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Arizona Journal of Environmental Law & Policy
February, 2013

Comment
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*1041 BEST-LAID PLANS: CORPORATE SOCIAL RESPONSIBILITY OFTEN GOES AWRY

One of the great mistakes is to judge policies and programs by their intentions rather than their results. We all know a famous road that is paved with good intentions .... I admire [people] for the softness of their heart, but unfortunately, it very often extends to their head as well ....[1]

INTRODUCTION

This quote from Milton Friedman encompasses the increasingly ambivalent attitude that many Americans feel toward our government's growing body of regulatory measures. Do they really work? Does regulation cause more problems than it solves? In a time when concepts like global warming and resource conservation are at the forefront of national debate, some private actors and businesses are taking their own initiative. These companies have decided that pausing for the government to address such problems would subject consumers to a waiting game they cannot afford to play anymore. These forward-thinking corporate leaders have taken it upon themselves to bypass the bog of administrative law and to voluntarily commit to practices grounded in concepts like sustainability and transparency. This growing field, known as corporate social responsibility (CSR), is a company's commitment to undertake voluntary actions, obligations, or ethics to help the businesses to become more "socially responsible."[2] These behaviors benefit corporate shareholders by fostering positive consumer perceptions, as well as ancillary stakeholders (such as the communities where the companies are based) through philanthropy, environmental ***1042** stewardship, or improved working conditions. While there are a number of sweeping laws governing business conduct toward the environment--restrictive statutes like the Clean Air Act,[3] the Clean Water Act,[4] and the Resource Conservation and Recovery Act[5]-- America's hands-off approach to the free market makes consumer-based environmentalism difficult at best. Thus, it falls to the directors of major market participants to decide whether or not to embrace an environmentally responsible approach to running their business.

While at one time corporations may have viewed CSR as a burden, more recently executives see it as a cost-saving model of sustainability.[6] Companies such as Whole Foods, Toyota, and even Walmart are now unflinchingly basing their business plan on a model of competitive, eco-friendly investment.[7] Though this trend in responsible behavior paints a nice picture of corporate America caring for its consumers, often the results of such efforts might not be exactly what those consumers had envisioned when choosing one brand over another. The implementation of socially and environmentally responsible initiatives can be incredibly time consuming, and while companies like Walmart might be cutting costs with efficient light bulbs and toilets, such practices require a great deal of monitoring, especially when these products involve vast supply chains. Reports on the methods used in implementing CSR policies indicate that the way companies initiate, organize, and monitor the process is just as important as the results they hope to achieve.[8]

This Comment explores the maturing field of corporate social responsibility, highlights economic drivers, and levels Milton Friedman's criticism of lofty policy objectives at corporate attempts to juggle both CSR and the fiduciary duty owed to their shareholders.

I. THE BOTTOM LINE

Though it might seem that the impetus for businesses to engage in the practice of CSR is altruism, the actual reasons are myriad. Professor Paul Portney has written extensively on the subject of CSR, explaining that such practices are not new, but have recently shown up in public discourse as a result of aggressive marketing campaigns.[9] Additionally, he has identified many reasons why corporations are suddenly interested in being team players and getting labeled "sustainable," "transparent," or "ethical." It turns out that being green is ***1043** good for business--as long as your consumers know about it. Portney's list of corporate incentives found in socially responsible activity includes currying favor with customers, encouraging loyalty and goodwill, attracting investors, ingratiating the community, improving relationships with regulators, and improving the overall bottom line.[10]

Not every company embraces CSR with philanthropic or economic motives; in fact, sometimes a company is nearly forced into it through events that are out of its immediate control. A recent example of this damage-control CSR strategy can be found in the promises, regulations, and shifts in leadership that were implemented by BP after the explosion of the Deepwater Horizon drilling rig.[11] BP is far from alone in the debate over ethics and the environment, as fast-food companies have been pushed into the national discourse on obesity and nutrition, and pharmaceutical companies have been asked to help with the AIDS epidemic in Africa.[12] The *Harvard Business Review* released a spotlight on the subject of CSR, exploring such responsive approaches to CSR and discussing ways in which companies can implement them.[13] Mature companies tend to rely on these responsive methods instead of rebuilding corporate focus from the ground up. Responsive CSR practices align well with a company's strengths and build upon existing methodologies. Examples of companies employing the responsive model include: DuPont, which has saved over $2 billion in reductions in energy use; McDonald's, which has reduced the solid waste created by its wrappers by 30 percent; and Microsoft, which has invested heavily in training computer technicians for its workforce through local community colleges.[14]

What difference does it make if a corporation turns to CSR for capital, in response to social opinion, or purely through an act of conscience? Many economists argue that playing by the rules and merely participating in the free market increases the social pie for everyone. Professor Portney follows this vein of thought, expressing that "even companies that do nothing more than observe all the rules still do extraordinarily *useful* things by providing the goods and services their customers want while at the same time creating jobs for their employees and outlets for personal savings."[15] In observance of this idea, is it really necessary to peek behind the curtain and explore an actor's reasons for pursuing a socially responsible end? Should we care about the "why" as long as the result means a brighter future for everyone? The answer is, "maybe."

*1044 II. BEHIND THE CURTAIN: WALMART'S WORK-IN-PROGRESS

The corporate social responsibility phenomenon is an improvement on the practice of global business, but how many of these changes are cosmetic? To what extent do they cause more problems than they purport to solve? And are those changes that prove more difficult than anticipated ever left abandoned and incomplete? In addition to exploring *why* corporations turn to CSR, it is equally important to address *how* it is done. Considering these criticisms, much can be learned from exploring a best-case scenario--including the great steps forward a company can make, as well as the many wrinkles a work-in-progress is bound to encounter.

In 2005, Lee Scott, then-CEO of Walmart, stunned the business world by reversing the company's policy toward CSR and the environment.[16] In a speech entitled "Twenty First Century Leadership," Scott rolled out a plan that revolutionized the way the company viewed sustainability, and enlarged the spectrum of its fiduciary duties from shareholders to other stakeholders--most notably, its consumers and suppliers.[17] This plan has resulted in Walmart becoming a quasi-regulatory body,[18] enforcing the tenets of its plan on its supply chain and notifying suppliers that they will be implementing a "Sustainability Index" to comply with Walmart's new sustainability goals: "(1) [t]o be supplied 100 percent by renewable energy[;] (2) [t]o create zero waste[; and] (3) [t]o sell products that sustain our resources and environment."[19]

Walmart's lofty initiative requires focused observation in order to gauge the success of the methods used by one of the world's biggest corporations to institutionalize its CSR plan. Whether it is a false start due to the global recession or a lack of infrastructure and oversight, Walmart's goals are not being met.[20] The fact that the company has over 20,000 suppliers in China alone provides a picture of just how large its global network is.[21] Though some might view this incredible size as a boon to the CSR effort, it has proven to be a substantial hurdle, as it is difficult to monitor so many suppliers. Further, the corporation has failed to make good on its promise to have such suppliers--those who do not meet its ***1045** green standard--"banned from making products."[22] A recent investigative report highlights these facts, and shows that as Friedman predicted, good intentions can fall short of the expected result.[23] The report detailed that a Walmart supplier that manufactures barbecues had signed up with about 200 other plants to increase energy efficiency by 20 percent.[24] The supplier explained that while the corporation preaches sustainability, it also pushes suppliers to lower prices (by 3 to 5 percent each year).[25] Operating within margins like these has severely limited the time and capital necessary to implement green projects. When asked to see how the supplier was meeting Walmart's corporate green standards, the manager showcased a mystery ""energy-saving device." The device--a small black box with a switch--was supposed to "slash electricity usage," but the supplier was unable to provide an explanation as to how that was accomplished.[26] When asked to see the factory's other energy efficiency investments, the supplier replied that the box was its sole contribution. Shortcuts like these, without meaningful enforcement on the part of Walmart, indicate that suppliers might be slipping through the cracks of the company's CSR plans. In fact, Walmart refuses to answer exactly how much of its policy is not enforced, nor will it disclose the percentage of its supply chain participants that are in or out of compliance with corporate standards.[27]

CONCLUSION

CSR is not something that exists in a vacuum. Just like the efforts that DuPont and Microsoft are pursuing, corporate social responsibility is a work-in-progress. As new social issues arise, it is in corporations' best intersts to blaze trails that both help and inform consumers about the state of the world. Whether this is done because of increasing utility prices and decreasing resource stockpiles, to attract new investors to an old company, or because the company's founder has an idealistic worldview is of little importance. What *is* important, however, is to understand that by expanding its role in the interests of a consumer, a community, or the environment, a corporation takes on actual responsibilities. Additionally, by expanding its fiduciary duties to these stakeholders, a company also takes on a requisite amount of accountability, but thus far there is little or no regulation to enforce this accountability. While many market participants voluntarily provide a nominal level of information or an annual CSR report, it would be best to implement a system of complete transparency. A complete disclosure of supply chain data and information would allow not ***1046** only regulatory bodies to monitor the progress of corporate efforts in social issues, but opens the door to further collaboration and innovation from the public at large.

This is not to say that profit-making entities should have to bear the brunt of the responsibility; government institutions and consumers can do their part through regulation enforcement and collective action, respectively. Corporate entities, however, are in a unique position to change the state of the market. Through responsible practices, businesses can change to better achieve global sustainability and improve the quality of products available. The change in corporate perspectives over last decade shows that the global community is starting to address the issue of responsible business ethics; whether this community will prove to have soft heads as well as soft hearts remains to be seen.

Footnotes

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1 *The Open Mind: Living Within Our Means* (interview by Richard Heffner with Milton Friedman, WPIX New York television broadcast Dec. 7, 1975), *available at* http://www.thirteen.org/openmind/public-affairs/living-within-our-means/494/.

2 *See* Paul R. Portney, *The (Not So) New Corporate Social Responsibility: An Empirical Perspective*, 2 REV. ENVTL. ECON. POL'Y 261, 261 (2008).

[3] 42 U.S.C. §§ 7602(e), 7413(c)(6) (2012).

[4] 33 U.S.C. §§ 1319(c), 1362(5), 1321(b)(5) (2012).

[5] 42 U.S.C. § 6928(d), (e) (2012).

[6] Pete Engardio, *Beyond the Green Corporation*, BUSINESS WEEK, Jan. 29, 2007, at 50.

[7] *See Declaration of Interdependence*, WHOLE FOODS MARKET, http:// www.wholefoodsmarket.com/company/declaration.php (last visited Jan. 24, 2013); *Sustainable Mobility*, TOYOTA MOTOR CORP., http:// www.toyota.com/about/environment/ (last visited Jan. 24, 2013); *Sustainability*, WAL-MART STORES, http://walmartstores.com/sustainability/ (last visited Jan. 24, 2013).

[8] Michael E. Porter & Mark R. Kramer, *Making a Real Difference*, HARV. BUS. REV., Dec. 2006, at 78.

[9] Portney, *supra* note 2, at 266.

[10] *Id.* at 263-65.

[11] Press Release, BP, BP CEO Tony Hayward to Step Down and Be Succeeded by Robert Dudley (July 27, 2010), http://www.bp.com/genericarticle.do? categoryId=2012968&contentId=7063976.

[12] Porter & Kramer, *supra* note 8, at 80.

[13] *Id.* at 79.

[14] *Id.* at 82.

[15] Portney, *supra* note 2.

[16] Lee Scott, CEO, Wal-Mart Stores, Twenty First Century Leadership, Address to Employees and Suppliers (Oct. 24, 2005), *available at* http:// news.walmart.com/executive-viewpoints/twenty-first-century-leadership [hereinafter Speech].

[17] *Id.*

[18] *See* Orville Schell, *How Walmart Is Changing China*, ATLANTIC, Dec. 2011, http://www.theatlantic.com/magazine/archive/2011/12/how-walmart-is-changingchina/8709/?single_page=true.

[19] Speech, *supra* note 16.

[20] *See* Andy Kroll, *Are Walmart's Chinese Factories As Bad As Apple's?*, MOTHER JONES, Mar. 22, 2012, http:// motherjones.com/environment/2012/03/walmart-china-sustainability-shadow-factories-greenwash.

[21] Schell, *supra* note 18.

[22] *Walmart Announces New Commitments to Drive Sustainability Deeper into the Company's Global Supply Chain*, N.Y. TIMES, Oct. 25, 2012, http:// markets.on.nytimes.com/research/stocks/news/press_release.asp?docTag=201210250300PR_NEWS_USPRX____DA99748&feedID=600&press_symbol=286571; Lee Scott, CEO, Wal-Mart Stores, Remarks as Prepared for Delivery, China Sustainability Summit (Oct. 22, 2008), *available at* http://www.wal-martchina.com/english/news/2008/20081008.htm.

[23] Kroll, *supra* note 20.

[24] *Id.* at 2.

[25] *Id.*

[26] *Id.*

[27] Schell, *supra* note 18.