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The Increasingly Visible Hand of Government behind Corporate Citizenship & Conscious Capitalism

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Abstract

This paper examines three recent and significant policy actions by the governments in India, the United States, and the European Union that make dramatic changes in how global societies view corporate behavior in the home and host country regions where economic benefits are accrued. These interventions point to growth of sharper policy instruments to push for Corporate Social Responsibility (CSR) obligations in nation states. The familiar concept CSR has spun-off important notions of Corporate Citizenship, and Consciousness Capitalism. Both of these conceptualizations build on Elkington's Triple Bottom Line (TBL)—which remains the central tenet of CSR philosophy. This paper discusses the three cases of government interventions in India, U.S. and EU. It argues that the new era of an increasingly visible hand of government has dawned to counteract market failure on the TBL, and to foster national and global sustainability values.

Keywords

corporate citizenship, corporate social responsibility, public law, sustainability, government intervention

1. Introduction

In attempting to be efficient and effective, markets have often ignored real costs to human societies and the environment. This is a growing concern, as evidenced in the last two decades of the global business economy, of market failure in this regard (Hawken, 1993i; Coates, 2002, 2004; Wagner et al., 2009). As a consequence, awareness the concept of Corporate Social Responsibility (CSR) has grown, and lately CSR as a government-driven initiative via (public policy) has been morphing from an ideology to a reality (Fox et al., 2002; Moon, 2004). Governments are seeing CSR as a form of "corporate citizenship"—a role that they expect businesses to embrace via "conscious capital" (Mackey & Sisodia, 2014) initiatives of business firms in their territories. The term "corporate citizenship" flows from the concept in American law that a group of people, may be recognized as having some of the same legal rights and responsibilities as individuals; this includes corporations. A "corporate citizen" denotes a legal business entity that contracts with, or makes agreements with countries or groups of citizens in a specific country. The idea is that corporations accrue benefits from nation states and consequently have obligations to return value to such nation-states. This paper examines three recent actions by government that reveal government interventions in CSR from India, The United States and the European Union, showing policy action to promote and sustain corporate citizenship. It follows on the heels of other such interventions in nations such as Italy, Norway and Great Britain (Albreda et al., 2007) to name a few. As we will see from examples of government action on CSR, corporate citizenship subsumes a variety of CSR concepts, including higher purpose, deontology, teleology, accountability and transparency, and ethics in corporate governance, and. These interventions signal a new era of business governmental relations.

While CSR, as a corporate philosophy, garnered only reluctant acquiescence at first, human and environmental problems on the planet have shown the urgent need for corporations to not only mitigate, but to *remediate* their negative corporate footprints in their regions of enterprise. When corporations themselves self-reflect they generally recognize that incidences of irresponsibility have thrust CSR into the forefront of strategic formulation (Wagner et al., 2009). They realize also that not only can business behavior be a positive force for people and the planet, but that profits accrue to firms (in particular), and to the market (in general) when CSR strategies are pursued in good-faith efforts. A growing change has thus evolved in corporate values representing a swing from the sole pursuit of economic advantage exemplified by the Friedman school of thought (1970) which has so far been the driver of corporate strategy and processes (Ghoshal & Moran, 1996; Ferraro, Pfeffer, & Sutton, 2005) to a greater sense of corporate responsibility.

The United Nations Industrial Development Organization defines CSR as “a management concept whereby companies integrate social and environmental concerns in their business operations and interactions with their stakeholders” (UNIDOhttp://www.unido.org/). The United Nations Global Compact on responsible corporate behavior and sustainability has appealed to over 6,000 corporations across 135 nations and continues to do so. Firms have pledged to calibrate their business goals to a set of standards of socially and environmentally-responsible actions, in addition to the profit motive (Du et al., 2013).

What CSR means to business is an issue that has been debated over the last four decades in global forums, as well as within national and sub-national governments around the world. In global discourse CSR comes up primarily in two question formulations: “what are the effects of corporate behavior on the natural environment?” and, “what are corporate impacts on human resources and societies?” A well-enunciated question from Archie Carroll et al. (2011) directly asks: “to whom, and for what is the modern corporation responsible?” The Tomorrow’s Leader’s Group, a think tank of CEOs from such major corporate entities such as Proctor & Gamble, GrupoNeuva, TNT, CLP, StoreBoard, BP and others routinely debate such issues. This group, instead of asking the traditional question, “how can we make more and more profit?” they now ask “what is business *for*?” They seek to answer this question through scrutinizing the role of business on broad societal issues such as poverty, human rights, and the environment. Their follow-up question is: "how can we make money and at the same time make a *difference*?" (You tube, http://www.youtube.com/ watch?v=Xox7Z0Bq7jY).

For Porter and Kramer "doing well, by doing good," means honing in on a firm's products and services from its very conception to its death, to ensure that it does not have negative externalities on societies and the environment (Porter & Kramer, 2011). They posit that in principle, the vision for conscious capitalism, like other strategic values, should be aligned seamlessly within the normal business activities of the corporation with input from key internal and external stakeholders who create that value. They call this "shared value"—and term it a more "balanced" way of value-creation. Porter and Kramer argue that if organizations were to plan using the same frameworks used for business objectives, then CSR would be much more of a competitive advantage and not merely "*a nice thing to do*," or viewed as a cost or constraint (*ibid*, 2011). Matejek and Gossing (2014) have argued that strategies to minimize negative environmental impacts is a corporate value creator. Indeed experience shows that a common thread among those companies that experience success with their CSR efforts is a commitment to integrate a corporate responsibility strategy with the overall business strategy in a way that makes it part of a firm's DNA.

In talking about the *stakeholder model* of the firm Freeman (1984), argued that it is essential for leadership to consider non-financial stakeholders as well as shareholders. Freeman maintains that non-financial stakeholders are important as they fail to support a firm that is seen as being unaware of its social responsibility.[ii] While most that business leaders today say their firms are equally attentive to CSR and the bottom line, we still see that there has been many at time that businesses seem to have paid only public relations lip service to conscious citizenship. Strandberg Consulting has termed this as "talking, but not walking the walk" on CSR (2009). Businesses today are expected to do more than make insincere hortatory statements, often called "greenwashing" (Westervelt, 1986) or "symbolic CSR" (Matejak & Gossing, 2014). However, as always, sustainability plans must make business sense, in terms of value-creation and competitive advantage (Hart, 1997; Salzmann et al., 2005)

Many interpretations and definitions of CSR have emerged in this century. In 2008 Alexander Dahlsrud counted 37. More have surfaced since then. The term CSR continues to still be the most commonly used phrase. In 2008, Bill Gates spoke at the World Economic Forum about the idea of "creative capitalism." He encouraged companies to identify their expertise—be it technology, agriculture, healthcare—and develop products that could "stretch the market forces" (Gates, 2008). Another term "conscious capitalism" (CC) has emerged from a book of the same name by John Mackey CEO of Whole Foods & Professor Rajendra Sisodia, wherein they argue that conscious business in a capitalistic society can work powerfully for the good of all stakeholders—the economy, people and the planet (2014). This term also denotes firms who display "capitalism with a social conscience" (Civitia, n/d/, www.newfuturesmedia.com). CC, at its heart, is based on four tenets: *conscious leadership* that recognizes the *interdependence* of a broad range of *corporate stakeholders*, that steers the organization to a higher purpose through the development of a c*onscious culture* that embodies corporate citizenship behavior.

Corporate citizenship[iii] is an expectation by business, governments, and third-sector organizations that business value is more than just profit; and that care for the well-being of all stakeholders, including the environment, must flow from business actions (Glavas & Piderit, 2009). Findings from their regression analyses and structural equation modelling support the hypotheses that employees who perceive higher levels of corporate citizenship will report higher levels of engagement, high-quality connections and creative involvement. The 100 Best Corporate Citizens list, now in its 14th year, contains a list of companies that uphold this philosophy; and it ranks companies based on publicly available information in seven categories: environment, climate change, employee relations, human rights, governance, finance, and philanthropy. The list's creators assign a 19.5% weighting to environmental impact and employee relations, because they think they are what consumers, shareholders and employees care most about. CR magazine's Editor-in-Chief Bill Hatton notes that, "A good corporate citizen doesn't treat people and the environment as a means to an end." (Adams, Forbes Magazine, Leadership 4/24/2014). Firms that integrate corporate citizenship with business goals have at their disposal a more robust set of tools for serving customers, shareholders, and communities. "Corporate citizenship" implies a growing willingness on the part of scholarly and business communities to review competition beyond the traditional five forces backdrop (Porter, 1980) of profit-maximization. It signals a paradigmatic shift in what society now expects from the corporations they embrace and assist.

Professor Kenneth Andrews of Harvard University, in his book on corporate strategy (1989) argued that the modern corporation "has become an institution in society governed by moral as well as economic values. Its strategists need moral as well as economic motives and competence." (p. 68). What is needed is ethically-driven l*eadership* for strategic planning for CSR that begins with corporate analyses of opportunities for wealth creation within cognizance that such activities should include returns to important stakeholders—such as societies and the environment. Andrews' notion of "moral values" is captured in the concept of the servant leader who shares power with all levels of stakeholders in the corporation, explicated in Robert Greenleaf's concept of the *stewardship theory of leadership* (2003).

From the *institutional theory of leadership* we learn that leaders who are seen as working in an atmosphere of trust, transparency, cooperation and ethics, gain follower support, motivation to the goals, and other workplace situational rewards. Research shows that CSR is a critical factor that empowers corporations to appeal to the socio-cultural norms of its institutional ecosystem, and through this it can appeal to its communal relevance (Handelman & Arnold, 1999; Palazzo & Scherer, 2006). Social legitimacy, in return, affects the movement of financial flow from a broad corporate stakeholder spectrum (Palazzo & Scherer, 2006; Pfeffer & Salancik, 1978; Sen & Bhattacharya, 2001). The consequences of this flow of capital and support enriches corporate economic value-creation (Luo & Bhattacharya, 2006; Margolis & Walsh, 2003).

Waldman et al. (2004) have argued that *transformational leadership* employs CSR in strategic planning. Lipman-Blumen argues that successful leaders consciously connect to their environments because of the underlying understanding of the interdependent nature between organizations and their environments (2006). In "the Path of Kyosei" or the spirit of cooperation, connection, and harmonious relationships between corporations and stakeholders Ryuzabuto Kaku explains that kyosei implies leadership and followership doing their absolute best with concern for people and the planet. With this mind-set CSR evolves naturally within the firm (2003). These (and other) scholarly writings argue that top-management support for CSR (corporate citizenship) is necessary (Jones et al., 2014).

The Triple Bottom Line (TBL) still raises controversies and eye-brow-raising among traditional strategists, and even among those who are concerned with a firm's relationship to a broader stakeholder base. While conceding that the TBL might represent "virtuous" behavior some criticism has arisen that such a model of firm behavior is unrealistic, cannot be sustained across all industries; is too long-term in orientation to satisfy Wall Street's current ideology; and, that the strategy often falls victim of mergers and acquisitions—when new leadership likely emerges (O'Toole, and Vogel, 2011)[iv]. Cynics and doubters also point to the challenge inherent in maintaining corporate virtue side-by-side with competitive advantage. Joel Bakan says about corporate virtue, "we should not expect very much from it. …There is "a profound limit on what a corporation can do" (p. 28, p. 50, 2004). Others argue that the commitment to treat all stakeholders equally and fairly is naïve.

While the detractors continue to provide well-intentioned opposition on conscious citizenship, their numbers are smaller in current times. Many indicators speak to this, but a key one is the growth of green stock indices which relate to companies with social and environmental values—e.g., The Dow Jones Sustainability Index, The Dow Jones Dharma Index, FTSE4Good Index, KLD Global Sustainability Index, Jantzl Social Index, Wilderhill Clean Energy Index, and a growing list of others. Capital is at stake, and divestment from large funds is a powerful tool for corporations to use to re-vamp their wealth-enhancing strategies. For example, in May 2014, Stanford University's Board of Trustees divested from all holdings in the coal industry, due to CSR concerns. Norway's Sovereign Wealth Fund, a socially-responsible investment group, divested from holdings in troubling industries such as tobacco, nuclear arms and cluster munitions (Kourabas, 2014). Furthermore, a growing ecosystem of strategic radar screens tell us that CSR is now systematically embedded into important social structures. Figure 1.1 graphically argues that this is the case:

Figure 1. The Push for Greater CSR: Eight Strategic Radar Screens Focus

Source: Coates, B.E. 2013

Recognition has been burgeoning for participation between governments, businesses and non-profit organizations that come together jointly to fill areas of vacuum that one of these parties working alone might be unable to fill. Other than its statutory laws aimed at specific societal needs such as occupational health & safety (OSHA) or environmental protection (EPA), or defense against discrimination protection for certain classes of citizens (CRA), government has taken a slow path in protecting societies against the various excesses in the market that have produced negative externalities. Professors Vogel and O'Toole at the University of California, Berkeley, give two-and-a-half thumbs up for CSR, noting that perhaps, the large societal problems need solutions through *governmental* action, rather than private enterprise (O'Toole & Vogel, 2011; Vogel 2005). Robert Reich, also at UC, Berkeley, says essentially the same thing "…under super-capitalism, regulations are the only means of getting companies to do things that hurt their bottom lines." (Reich, 2007, pg. 170, 204)[v]. Observations from experience around the world show that governments are beginning to do this[vi].

Around the globe governmental CSR expresses itself in a range of issues—social health and inclusion, human rights, corporate governance and protection of natural resources. Here governments play several roles (Fox et al. 2002): 1) Commanding—mandate and control tactics, via laws, regulations and inspections. India's CA2013 on CSR falls into this category (discussed in Section II), and the EU law on mandatory CSR reporting (discussed in Section IV). 2) Facilitating—via enabling legislation that may provide funding support to build capability and stimulate markets—such as energy initiatives in the U.S. (e.g., when providing funding incentives for solar power in the United States to build alternative sources of energy; or federal grants and contracts for medical research). 3) Partnering—via public-private-nongovernmental relationships, that combine resources, and involve a variety of stakeholders who provide dialog and input, e.g., the Nature Conservancy projects (e.g., partnering with Texaco in Louisiana and Disneyland in Florida, to mitigate ecological footprints made by these corporations in their respective regions. 5 The Table that follows shows examples of 2 categories of forces that prompted government reactions in the areas CSR: 1) Defining Moments—which set the dialog in motion for future action; and, 2) Catalytic Moments, that signaled to society that government must push for greater CSR involvement. In looking at governmental action in this second decade of the 21st century we find specific examples of recent government reaction to market failure: 1) India's New CA2013 law on CSR; 2) The Benefit Corporation in the United States, and 3) The EU law on CSR. The three examples that follow show the power of government in mandating and facilitating CSR. We turn now to three such recent actions by governments in India, the United States, and the European Union where governments are now taking the unprecedented steps of creating specific legal forms for CSR.

Table 1.Market Failures and Government Reactions

ENVIRONMENT	Defining Moment	Losses	Catalytic Moment	Losses
	Exxon Valdez Oil Spill 1989	1,300 miles of coastline impacted. Approx. 250,000 seabirds, 2,800 sea otters, 300 harbor seals, 250 bald eagles, up to 22 killer whales, and billions of salmon and herring eggs.	BP Oil Spill, Gulf of Mexico, 2010	5 million barrels of oil spilled into the Gulf 11 people killed. Hundreds of miles of coastline impacted. The spill area hosts 8,332 species, including more than 1,270 fish, 604 polychaetes, 218 birds, 1,456 mollusks, 1,503 crustaceans, 4 sea turtles and 29 marine mammals

PEOPLE	Union Carbide, Chemical Disaster, Bhopal 1984	3,000 people were killed; over 15,000 injured.	Foxconn, 2010	18 suicides
FINANCIAL	U.S. Savings & Loan Crises 1980s & 1990s [vii]	By end of 2004, the direct cost $124 billion, Healthy S&Ls as well as commercial were taxed approx.. $30 billion for cleanup costs.	Enron Scandal, October 2001	Cost to shareholders—drop in stock price from $90/a share to $1/a share. Shareholders lost $74 billion. Employees lost their jobs; Investors' retirement funds were wiped out [viii].

At this point it is useful to ask the following questions: Should businesses today act as "citizens" in the countries where they do business? Should governments take a visible role in mandating how businesses should act in their territories? What form should such a visible role take in protecting people and the planet, while at the same time allowing firms to pursue profits. We turn now to the three recent governmental actions mentioned may be global precursors in answering these questions.

2. Corporate Citizenship Expectations: Mandatory CSRin India via the 2013 Companies Act

In India, CSR has traditionally been seen as a philanthropic activity in keeping with the Indian cultural traditions of alms-giving. Corporate India performed social activities, generally in the form of voluntary corporate charity. They did so without necessarily seeing corporate-giving as a strategic force of opportunity that could add value to the corporation's brand or bottom line, not to mention consideration of deontological value to corporate stakeholders. The liberalization of the economy, and rapid globalization, however, has come with a heavy price for humans[ix] and natural resources in India. Environmental pollution, forest decimation, loss of biomass, ineffective waste management systems and the like, are some of the many complex problems with negative externalities that contribute to poverty and over-population problems within the country today. These problematic national welfare issues can and do morph into national security issues, and are of such growing concern that it has propelled the Indian government to seek corporate partnerships, and even mandate what business actions must be taken. While other countries have made policy proclamations about the role of business firms in their societies, India in 2013 did something about it via its CA2013 the new companies law to mandate specific levels of MNE spending. This signals government's view that corporations have societal and environmental obligations—not only in the regions where they exist, but also to take into consideration how company activities affect the broader society and the environment at large. The underlying premise being that corporate India and big foreign multinational corporations are important actors in India's social and physical environments from which profits are drawn. It also signals the notion that firms have a role in enhancing democratic values; and that big businesses needs to not only *reduce*, but *reverse (*when they can) their negative footprints caused by doing business enterprise zones. It further represents the mounting apprehension felt by the public and non-governmental sectors around the world that government regulation (labor laws, health and safety statutes, and environmental legislation, etc.) while necessary, are not sufficient, to stem the alarming growth of pollution and extreme poverty-to-wealth ratios and inequalities. In passing this law, Indian society signals its expectation to business entities to behave as good "corporate citizens." It also introduces social change in a more planned and comprehensive fashion. It should be noted that CA2013 embodies many of the indicators that form the basis of Conscious Capitalism (Mackey & Sisodia, 2014) and Corporate Citizenship (Glavas & Piderit, 2009).

CSR is governed by Clause 135 of India's Companies Act, 2013, which was passed by both Houses of the Parliament, and was signed by the President on 29 August 2013. The law became effective in 2014. The new "Companies Act" (hereafter referred as CA2013) which replaced the old "Companies Act" of 1956 (referred to as CA1956) makes comprehensive provisions to govern corporate behavior for corporate use of the country's economic factors of production. CA2013 has far-reaching implications for both Indian domestic companies as well as foreign overseas investors with a presence in India. Under CA2013 the long list of projects and areas for CSR funding, include social and environmental concerns as previously noted: ending hunger and poverty; promoting public health; supporting education; addressing gender inequality[x]; conserving and protecting the natural environment; funding cultural initiatives and the arts, etc. (http://blog.ipleaders.in/corporate-social-responsibility-csr-laws-around-the-world/#ixzz3Fm292lew).

Some provisions of CA2013 remain in-operative as of today. The Indian government is likely to address the issues concerning the non-starter clauses in due course.

Specifically, the Corporate Social Responsibility Clause of CA2013 (Clause #4) applies to any company, during any fiscal year, with a net worth of rupees 500 crore [xi] or more; a turnover of rupees 1,000 crore [xii] or more; or a net profit of rupees 5 crore [xiii] or more. Companies that fall under these categories must create and embed CSR strategic plans into their corporate policies. In the event that a company does not comply with its stated corporate social responsibility plan, the Board of Directors of the company will be required to explain their reasons for noncompliance in the company's yearly financial statements.

CA 2013 mandates that the relevant categories of companies must spend at least 2% of their average net profits in every financial year on corporate social responsibility activities in India[xiv]. It also stipulates that this CSR money is preferably to be spent in the regions where the corporation operates—thus forging direct benefit to the firm's closest societal stakeholders. Companies may also team up and merge CSR resources with other appropriate companies in India. This is seen as useful to smaller firms that wish to do CSR activities in the region, but do not fall under CA2013.

The new law permits these CSR obligations for large corporations to be channeled through non-profit agencies, trusts, or charities (§8 entities) "…that have an established record of at least three years in CSR-like activities." (http://forbesindia.com/article/real-issue/key-implications-of-the-companies-act-2013-on-board-room-decision-making/38170/1#prioixzz3FlrfoIca). Non-profit agencies in India, as in the U.S. and elsewhere, have the know-how, and societal links to turn corporate CSR plans into realities.

A company belonging to the targeted group will be required to constitute a Corporate Social Responsibility Committee" that will develop and embed into the company's general policy the specific corporate social responsibility activities required by this law. This document, which is to be submitted to the company's board, should recommend particular CSR activities; set forth a budget; describe how the company will implement the project, and establish a transparent means to monitor progress. The CSR committee must include at one or more independent board members. When a corporation falls under the corporate class that is required by CA2013 to appoint external independent board members; they also have the obligation to appoint at least of one woman director are as included in section 149(1) of the Act and represents India's policy of gender mainstreaming. 7 Under CA2013 political contributions out of CSR funds are not allowed. However, as noted before, CSR funds can be used to assist special societal welfare initiatives undertaken by the Prime Minister or the central government legislature. Such projects must be carefully monitored to ensure that such money is not used for grease money purposes, political favors, or other corrupt practices. CA2013 further specifies that the CSR money not be spent on internal projects that normally are funded by the corporation—such as benefits to its employees or other internal stakeholders.

A cause of concern for corporations is that CA2013 imposes substantial bureaucratic expenditures. For example: 1) Firms must prepare accurate and detailed statements in structured formats, about their CSR policies, the configurations of their CSR committees, CSR aggregate outlays, and the details of CSR projects, item-by-item. 2) The Board of Directors have to include this statement in their yearly report to investors. 3) The CSR report has to be circulated on the firm's website. 4) The requirements may necessitate creation of a new compliance division to monitor the policy as well as to conduct due diligence investigations on new clients, suppliers, or other strategic alliances. As yet, it is not clear whether lack of compliance constitutes breaking the law. Because of this ambiguity, it is suspected that the new law may prove to merely be a policy instrument that merely says "conform or defend." It could, however, grow teeth in the form of penalties for non-compliance, as the new law plays out in the society in the future.

There are also implications in CA2013 for foreign corporations in terms of foreign direct investment (FDI)—as related to subsidiaries, joint ventures, alliances, "buy-operate-and transfer" projects, and franchises of all kinds in India. This new companies law also has ethical ramifications as they pertain to several foreign statutes. As of now, if the Indian company undertaking CSR is a subsidiary of a United States entity then the U.S. Foreign Corrupt Practices Act of 1977 (FCPA) pertains. Likewise if the business activities link in some way to the United Kingdom, the U.K. Bribery Act (UKBA) applies. Other regulations and statutes from these dominions could pertain to the foreign entity's India-based company's CSR payments. This may possibly raise apprehensions with regard to conformity and accountability. Significant civil and criminal consequences upon business firms and their senior leadership that make improper payments, are involved in suspicious transactions (or if they fail to undertake satisfactory actions to protect and prevent against the same) are inherent within the FCPA and UKBA. With respect to these statutes and the significant sums of money that must now be spent on CSR in India, it is expected there will be close scrutiny of companies' CSR payments by United States and U.K. authorities. In complying with CA2013, companies both domestic and foreign, will probably see an increase in bureaucratic learning and agency costs in terms of increased headcount, legal counsel fees, accountancy audit costs, and monitoring expenses.

Figure 2. The Three Major Pillars of India's CA2013

Source: Coates, B.E., 2014

One alternative to doing the new CSR requirements in-house is for Indian firms and foreign MNEs to rely upon not for profit agencies (NPs) for management of their CSR activities. NPs are typically used by big businesses in India for social welfare project administration—such as such as designing, managing, and reporting upon corporate trusts, or foundations (of the sort that CA2013 envisions). In recent times there has been an upsurge of NP-emergence in India as a result. Selection of an appropriate non-governmental conduit may be hard for foreign corporate leadership to identify as there are said to be roughly 2million NPs in India. Again, use of these non-governmental agencies would undoubtedly increase administrative costs to the focal firm. Another potential issue to be considered is that fraud and dishonesty frequently have occurred within NPs. One reason is the lack of liability for Indian non-profits, which often are casually structured, inadequately audited, and operate with little control and supervision. Furthermore, corruption and bribery problems have been noted, mainly within the political structure of government. Politicians and political groups in India have used NPs as a means of amassing political donations, making patronage ploys, or circumventing Indian election statutes.

Apprehensions about increasing government control on the private sector not-with-standing, India's new Companies Act of 2013, is being viewed as a frontward movement by government in making companies accountable for their actions as citizens in India's territories—from which they unquestionably derive much of their corporate wealth and power. We now turn to the United States of America where since 2010, state legislatures have created a new legal corporation, known as the Benefit Corporation, in order to allow those corporations who wish to charter themselves as such to meet the 3Ps (people, planet, and people) of the Triple Bottom Line.

3. Corporate Citizenship: New Law Designed for Corporate CSR in the USA

The emergence of the Benefit Corporation (BC) goes hand-in-hand with the philosophy of corporate citizenship and conscious capitalism. This class of legal BCs are specifically-designed entities by state governments in the U.S. for firms that pursue both for- profit and non-profit objectives. Their charters free their directors from having to manage strictly for the economic benefit of shareholders, while at the same time advancing the interests of the underserved, and for improving human and environmental health. Traditionally, for-profit entities have been required by corporate law to do one main thing: i.e., maximize shareholder value and profits. This incentivizes short-term profit, regardless of long-term costs to society and the environment, sometimes requiring extensive legislative and regulatory action to fight abuses. The emergence of the BC indicates a new corporate reality throughout the states to create a legal framework to support corporations that have a philosophy of corporate citizenship and deontological values. The BC brings to clarity the question posed by Carroll et.al. (2011) *to whom and for what is the modern corporation responsible?* (2011). The rapid growth of this new class of corporations[xv], provides evidence that society has broadly changed views about the role of corporations in the 21st century. In the words of one CEO, "it sends a message that we take seriously the opportunities of business to bake into its DNA that we are here for more than just financial return (Carroll et al., pg. 132, 2012). Public policies for Benefit Corporations display political and social will behind the philosophy of TBL. It brings corporate law into alignment with corporate citizenship.

The Benefit Corporation falls into a new "fourth sector" class for corporations—those that integrate goals of profit and not-for-profit firms. A range of efforts are underway to define the criteria for the BC, which is the archetype for this for Fourth Sector form. As broad consensus builds around conscious capitalism we see the BC archetype drawing toward itself a whole ecosystem of support from financial markets, certification agencies, to assessment tools and consultancies to rate these firms. This in turn ripens the climate for the growth and maturation of fourth- sector organizations. Benefit Corporations commit to the following:

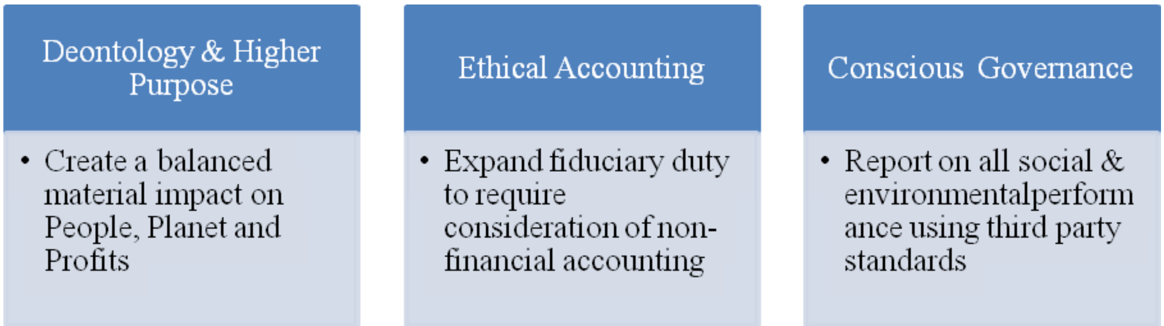

Figure 3. The Three Major Pillars of the Benefit Corporation

Source: Coates, B.E., 2014

In terms of Purpose, the Board of Directors in a Benefit Corporation have to manage the organization with the same authority as in a traditional corporation, but here they judge not only profits, but qualitative performance based on the BC's other stated goals. Executives in BC's must take into account the three Ps of the TBL—People, Planet and Profit. Shareholders in a benefit corporation determine if the benefit corporation has achieved a material positive impact (this is known as "general public benefit") in its goals. Such positive benefits could be identifying a social environment benefit (such as a wetlands project, or a harmful labor practices in a specific region). Should a quarrel occur, then the courts determine if the corporation did achieve a material benefit.

The BC corporate form also provides shelter to its executives and managers that engage in TBL objectives as follows: 1) A good faith effort for all three categories of the TBL. 2) Transparency & Accountability requires a third-party assessment (it could be an attorney or a certification entity, such as the B-Lab) that meets the statutory purpose of a BC. 3) An annual report that shows the BC meets the statutory purpose. 3) BCs can be faced with lawsuits brought against them by a shareholder, an Executive or individual or group that holds more than 5% equity in the corporation, for not meeting the statutory purpose of the BC. Damages are limited to injunctive relief.

California has two forms of socially-responsible corporate charters. In October 2011, California's Governor Jerry Brown Signed into law 2 new corporate entities the Benefit Corporation within the California Corporations Code (§14600-14631) and the Flexible Purpose Corporation (§2500-3503) which were themselves enabled by the corporate Flexibility Act of 2011. The charters of both benefit corporations and flexible purpose corporations expressly include social objectives among the purposes that they may pursue, even if the pursuit reduces the economic benefits provided to shareholders. Debra Bowen, California Secretary of state, notes that the law requires that the BC must include in it Articles of Incorporation, the statement that: "This corporation is a Benefit Corporation". In addition the BC "may include one or more public benefits that shall be the purpose or purposes of the benefit corporation. "(Office of the Secretary of State of California, 12/14/2014)[xvi]. As a result, BCs are the same as other California corporation corporations except that they have the above-mentioned rights and obligations under §14600-14631 that are not applicable to business corporations. Existing corporations and other entities can also become BCs by amending their Articles of Incorporation or by converting to, or merging into, BCs[xvii].

As noted, every BC in California has the purpose of creating "general public benefit." This clause protects corporate governance from being accused of straying from the exclusive goal of creating economic benefits for the shareholders. The term "general public benefit" is defined as follows: that the corporation have a material positive impact on society and the environment, taken as a whole, as assessed against a third-party standard. In addition to the general public a BC may adopt as its purposes one or more specific public benefits. The identification of a "specific" public benefit does not limit the BC's purpose to create a "general public benefit". These must be identified in their reports. Failure to perform as stated in the purpose clause, may result in injunctions. BC law authorizes directors to consider the impacts of corporate actions on a broad spectrum of stakeholders besides shareholders. The law also authorizes "benefit enforcement proceedings" by which benefit corporations, either directly or through actions brought by shareholders, may enforce the obligations of the corporation to seek to pursue the general and any identified specific public benefit purpose. The article of incorporation of a given BC may entitle other specifically named persons to bring these proceedings.

Besides indicating purpose, the BC corporate form imposes bureaucratic costs in terms of accountability and transparency responsibilities: 1) Verification by a "third party" to certify definition, reporting and assessment of a firm's performance on TBL: and what factors affect the believability and reliability of the third party that certifies the BC. 2) An annual report to shareholders that reveals answers to the following questions: a) How the third-party verification entity was chosen. 3) How were the general and specific benefits of the pursued? 4) A report by the board as to what were the success and /or failure of stated purpose. 3) The names of major shareholders of the corporation (i.e., those who hold 5% or more of the corporation's shares). 5) Reports have to be placed on the corporate website (if the firm has one) on the benefit portion of the report, minus individual confidential data, such as executive compensation.

The analytics behind certification of a BC includes using (if the company so desires) a third-party certification agency. One such agency is the B Lab is a 501(c) 3 nonprofit that serves the global movement of entrepreneurs using the power of business to solve social and environmental problems such as Benefit and B-Corps.[xviii] The B-Lab asserts that "a company's revenue only tells half the story" (Hower, 2013) and argues that today's most successful business must also create a positive social and environment impact [xix].The B Lab certifies Benefit and B Corporations in a yearly survey that tests 200 variables that measures the criteria for showing that a corporation is indeed fit to continue as a Benefit or B-Corp. The measurement provides a metric that backs up a corporation's mission and vision, and holds these statements accountable. The B lab drives systemic change through a number of interrelated initiatives: 1) building a community of Certified Benefit and B Corporations who lead the movements to produce sustainability and "good companies" with good marketing; 2) passing BC legislation to create a new kind of corporation legally required to create value for society, not just shareholders; 3) helping investors invest for impact through use of the B Analytics data platform; and 4) helping businesses measure, compare and improve their social and environmental performance through use of the B impact Assessment as a free powerful education tool. (*ibid*).

Another assessment system used for the Benefit Corporation's analytics is the Global Impact Investing Rating System (GIIRS) xx. It offers a company seeking investment capital a rating of its social and environmental impact. GIIRS rating are designed to be used with investors only and not with a company's other stakeholders (consumers, policymakers, suppliers, etc.). The GIIRS is a comprehensive and transparent system for assessing the social and environmental impact of developed and emerging market companies and funds with a ratings and analytics approach analogous to Morningstar investment rankings and capital IQ financial analytics. The GIIRS has: a focus on the impact performance of private companies: that uses a cross-industry and cross-geographic methodology: and that provides transparent, independent, and verified data. It also maintains transparent standards and an assessment tool that can be used by anyone for internal use for free. Yet another rating system is the Global Reporting Initiative (GRI) is a consortium of 300 global organizations. It was launched by Ceres—a non-profit organization advocating for sustainability leadership and the United Nations Environmental Programme (UNEP). The GRI standardizes reporting measures on sustainable in order to maintain enhance and disseminate guidelines thorough ongoing consultation and stakeholders relationships. The GRI fills in a much-needed gap in world-wide measures of corporate TBL initiatives, its guidelines represent the first global framework for conscious capitalism reporting.

The growth of Benefit Corporations in the United States has been phenomenal, with almost every state either having already passed legislation; has legislation pending before state congresses, or is considering legislation. This speaks to the growing recognition by U.S. subnational governments of the fusion of CSR and profit-making. Following the examples set by India's CA2013, and the United States' Benefit Corporation, The European Union (EU) has drafted a reporting policy for CSR for EU businesses with over 500 employees in its 28 member states. This is another indicator that governments and societies want to see corporations with a conscience in their regions. We turn to this newly-promulgated legislation next.

4. Corporate Citizenship: CSR Legislation Promulgated in the EU

For over a decade, the European Union (EU) has had an expectation that businesses be good corporate citizens with more accountability to society, particularly in the EU itself, and in developing countries with whom EU trades. As seen in recent years, many of the clauses in contracts between the EU and other nations, such as South Korea, Columbia, and Peru stress the need for CSR. Individual nations within the EU, France, Denmark, Norway, Italy, and Great Britain, to name a few, have passed legislation on aspirations for CSR. Aaronson & Reeves (2002) indicate that European governments have a more cooperative stance with business, and in turn businesses in the EU are culturally more comfortable working with governments. The EU's emphasis specifically targets negative footprints of corporations on society and the environment. The legislation implies that the TBL philosophy should be embedded into corporate missions with particular emphasis on value chains. It also highlights the EU's recognition of the growing profile of the challenges and opportunities of CSR in globalization (Aaronson & Reeves, 2002).

In March 2014, the European Parliament passed the resolution for mandating CSR into law. The United Nations Global Compact; United Nations Guiding Principles on Business and Human Rights; ISO 26000 Guidance Standard on Social Responsibility; and the OECD Guidelines for Multinational Enterprises, served to provide the framers of this legislation direction for design of its law. The magnitude of the legislation by the EU law is that it puts the burden on business corporations and not just state parties (Pasipanodya, 2012). As emphasized by Kostas Hatzidakis[xxi] "it is not only for shareholders but also for stakeholders and citizens that it adds value" (ibid, 2014).

The basic structure of the EU law has three major provisions: 1) Higher Purpose: European companies enjoying the benefits of trade are being asked to conduct themselves in a socially and environmentally responsible manner in the EU and importantly also, in developing countries and where EU firms are located. 2) Accountability: In EU parlance, "Non-compliance with CSR principles constitutes a form of social and environmental dumping". 3) Consistency in EU Public Policy: The EU's goal is to get its trade policy consistent with its TBL philosophy, and complimentary of its other foreign policy priorities on matters such as environmental protection and development aid.

With this law the EU Parliament made an umbrella declaration about corporate citizenship throughout their union via its new legislation is a necessary condition for membership. As a result of the law, some 6,000 companies will fall under the mandates and are required to report on the specified areas. Companies will be able to choose the relevant indicators against which they should report and a lot of large companies—particularly private companies—will be exempt from the law altogether. Behind this policy is the goal that sustainability reporting practices can help EU markets perform more powerfully and efficiently, and grow a more vigorous economy. The EU sees it as an instrument to reach its sustainable development goals. The information collected can show who cooperates with sustainability and is a good corporate citizen, and who is not. European Commissioner Michel Barnier, Acting Commissioner for Industry and Entrepreneurship, noted that "CSR …is also, and increasingly, about creating new value through the innovation that comes from challenging a company's status quo and looking for better solutions. We look forward to receiving stakeholders' valuable feedback on our CSR agenda and on their expectations for the future."[xxii] (http://ec.europa.eu/enterprise/policies/sustainable-business/corporate-social-responsibility/public-consultation/index_en.htm.).

This law was welcomed by the European Coalition on Corporate Justice and its members NGOs as a tool for enhanced reporting with transparency and accountability. The legislation is mandatory for all 28 EU member states (Coppola, 2014). The legislation is seen as an "enabling tool for business productivity, and one that contributes to sustainable growth of EU corporations. Unlike the CA2013 in India which mandates a specific spending goal from corporations of a certain size, the EU law only mandates transparent accountability reporting of activities. Reports will be audited, but do not have a requirement to be verified. Corporate disclosures include environmental, social, employee-related, human rights, anti-corruption and diversity policies that the corporation might have. (Coppola, 2014). Major businesses in Europe will be required to produce social and environmental reports as part of. A number of signposts for corporate boardrooms arise from the new legislation. 1) It will force corporate boards to take notice of the social and environmental impacts of their strategies, as they now have to unveil such impacts, backed by qualitative and quantitative data. 2) Corporations will now be able to assess their own substandard performance and make corrections due to reputational losses and consumer distrust. 3) It will benefit corporations to be CSR-friendly as this will attract "impact" investors and socially-responsible parties to know and invest in them.

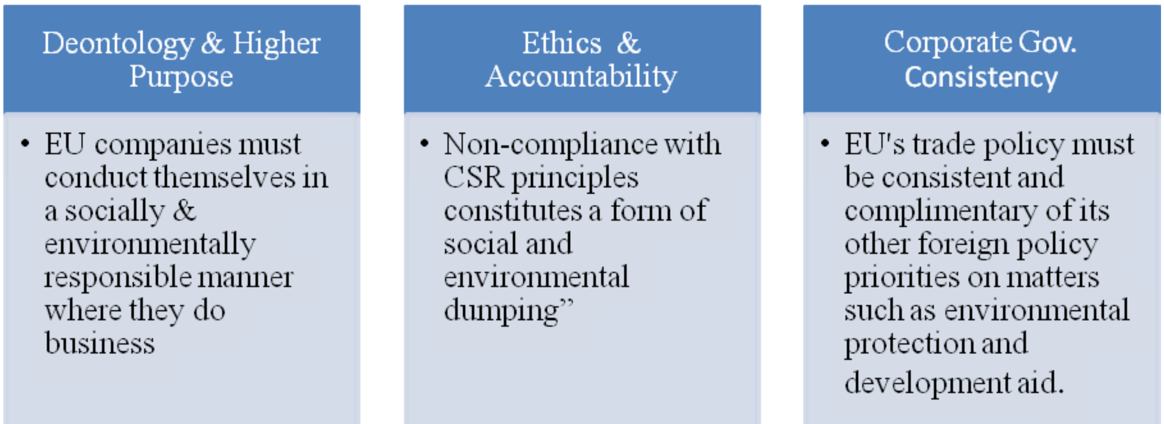

Figure 4. The EU's Three Major Pillars for CSR

Source: Coates, B.E., 2014

Reporting is mandatory but the "*obey or justify*," or explain "*why not*" clause provides flexibility to corporations (Chapelier, 2014). Not surprisingly many have claimed that the European Parliament's new law on Corporate Social Responsibility reporting has been weakened by industry pressure to the extent that it is now virtually hollowed out and meaningless. Instead of a solid framework there remains a hollowed. As of now a slim 0.3% of all European companies may be affected by the new reporting rules on social and environmental impacts—and even they could opt out (Bizzari, 2014). Even so, some countries have complained that it would be adding an additional bureaucratic layer and cost to business firms. However, progressive companies such as Unilever and IKEA and others who already have CSR programs in place, or are considering them, have gone on record in support of the law. Other key European business lobby groups have been in opposition (ibid, 2014). Support for the passage of this law was garnered by intensive campaigning by an umbrella group of NGOs – the European Coalition of Corporate Justice (Howitt, 2014). A more consolidated voice structure for

European CSR-reporting that will challenge corporations with (actual or potential) social and environmental risks in their operations and supply chains. It will meet growing demand by buyers for a more conscious capitalism on the part of business firms, and will strengthen the market for sustainable investment. The fact that many large companies are already reporting on their CSR-policies will likely make the political task of managing the law confrontational for the European Commission (Zandvliet, 2011).

The visible hand of government is not new in the European region. Western European governments have always sought to compensate for market failure and opportunistic behavior via laws and regulations, still critics will no doubt argue that these latest policy actions on CSR are a bridge too far. However, the words of James Madison echo from the Declaration of Independence, if men were angels, he said, there would be no need for government (Diamond, 1981). Government policies are, nevertheless, imperfect tools, to right economic, social and environmental harms—due to many factors, among others: undue influence in the policymaking process, corruption of key players, the ever present difficulty of bounded rationality (Simon, 1991). If public policies are caricatures or approximations of what is needed, however, it is the best (among a range of limited tools we have at our disposal) to right social wrongs.

5. Visible Hands of Other Governments—Future of CSR

In terms of corporate citizenship, conscious capitalism, and proxies of CSR, the actions taken by governments from around the world point willingness among world societies for need for policy instruments to mediate or remediate the many negative footprints business and individuals have placed on ecology, people and the economy. There are those that will indubitably contend that having CSR in the form of a law defeats the core of the philosophy. On the other hand, many believe that in the future laws will emerge in the form of compulsory orders that all corporations allocate a percentage of net profits to CSR as is required for corporation tax purposes. It can be structured in such a way that there are different rates for different companies depending on their profit margin (Akullo, 2013) as we saw in India's CA2013. A major impetus for CSR reporting, came about in the U.S., on January 2010, when the US Securities and Exchange Commission asked American public companies to regularly disclose climate-related risks in their annual reports (Hammer & Boccardi, 2011).

Looking around the world, other government mandates, or facilitation, have been occurring specifically relating to green urban planning and architecture. In South Korea for example, the city of Songdo's International Business District exemplifies the "green city of the future", and has been touted as a model is a model for smart cities around the globe. Indonesia has taken a global lead by passing a law requiring all public companies to issue CSR reports, The Songdo project, built on reclaimed land from the Yellow Sea at a cost of $35 billion. It brings together the world's best corporate technologies, building design and eco-friendly practices to create the ultimate lifestyle and work experience. Masdar City in Abu Dabi, in the United Arab Emirates, is yet another model sustainable city[xxiii] construction of which began in 2008, and is still on-going. The estimated cost is $18 billion. This planned development is a public-private partnership arising from seed capital from the government of Abu Dabi and the Mubadala Development Company.

Other examples include the Danish parliament in 2008, passing a law requiring all large companies to publicly report on their CSR efforts. While the law does not require the 1,100 companies it impacts to actually *be* socially responsible, the hope is that by requiring companies to be more transparent about their CSR efforts, public pressure and desire for competitive advantage will motivate companies to enhance their "triple bottom line" of people, planet and profit (Hurst, 2011). As of this writing North Dakota's Measure 5 proposed a constitutional amendment on the ballot this year [2014] that would appropriate 5 percent of oil and gas tax revenue into an account meant for wildlife, parks and environmental cleanup. Supporters say making the change is necessary to avoid handcuffing future legislatures by requiring a specific amount of money be spent on specific projects even before the budget process begins.[xxiv]

Many other such examples as the ones shown above exist and are growing. They indicate a shared valuation of sustainability of society the environment and the economy between government and business. The old paradigm of the relationship between government and corporations is giving way to a new paradigm of interconnectedness and interdependence. It shows an interest of societies and their governments to see corporations doing business in their geographic areas as corporate citizens. Trends in government-business relations show that:

1) Businesses are seen as beneficiaries from a broad range of stakeholders in their geographic areas of profit-making.

2) Businesses are obligated to return in kind to these stakeholders

3) Businesses must see themselves as partners, or corporate citizens, in societies where profit-making strategies are conducted

4) Businesses must be accountable to stakeholders with specific strategies based on higher purpose, transparency, and good corporate governance

5) Businesses can no longer rely solely on government or third-sector organizations, for negative impacts on regions where they operate.

6) Businesses must be proactive and interactive, not simply reactive, in their dealings with stakeholders.

7) Businesses must show good-faith actions, not "greenwashing" Businesses are obligated to return in kind to these stakeholders.

In order to meet the challenges of the new paradigm of business-governmental relations, both sectors must undertake a "learning process." For governments it will be a practical way of assessing their organizational structure, and the scope of their policy processes (Albreda et al., 2007).

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Endnotes

i Hawken and others argue that this new consciousness, moves away from a hitherto false consciousness about aspects of morality of market efficiency.

ii Corporations have a lot of power stemming from their wealth and ability to influence social issues. Power comes with responsibility. The Iron Law of Responsibility states that those who do not use their power responsibly are likely to lose power in the long term (Lawrence & Weber 2011).

iii *The Journal of Corporate Citizenship* uses a broad range of CSR notions in studies of corporate citizenship, which are concepts such as: stakeholder relationship, public policy, sustainability and environment, human and labor rights/issues, governance, accountability and transparency, globalization, small and medium-sized enterprises, as well as multinational firms, ethics, and specific issues related to corporation citizenship, such as diversity, poverty, education, information, trust, supply chain management and problematic or constructive corporate behaviors and practices

iv It should be noted that Vogel and O'Toole, however, are generally in favor of CSR and give it "two and a half thumbs up" (2011).

v Reich and others, however, are likely to explain that corporations do not need to squeeze the last bit of surplus value from people and the planet in order to enhance their bottom lines.

vi In the past governments and international agencies around the world have done a lot of regulation via statutory laws and other public policies, however the degree to which these are enforced is variable, which has resulted in human and planetary neglect by corporations on a large scale. This is mainly because the indirectly law skirts the issue of CSR. Furthermore, "Law is a bit like wine" says Professor Lynn Stout, "A certain amount of aging adds weight and flavor, but after too many years it goes bad (2012, pg. 27).

vii Savings and loan associations had been deregulated in the early 1980s, allowing them to make highly risky investments with their depositors' money. Costs to the nation and individual investors was high—was estimated at $160.1 billion, about $124.6 billion of which was directly paid for by the U.S. federal government.

viii If there is one theme to rival terrorism for defining the last decade and a half, it would have to be corporate greed and malfeasance," Jacob Wolinsky, "Ten Worst Accounting Scandals of all Time*,* *Infograph*, March 24, 2013.

ix Particularly those at the Bottom of the Pyramid (BOP), C.K. Prahalad (2004).

x This is related to important Indian gender mainstreaming policies and aspirations.

xi About U.S. $90 million

xii about U.S. $180 million

xiii about U.S. $802,774.39

xiv However, any profits arising from overseas operations conducted through foreign branches or subsidiaries and dividend received from other companies in India conducted through foreign branches or subsidiaries and dividend received from other companies in India are excluded.

xv Maryland led the effort by creating its Benefit Corporation class in 2010. As of today 20 states, including California and Hawaii have passed this type of legislation. Legislation is moving forward in 16 other states.

xvi The California bill that passed into law with hefty business support. Support included more than 200 individual California businesses, 12 Business Associations, including the Silicon Valley Leadership Group and the U.S. Green Building council, Standards Organizations like Green Seal, and more than 3,000 California citizens through the advocacy efforts of Care2.com, who were all interested in creating better choices for the growing number of entrepreneurs and investors who seek to create businesses that create both social and shareholder value.

xvii"This is California at its best, showing there is a way to create jobs and grow the economy while raising the bar for social and environmental responsibility," said Assembly member Jared Huffman (D-San Rafael). "With this new law, we are attracting new socially-conscious companies, investors and consumers- we're sending a strong message that California is open for this emerging form of business."(Corporate Social Responsibility NewsWire 1/3/2013).

xviii B Corps (be-good-corporations) should not be confused with Benefit Corporations. The B Corp is a standard corporation that practices TBL values, but for one reason or another, has chosen to remain as a traditional corporation.

xix Mike Hower is quoting Jay Cohen Gilbert, one of the founders of the B-Lab. The B-Lab has as its vision that one day all companies will compete not only to be the best in the world, but best for the world.

xx The GIIRS is a hybrid private/public good, in that while it charges for its services in order to be sustainable, it is also a non-profit entity that publishes data for public use and educates/advocates about impact investing, and impact metrics

xxi President of the EU Competitiveness Council.

xxii One notes the echoes of Porter and Kramer's (2011) shared value concept in this quote.

xxiiiMasdar City is called an *arcology*project, i.e., it is a combination of smart architecture, and ecology

xxiv New-found prosperity in the state from oil and gas drilling has citizens worried about potential environmental costs (Wilson, 2014).