value." Good Capital is one such investment firm. On their website, Good Capital describes their investment strategy as follows: "Corporate venture capital . . . seeks to add strategic value to a business as well as produce positive financial returns. Good Capital builds social as well as financial value through its investments. The two are not mutually exclusive, and in many cases one reinforces the other."[11] This type of thinking is the new frontier of CSR and deserves our considered judgment when evaluating how best to "give back," in the private sector.

Charitable giving is the most visible CSR program available to corporations. If a corporation was considering expanding its CSR policies, a worthy foray into the realm of social responsibility is through philanthropy. Many corporations are beginning to see that their financial growth is dependent on their role in the community. If

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10. Mike Gibb, *Recognized as a Top Brand, Ford Charts Course for Future Success*, AUTOFINANCENEWS.NET. (Feb. 22, 2013, 7:00 AM), http://autofinancenews.net/profiles/blogs/recognized-as-a-top-brand-ford-charts-course-for-future-success.

11. *Overview*, GOOD CAPITAL, http://www.goodcap.net/aboutus.php (last visited Dec. 11, 2013).

a company is known for its charitable and pro bono work, people are more likely to use its services rather than the services of its competitors.

When a corporation enters a community, it creates jobs and pays taxes. The resources that companies invest in operations, workforce development, pro bono work, partnerships with local organizations, and philanthropy have the potential to improve the quality of life and build community capacity. In these difficult economic times, a company's strength may depend on the health of the community in which it operates.

A typical critique of corporate philanthropy is that if a corporation has the funds to give to a charitable organization, they should instead use their financial flexibility to lower prices, allowing consumers greater disposable income to contribute to charities of their own choosing. Others would say that this form of giving is not true philanthropy, but a different form of marketing.[12] This position assumes there is no economic incentive for corporations to engage in CSR, and that the private sector should operate as though they have no accountability to stakeholders or the environment because private sector giving can be substituted for individual giving. This position assumes too much. The current state of the economy, combined with a widening gap between affluent and underprivileged communities, indicates the private sector has an important role to play in improving the quality of life for stakeholders all around the world.

In spite of criticism to the contrary, some companies have found great success in adopting programs that illustrate the fact that "corporate giving" and consumer choice are compatible ideals. For instance, Crate and Barrel has had a program in place with donorschoose.org since 2006.[13] The company provides consumers with thank you cards called "GivingCards," after a purchase that matches them with classrooms in need. The thank you card is actually a gift card that allows customers to distribute Crate and Barrel giving across projects around the United States. A sales boost

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12. *See, e.g.*, M. Todd Henderson & Anup Malani, *Corporate Philanthropy and the Market for Altruism*, 109 COLUM. L. REV. 571, 571 (2009) ("Academics and businesspeople have long debated the merits of corporate philanthropy.").

13. *Crate & Barrel*, DonorsChoose.org, http://www.donorschoose.org/docs/donorschoose-org-crate-and-barrel-092211.pdf (last visited Dec. 20, 2013).

of sixteen percent for GivingCard redeemers, compared with only five percent for non-redeemers, contributes to evidence that CSR has benefitted Crate and Barrel's triple bottom line.

Some companies report that they are interested in doing pro bono work but they do not know how to establish such a program. While years ago there was no assistance for companies to initiate such programs, now there are many resources available that can help companies become more socially responsible. There are a number of organizations which work on helping corporations start and successfully build pro bono programs. One such organization is Corporate Pro Bono, which is a national pro bono partnership project between the Association of Corporate Counsel (ACC) and the Pro Bono Institute. Through their website "CorporateProBono.org," this organization facilitates connections and partnerships between corporate counsel, law firms and non-profit organization that need assistance. Also, it has compiled a comprehensive list of working models that other corporations have utilized.

One successful model is run by Abbott Laboratories. Abbott's corporate attorneys partner with law firms and non-profit organizations on over fifty projects ranging from immigration to business law.[14] The reason for its pro bono success is the way the program is managed. The company has set up a committee devoted solely to management and outreach. Its members manage the volunteers and find new partners with whom Abbott can work. It is this concentrated effort that allows the program to function and flourish. In fact, central management of pro bono programs is possibly the most important element needed for the program to succeed. Organizing and overseeing a project is almost as important as volunteering. Several law firms have an entire department devoted to pro bono and there is often a partner in charge. Therefore, if a corporation wants to get involved, a natural first step would be to set up a committee that would be in charge and responsible for the development of the program.

14. Press Release, Corporate Pro Bono, Abbott Laboratories with Baker & McKenzie and Midwest Immigrant & Human Rights Center (Feb. 28, 2003), http://www.cpbo.org/wp-content/uploads/2012/02/Abbott-Laboratories-with-Baker-McKenzie-and-Midwest-Immigrant-Human-Rights-Center.pdf.

In 2001 BellSouth, an American telecommunications corporation, did just that. This company established a committee comprised of twenty members whose sole job was to develop a pro bono program for the company.[15] The committee began by looking to lawyers in BellSouth's outside firms to learn what they were doing. Shortly thereafter they partnered with the law firm Kilpatrick Stockton LLP on a Grandparent Adoption Program, which assists low-income relatives in adopting children, created by a Kilpatrick attorney who had expertise in adoption law to address this growing, yet unmet, need in the community.[16]

Today Corporate Pro Bono is an easily developed and implemented business strategy that requires a commitment, a few resources, and willing volunteers. Something that William T. Gossett said forty-five years ago still rings true today: "counsel must be judging constantly the pace and direction of the free society in which the company exists. He must observe and appraise new ideas of conduct as they become current."[17] That quote not only emphasizes that the community and the consumer are the ultimate judges of corporations and their conduct, but also that attorneys need to be attuned to new and current ideas and the changing world. With the resources currently available to companies, participation in CSR is so easy that everyone can and should do it. I suggest that it would be detrimental both to the community and the corporation NOT to do it. The importance of doing so was stressed by one distinguished lawyer, Kevin Curnin, who said in an article for the *New York Law Journal*:

> It may be that pro bono service is little more than a mask we put on for our own sakes, to restore our own sense of balance as we each grapple at the crossroad; or it may be that it elevates the profession by humanizing it. When you work with the poor, you confront real-world problems—

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15. S. Kendall Butterworth, *BellSouth's Pro Bono Program: A Successful History of Partnering for Pro Bono*, METROPOLITAN CORP. COUNSEL (Aug. 1, 2004), http://www.metrocorpcounsel.com/articles/4435/bellsouths-pro-bono-program-successful-history-partnering-pro-bono.

16. *Id.*

17. William T. Gossett, *The Role of the Corporation Counsel*, 13 WASH. & LEE L. REV. 129, 143 (1956).

> debt, violence, sickness—and offer small, sometimes temporary, solutions. You come in on legal terms but you end up working through life terms, closer to your clients and their world, which is, but is not, yours.[18]

18. Kevin J. Curnin, *Pro Bono at the Crossroads*, N.Y.L.J. (Oct. 29, 2009), http://www.law.com/cs/ContentServer?pagename=pubs/nylj_07/wrapper&childpagename=NY/Article_C/pubs/nylj_07/pubarticlePrinterFriendly&cid=1202435003387.