Roundtable on Business Structures that Prioritize Human Rights

Discussion Summary

24 May 2016
Columbia University, New York

Overview:
The roundtable brought together experts working to develop and promote alternative corporate forms from the fields of business and human rights (BHR), corporate governance, impact investing, and social enterprise. (See the end of this Discussion Summary for a list of participants.) It was co-chaired by Joanne Bauer of Columbia University's Institute for the Study of Human Rights (which hosted), Erinch Sahan of Oxfam Great Britain and Liz Umlas of the University of Fribourg.

The purpose of the meeting was to begin a discussion on alternative corporate forms that lend themselves to integrating human rights, including the elimination of extreme inequality, into business practice. With the diversity of perspectives around the table and the fact that few participants had previously interacted with one another, the meeting was largely aimed at "synchronizing watches" around language, root concerns, and change objectives.

Among participants, there was general agreement that moving forward needs to involve both reform of existing structures and modeling alternative structures. Conventional companies set the benchmarks for practices for investors, whereas social enterprises raise the bar on what is possible and desirable. The core problems that each of the represented corporate responsibility initiatives is grappling with are market short-termism and, relatedly, business prioritization of all shareholders over other stakeholders. Participants acknowledged that market short-termism is an effect of shareholder primacy and, therefore, extending time horizons alone will not reverse the shareholder primacy problem.

Many of the participants were new to human rights and the business and human rights perspective. Some participants were keen to understand what the regulatory and legislative asks should be to create the "ecosystem" in which alternative corporate forms can thrive. Others believe that existing laws are sufficient: what is needed is to clarify them and in doing so debunk the maximizing shareholder value myth that existing corporate law requires prioritizing shareholder interests in business decision making.

Three readings were circulated to participants in advance: a [paper by Joanne and Liz] that examined the B Corps movement in relation to the business and human rights movement, [an Oxfam blog on] [inequality], and a white paper on benefit corporations prepared by participant John Montgomery, who has been active in the B Corps movement.

Presentations:
Four participants kicked off the discussion with brief presentations describing the work they are doing within their own organizations.

Erinch Sahan of Oxfam GB outlined six lessons that Oxfam has observed in its work on alternative corporate forms thus far:

- The current form is an accident of history and so are the examples of emerging alternatives, many of which are developed in isolation by visionary individuals.
- There is not a lot of traction yet in developing countries for these discussions, despite the strong (but often slowly declining) presence of agricultural cooperatives as an alternative form.
- There is no silver bullet, but rather diverse solutions depending on the stakeholders most impacted by the business.
- Few alternatives to mainstream business structures focus on power disparities between stakeholders and balancing the interests of multiple stakeholders impacted.
- The movement to reimagine the corporate form is fragmented.
- Adopters of alternative corporate structures, including social enterprises, face the challenge of attracting the capital to reach a sustainable size.

Explaining his work at **Transform Finance**, **Andrea Armeni** said:

- Transform Finance's overall approach is that capital ought to and can be a tool for social change, and should be grounded in equity and social justice.
- The work is guided by three principles
    1. Deep engagement of stakeholders
    2. For finance to be a tool for social change, a mind shift from value capture to value creation for affected communities is needed.
    3. The allocation of risk should address power dynamics
- A challenge is that there are many actors in the causal chain between finance and impacts. "Well-intentioned capital" is not talking to people on the ground who know the issues (e.g. cocoa farmers, affordable housing experts)
- Andrea is optimistic about change that's happening. Some social justice-driven investors are paving the way.

Michael Peck spoke about **Mondragon**, highlighting these points:

- Mondragon is the world's largest cooperative – practicing the "solidarity economy"
- In the U.S. it joined with United Steel Workers' union to promote a vision of "1worker, 1 vote" as well as union-cooperative hybrid models

- Mondragon has long experience, and is the subject of a number of case studies.

During the discussion, participants noted that Mondragon's good performance with respect to workers doesn't absolve it from the broader obligation to respect human rights; at the same time, Mondragon should not be held to higher standards than other companies. It was also acknowledged that the broader applicability of the Mondragon model is unknown.

Paige Morrow described the **Purpose of the Corporation Project at Frank Bold**, outlining seven action points to reforming traditional corporations:

- Specify corporate purpose
- Clarify fiduciary duties of directors and institutional investors (lack of guidelines)
- Revisit the role of boards
- Engage other stakeholders (including but beyond employees)
- Reviewing executive compensation rules
- Incentivize long-term shareholding (e.g. tax incentives)
- Revise accounting models to better capture human capital and externalities.

Theory of Change:

During the discussions a number of principles for "disrupting corporations" and advancing the movement for alternative corporate forms were put forth:

- The corporate governance mantle is "up for grabs." We may be able to convince a business to lead by doing something radical in their structure or with respect to companies in their supply chain.
- Stakeholder involvement is essential in corporate decision-making. Borrowing from the disability rights movement, "Nothing about us without us."
- It is critical to open conversations with business executives in a way that doesn't trigger a "fight or flight" response. These conversations should reflect an understanding that fear through the law (e.g., Foreign Corrupt Practices Act) and greed (e.g., brand reputation) drive corporate action.
- We need to impress upon decision-makers the urgency of addressing extreme inequality, just as they have come to understand the urgency of climate change: there will be social upheaval in many countries if we don't "course-correct."
- We need to move away from the need to "solve for investor returns" – where investor returns dictates everything else.
- For impact investing, it is important to get the model right before it goes to scale.
- Bonds are a more significant source of capital than equity. Therefore, efforts to channel investment to inclusive economic development should extend beyond equity finance.

- Network-building that links ideas about alternative business structures with other debates and movements (e.g., BHR, shared value, corporate sustainability) is essential.
- We cannot work in the social enterprise space alone. For transformation of business practice to occur, it must also include conventional companies.
- Human rights can be a powerful frame to propel the movement forward.

Three Examples of Innovation:

Three notable examples of innovative business structures were raised:

1. ***Progressive equity cap****:* Detour has developed an idea to cap pay-offs at the initial public offering stage for tech firms. The cap frees up funds to promote a social purpose (e.g., profit-sharing with workers) within the enterprise's work. This is an example of a "structured exit" that allows investors to get a return without forcing a sale or an IPO of the enterprise.
2. ***Social enterprise SEZ***: In Liberia, a special economic zone (SEZ) was set up for social enterprises. This happened through targeted advocacy at a time when the US was actively supporting Liberia.
3. ***Impact funds supporting transition to employee-ownership****:* There's a concept note to set up a private equity fund that would have transfer of ownership to employees as the exit of the investment.

Three Approaches:

Tree approaches to business reform emerged from the discussions.

1. ***Reforming conventional structures****:* Work on improving shareholder capitalism (i.e. corporate governance), through changes to fiduciary duties of directors, incentivizing long-term shareholding, and creating accountability mechanisms to check corporate behavior. The public interest law firm, Frank Bold, which runs the Purpose of the Corporation project, and the Aspen Institute, which also has a project on corporate purpose, have provided intellectual leadership in this arena.

   Within the BHR field, some believe that the state duty to protect pillar of the UN Guiding Principles requires that states "do not breed sociopathic behavior." Through corporate and securities law, States are creators of the corporate form and therefore are responsible for impacts of those laws. This could be the basis upon which to locate questions of corporate governance and structures within the BHR movement.

2. ***Creating alternative structures to mainstream business***: Work on generating alternatives to existing business structures and shareholder capitalism, through piloting social enterprises, channeling investment to them (e.g., through social justice-focused impact investors, social stock exchanges), promoting alternative models through supply chains (e.g. as the employee-owned multinational Mondragon does) and advocating for

policy or legislative change to support new models (e.g. B Lab's promotion of benefit corporation legislation, Liberty and Justice's promotion of special economic zones for social enterprises).

3. ***Building a new ecosystem****:* A new ecosystem requires a new legal architecture, as well as:

    1) Narrative change: It is important to continue sharing insights, opportunities, frames and language to fortify the argument that the dominant corporate form today is unsustainable, and the ecosystems to support alternative forms need to be built. In doing so we should recognize that:
        - Many frames are complementary, but some frames compete (e.g., maximizing long-term shareholder value vs. short-termism)
        - There is a need to expand definitions of "corporate responsibility" and "corporate sustainability" to include issues of corporate ownership and governance, profit shares, tax, etc.
        - We need to debunk the existing model that hasn't worked and highlight viable new economic models. For example, employee ownership is a model of market place freedom because it allows workers to vote with their wallets.

    2) Work with investors: New business models need new forms of capital formation. Yet, the movement cannot be mainstream investor-led, since mainstream investors might support it on the margins, but are unlikely to champion it. Workers' capital (in the form of pension funds), which represents between US $33 trillion and US$ 36 trillion globally, can be an important part of the answer.

    3) Work with consumers: New economic models require the cooperation of consumers in curbing over-consumption. Questions that need to be answered about this work include: What is the role of consumers? What are the implications of the new models for job creation?

The BHR movement and the social enterprise movement have complementary roles to play in realizing this agenda. The BHR movement can help in reforming existing corporations; mainstream companies need to be a target not just because they now dominate the global economy, but also because they set the benchmarks for investors. The social enterprise movement can continue to experiment with alternative business models that can raise the bar on what is possible and desirable *and* be fed into the BHR movement's reform effort. Recognition of the distinction between the two efforts gives rise to a question about the relationship between them: Do they require the same or different policy prescriptions?

Both movements need to be alert to the fact that a focus on incremental improvements in one can distract from the bigger changes sought by the other. For instance, “do no harm”-focused BHR solutions that are indifferent to business structures can detract from attempts by the social enterprise movement to demonstrate the need to change the structures of mainstream business. Equally, attempts by the social enterprise movement to promote business models that prioritize social mission and are blind to human rights can produce unintended outcomes that fall far short of the social enterprise objectives. Apparent signs of progress could be steps in the wrong direction. Overall there is a need to develop metrics to measure the effectiveness of new initiatives.

Participants

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Nick Iuviene, MIT Co-Lab, Bronx Co-op Development Initiative
Fern Jones, Croatan Institute
Iva Kaufman, American Council for Sustainable Business
Child Liberty, Liberty & Justice
JW Mason, Roosevelt Institute
John Montgomery, Montgomery & Hansen, LLP
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Michael Peck, Mondragon
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