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CORPORATE SOCIAL RESPONSIBILITY

Why Patagonia's Founder Felt He had to Give His Company Away

by James O'Toole

Image Credit | Charles DeLoye

There was no other way to maintain the company's environmentalist views & encourage enlightened capitalism.

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It’s not every day someone gives away a billion dollar company. Not only can it be gut-wrenching to walk away from a fortune, turns out it costs an arm and a leg in legal fees, as well. So, when Yvon Chouinard, visionary founder of outdoor apparel maker Patagonia, donated his company to a trust and a non-profit organization the business world was shocked. He had concluded there was no viable alternative to doing so if the company’s environmentalist values were to be maintained in the future.

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Typically, founders of successful, privately held companies eventually opt to sell them to larger, public-traded corporations–thus reaping lucrative rewards for their entrepreneurial efforts. Chouinard decided not to pursue that obvious exit route because he feared Patagonia’s culture, values and practices—all designed to serve the needs of employees, customers, and the environment—would be lost in the process of assimilation by any acquiring corporation.

His concerns were well-founded: there are few such instances of enlightened business practices being maintained at a publicly traded corporation over more than two successions of leadership. It’s not just the virtuous practices of acquired companies, but home-grown ones as well. Johnson&Johnson was arguably the nation’s most ethical giant corporation in the 1980’s, but under pressure from shareholders to increase profits, by the 1990s it was mired in regulatory and legal non-compliance issues. Moreover, it had all but abandoned its vaunted commitment to meeting the needs of all its constituencies, including medical professionals and mothers.   As the research in my book *The Enlightened Capitalists* documents, this pattern has held for nearly two centuries in both the U.S. and the U.K.

Of course, many privately held family- and employee-owned companies have admirable long-term records of social responsibility. Significantly, leaders of those companies do not have to answer shareholder demands for higher returns on their investments, thus they are free to engage in benevolent actions typically viewed as non-productive by Wall Street.

Recently, however, heads of a few Wall Street investment funds, public-employee pension funds, and national sovereign funds joined the U.S. Business Roundtable (composed of corporate CEOs) in pledging no longer to adhere to the time-worn concept of "shareholder supremacy" and its unrealizable demands for profit-maximization. Yet while those groups have changed their rhetoric, there is little evidence they have changed their behavior. How could they? What fund manager is willing to tell retirees that their pension checks are going to be smaller because companies in which they own shares made heavy investments in environmentally friendly technologies? Ditto corporate executives. When Unilever's former CEO appeared to sacrifice some short-term profits for long-term social and environmental gains, he found himself ignominiously "retired." That's probably why Yvon Chouinard has said he "doesn't trust Wall Street."

So, what can enlightened founders do to insure their virtuous practices are sustained after their retirement? They have several choices: They can charter their businesses as B Corporations (a device that shelters companies from the dictates of shareholder supremacy); they can sell their businesses to their workers by way of Employee Stock Ownership Plans; or they can follow Chouinard's lead.

While Chouinard's decision to donate Patagonia to a dedicated trust is extremely rare, it is not unprecedented. Milton Hershey left his chocolate company to a foundation dedicated to supporting a school. Unfortunately, the legal instrument by which he did so was flawed and ethical problems have ensued over subsequent decades. More successfully, the John Lewis Partnership, Britain's largest retailer, has been owned for nearly a century by a trust with a legally valid "constitution" which binds trustees to meeting the needs of employees, customers, and host communities.

To avoid the issues plaguing the Hershey Trust, John Lewis's son devoted four decades (and countless billable attorney hours) creating a viable legal framework for the Lewis Partnership's governance and ownership. In the U.S., there is an even higher hurdle to clear: In 1969, Congress prohibited non-profits from owning more than 20% of a corporation's shares. Given the complexity involved, it is remarkable that Chouinard was willing to take on that challenge and then creatively separate the ownership of the company from its charitable activities by forming two separate entities.

Chouinard's stated objective is to encourage other enlightened founders to follow in his footsteps. I believe all of society would benefit it they were to do so, but if history is a guide only a very few will. Realistically, most will be unwilling to go to the trouble of ensuring their legacies. Instead, they will take the money and run.

James O'Toole

James O'Toole is Professor Emeritus, Marshall School of Business, University of Southern California. He is author or co-author of 18 books on business ethics, leadership, the role of corporations in society, and most recently, THE ENLIGHTENED CAPITALISTS.