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Revamp Corporate Charters

Contribution to GTI Forum Corporations in the Crosshairs

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Looking Back Through the Rear-View Mirror

Let me express gratitude for Allen White's typically visionary and thought-provoking essay and for the intellectually enriching and inspirational discussion it prompted.

From my perspective as a professional accountant (in recovery, I like to say), and one who had the good fortune to work with White and some extraordinary people on the founding Steering Committee of the Global Reporting Initiative and the Corporation 20/20 project, as well as to serve on the Working Group of the International Integrated Reporting Council to develop its 2013 Integrated Reporting Framework, I will try to offer a few fresh ideas and insights.

I fully agree that it is time to close the "corporate social responsibility" (CSR) chapter of the movement to tame corporations and get on with corporate redesign. Two fundamental systems-design flaws, dating back to the Industrial Revolution, explain why voluntary CSR has been unable to achieve the systems changes needed. First, from their very inception, the concept of a corporation and its legal charter were not situated within the broader context that fulfilling corporate purpose and creating value for shareholders occur within a larger system of nested dependencies of society and the planet. Second, corporations, their owners, and their governing bodies were then seen to owe a duty of accountability only for the stewardship of shareholders' invested capital, rather than to other stakeholders and the general public.

The architects of corporations and their charters had an incomplete understanding of the planet and its capacity to support society and all living systems. The long-term impacts of the Industrial Revolution coupled with population growth and consumer demands were not foreseen in those times of transition from agricultural societies, local communities, and domestic markets for goods and services. Likewise, it was not yet recognized that business entities could cause social injustices and human harm beyond what was mitigated by legislation to improve working conditions, such as the successive Factories Acts of Victorian England.

So granting corporate charters to facilitate the raising of private capital under terms which limited the liability of those who provided the capital must have seemed a sensible and attractive public policy for attracting and harnessing private financial resources for business purposes, especially large infrastructure and manufacturing enterprises, to address the growing societal needs of the day. And who would be accountable for such chartered corporate enterprises? Why, naturally, to those who provided the financial capital, including empowering shareholders to appoint corporate boards charged with generating acceptable financial returns.

It also happened that standard practices for bookkeeping and accounting for the commercial transactions of an enterprise or project in the ordinary course of business were already well-established. This meant corporate charters could readily incorporate a requirement for directors to provide financial reports to shareholders. It was not until the mid-thirties that, in the US at least, more regulatory rigor and oversight was applied to reporting requirements and standards.

Looking Ahead…a Roadmap for Redesign?

There is an obvious and urgent need to (re)design charters to require corporations to create value for society *without* impairing the interests of society and depleting the natural resources on which both the chartered enterprise and society depend. This new model for a corporate charter will need to be capable of being enacted and embedded in all jurisdictions.

We also need to build into the new model charter twenty-first-century accountability provisions that require this new legal entity to be accountable to *all* stakeholders and to measure its use of and impacts on various "capitals"—not just financial, but also infrastructural, human, social, and natural—on which it depends for the production of goods and services. High-level guidance for measuring and reporting on these multiple dimensions of value creation is presented in the 2013 Integrated Reporting Framework of the International Integrated Reporting Council. What is missing (except in South Africa) is a legal requirement for corporate enterprises to report on their performance across these criteria to society in general.

A number of efforts, such as the OECD Principles of Corporate Governance, the King Codes of Corporate Governance in South Africa, and European Union directives on these matters, provide a strong foundation for jurisdictions that are so minded to proceed forthwith in enacting binding redesigned corporate charters that are fit for business in the twenty-first century, and aligned with handling the global imperatives we face. While this work could take a few years in any given jurisdiction, that is all the more reason to get started. It would be very desirable to create (or turn to an existing institution for) an international liaison mechanism or body to promote cross-border exchanges of thought leadership, emerging practices, and prototype charters, perhaps leading eventually to international consensus or even an accord. But as long as business factions or partisan political forces are able to obstruct the path, visions of a new world oversight body for this work and its global implementation will remain unrealistic.

However, there have been times within living memory when nations and multinational alliances have put aside politics and domestic interests in order to confront a common enemy for the sake of the common good—indeed, our common future. At such times, strong and visionary leaders have come forth to unite citizenry and business in common cause, even when citizens have had to make personal sacrifices in their daily lifestyles. Legislation enacted for World War II rationing of food, gasoline, consumer goods, and even children's candies quickly comes to mind. People "get" the need for such actions when they realize the relatively immediate disastrous consequences of inaction. Now is a time to summon this "wartime" caliber of leadership and public support to redesign and enact the new corporate charter.

Fast Forward to the Near Future…

Meanwhile, relatively low-hanging fruit can be harvested. Stronger disclosure and reporting practices can be enacted that strongly enhance corporate transparency and accountability to all stakeholders. With many measurement and reporting initiatives to draw upon, rather than creating new frameworks and standards, we need to harmonize, build on, and consolidate the ones we already have. In a recent paper, I proposed two different but related transparency packages, which could ultimately be combined: one for accountability reporting to investors or shareholders, the other for transparency and accountability to direct stakeholders and the wider public.

The key is to make such accountability reporting mandatory in all jurisdictions for companies that are publicly listed, and encourage it for all other companies and forms of enterprise—even non-profit institutions. It is not necessary to await the implementation of redesigned model charters. In many jurisdictions, a mandatory accountability report could immediately be enacted by law or regulation or stock exchange listing requirements, and become a de facto catalyst for redesign of the charter.

Fortunately, recognized international institutions exist in the measurement and reporting space which could take on the international collaboration needed to produce the new accountability reporting model. Strong visionary leadership and avoidance of obstructions by partisan politics and business lobbying will be crucial to making progress. The EU's Non-Financial Reporting Directive, which requires large companies to disclose certain information on the way they operate and manage social and environmental challenges, although not the perfect model for what we need, is an example of what can be implemented near-term.

We may not live to see the end of this journey, but surely it is time to start making demonstrable progress on the redesign of corporate charters to reflect twenty-first century thinking about corporate purpose, governance, and accountability.

About the Author

Alan Willis is an independent researcher, writer, and advisor on the implications of sustainability for corporate performance measurement, accounting, reporting and assurance. Prior to 1991, he was a partner with Deloitte. He represented the Canadian Institute of Chartered Accountants on the founding Steering Committee of the Global Reporting Initiative and was a member of the Working Group of the International Integrated Reporting Council, the Steering Committee of the Global Initiative for Sustainability Ratings, the Advisory Council of the Sustainability Accounting Standards Board, and the Integrated Business Reporting Committee of the International Corporate Governance Network. He has authored or co-authored numerous CPA Canada research and publications about corporate business reporting and accounting for and reporting on sustainable development.

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