Strategic management concepts for antitrust: Cooperation, stakeholders and sustainability

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Now that the rule of reason has largely over taken per se rules of antitrust law in the United States, antitrust enforcement generally requires evaluation of a wide variety of evidence to determine the challenged conduct's effect on competition. This article provides an overview of three concepts commonly taught in MBA-level strategic management courses to evaluate much of the same evidence for purposes of determining the firm's competitive strategy: cooperative strategies, stakeholder management, and sustainable business practices. Unlike the neoclassical microeconomic view of competition commonly used in modern antitrust analysis, strategic management teaches students to view competitors not only as rivals, but also as stakeholders with whom their firms may need to cooperate. While the application of these concepts to specific antitrust issues requires further analysis, these concepts provide a basis for supplementing the understanding of business competition under the rule of reason.

KEY WORDS: *antitrust, strategic management, stakeholder, sustainability, cooperation, tacit collusion*

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I. INTRODUCTION

> *To put it another way competition has been shown to be useful up to a certain point and no further.*[1]

This article updates earlier work examining what strategic management teaches MBA students about antitrust and competition.[2] That research found that MBA students learned to evaluate competition as the interplay of five forces based on the model first developed by Michael Porter and that their goal should be to create sustainable competition advantages for their firms. At the same time, students learned very little about antitrust law and competition policy from strategic management.

Strategic management continues to play an important role in the MBA curriculum, and nearly all business schools accredited by the Association to Advance Collegiate Schools of Business require students to take at least one strategic management course. However, an examination of current textbooks suggests that strategic management now places an increasing emphasis on cooperative strategies, including strategic alliances and tacit collusion, as avenues toward the goal of sustainable competitive advantage. These texts also place greater emphasis on stakeholder theory as opposed to shareholder wealth maximization to define the duties of the firm's managers. Business ethics and social responsibility also play an increasingly important role in strategic management under the guise of "sustainability," a concept that covers not only environmental but also social and economic concerns. These concepts suggest students should not see competitors simply as threats to the economic well-being of their own firms.

To be sure, the strategic management texts examined in this article teach MBA students to view other firms as rivals, and the original findings from a decade ago remain true today. Nonetheless, students

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[1] Franklin Delano Roosevelt, Speech Before the Troy, New York, People's Forum (Mar. 3, 1912), *available at* http://www.nps.gov/history/history/online_books/cany/fdr/part1.htm.

[2] Norman W. Hawker, *The Public Policy of Antitrust and Strategy*, 21 J. PUB. POL'Y & MARKETING 257 (2002) [hereinafter Hawker, *Public Policy*]; Norman W. Hawker, *Antitrust Insights From Strategic Management*, 47 N.Y.L. SCH. L. REV. 67 (2003) [hereinafter Hawker, *Antitrust Insights*].

are also taught that a business may need cooperate with its competitors and perhaps even include competitors as stakeholders in its decisions. The picture of business competition that emerges is not so much one of Darwinian struggle for survival, but of intense sibling rivalry.

II. STRATEGIC MANAGEMENT'S LACK OF INFLUENCE ON ANTITRUST

In 2001, Michael Porter, one of the leading scholars of strategic management, decried what he saw as the lax antitrust enforcement in the United States that had resulted from an over-reliance on consumer welfare theory from microeconomics.[3] Not only did this put national prosperity at risk, it also harmed individual firms. To reinvigorate antitrust, he offered strategic management as an alternative to antitrust's traditional reliance on economic analysis for evaluating the competitive impact of business behavior.

Porter was not the first to express concern about antitrust's Faustian bargain with economics,[4] nor was he alone in suggesting that business scholarship, including strategic management, could provide antitrust with some much needed insights.[5] Nonetheless, as Oberholzer-Gee and Yao recently showed, strategic management has had almost no influence over antitrust enforcement or scholarship during the past decade.[6]

Now would seem to be an appropriate time for antitrust to take a serious look at strategic management and other business disciplines. The rule of reason has replaced per se rules for antitrust analysis of

[3] Michael E. Porter, *Competition and Antitrust: Toward a Productivity-Based Approach to Evaluating Mergers and Joint Ventures*, 46 ANTITRUST BULL. 919 (2001).

[4] *See, e.g.*, Frederick M. Rowe, *The Decline of Antitrust and the Delusions of Models: The Faustian Pact of Law and Economics*, 72 GEO. L.J. 1511 (1984).

[5] *See* Spencer Weber Waller, *The Language of Law and the Language of Business*, 52 CASE W. RES. L. REV. 283 (2001); Albert A. Foer, *The Third Leg of the Antitrust Stool: What the Business Schools Have to Offer Antitrust*, 47 N.Y.L. SCH. L. REV. 21 (2003); Norman W. Hawker, *Antitrust Insights*, *supra* note 2.

[6] Felix Oberholzer-Gee & Dennis A. Yao, *Antitrust—What Role for Strategic Management Expertise?*, 90 B.U. L. REV. 1457 (2010).

nearly all types of business conduct. Critics have complained that the modern rule of reason lacks clear standards[7] and "may be divorced from marketplace realities."[8] Even defenders of the rule of reason have conceded the need for reform.[9] Insights from business school disciplines, including strategic management's teachings regarding competition and competitors, may have the potential to reconcile the rule of reason with marketplace realities.

III. ANTITRUST'S LACK OF INFLUENCE ON STRATEGIC MANAGEMENT

Modern strategic management textbooks pay little attention to antitrust. An examination of six of the most popular strategic management textbooks[10] reveals that only four contain an index listing for antitrust.[11] This is not to say that antitrust materials for strategic man-

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[7] *See, e.g.*, Jesse W. Markham, Jr., *Sailing a Sea of Doubt: A Critique of the Rule of Reason in U.S. Antitrust Law*, 17 FORDHAM J. CORP. & FIN. L. 591, 594 (2012); *see also* AM. ANTITRUST INST., THE NEXT ANTITRUST AGENDA: THE AMERICAN ANTITRUST INSTITUTE'S TRANSITION REPORT ON COMPETITION POLICY TO THE 44TH PRESIDENT 202 (2008), *available at* http://www.antitrustinstitute.org/content/aai-book-next-antitrust-agenda-american-antitrust-institute's-transition-report-competition ("there is a surprising dearth of either judicial or agency guidance on how a rule of reason analysis should be conducted").

[8] Maurice Stucke, *Does the Rule of Reason Violate the Rule of Law?*, 42 U.C. DAVIS L. REV. 1375, 1386 (2009).

[9] Andrew I. Gavil, *Moving Beyond Caricature and Characterization: The Modern Rule of Reason in Practice*, 85 S. CAL. L. REV. 733, 739 (2012) ("room for improvement lies on the underdeterrence side of things," and "[w]e are primed, therefore, for the next phase in the evolution of the rule of reason").

[10] Harvard Business Publishing has created Textbook Case Maps for many business disciplines, including strategy. Harvard Business Publishing, Textbook Case Maps, http://hbsp.harvard.edu/list/textbook-case-maps (last visited May 29, 2013). This article relies on Harvard Business Publishing's decision to develop a Case Map as a proxy for the popularity and importance of a textbook in teaching strategic management. This is only a rough approximation of a textbook's use. For example, DANIEL F. SPULBER, MANAGEMENT STRATEGY (2003) is now out of print.

[11] The following books have an entry for antitrust in the index: JAY BARNEY, GAINING AND SUSTAINING COMPETITIVE ADVANTAGE 481 (4th ed. 2011) ("antitrust actions"); MICHAEL A. HITT ET AL., STRATEGIC MANAGEMENT: CONCEPTS AND

agement courses are not available from other sources. Dennis Yao, for example, has written an excellent Background Note on antitrust for Harvard Business School that is available for use in MBA-level strategic management courses.[12]

Not surprisingly, the discussion of antitrust found in strategic management texts provides managers little insight into antitrust law and policy. Saloner, et al., offer the most extended discussion of antitrust law, but in evident frustration, they conclude that "no common understanding exists about precisely what acts are lawful or the conditions under which certain acts become unlawful or even the rationale for having antitrust laws."[13] Nor does strategic management offer much insight regarding the legality of specific types of conduct. Carpenter and Sanders, for example, outline five strategies that incumbent firms may use in response to new entry or increased rivalry among firms: (1) containment, (2) neutralization, (3) shaping, (4) absorption, or (5) annulment. Although they note that antitrust law may not always allow the use of these strategies, Carpenter and Sanders do not explain why or under what circumstances each of these strategies may be illegal. Instead, they present antitrust law as an arbitrary and capricious force.[14]

Even the discussion of high profile cases and companies such as Microsoft can be misleading. Walker, for example, notes that

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CASES I-18 (9th ed. 2011) ("antitrust regulations"); GARTH SALONER ET AL., STRATEGIC MANAGEMENT 429 (2001) ("antitrust"); GORDON WALKER, MODERN COMPETITIVE STRATEGY 380 (3d ed. 2009) ("antitrust issues as a problem in partnerships"). The following books do not have an entry for antitrust in the index: MASON ANDREW CARPENTER & WILLIAM GERARD SANDERS, STRATEGIC MANAGEMENT: A DYNAMIC PERSPECTIVE: CONCEPTS AND CASES (2d ed. 2009); THOMAS L. WHEELEN & J. DAVID HUNGER, STRATEGIC MANAGEMENT AND BUSINESS POLICY: TOWARD GLOBAL SUSTAINABILITY (13th 2012). DANIEL F. SPULBER, MANAGEMENT STRATEGY (2003), is out of print and was not used for this article.

[12] Dennis Yao, *A Note on Antitrust and Competitive Tactics* (Harv. Bus. Sch. Note No. 9-703-493, Mar. 22, 2011), *available at* https://cb.hbsp.harvard.edu/cbmp/product/703493-PDF-ENG.

[13] SALONER ET AL., *supra* note 11, at 213.

[14] CARPENTER & SANDERS, *supra* note 11, at 203–06.

Microsoft's tactics of creating high switching costs for consumers and high entry barriers for competitors provided the basis for antitrust lawsuits in the United States and the European Union.[15] While he correctly points out that these tactics enabled to Microsoft to maintain its dominant position, Walker neglects to mention that Microsoft lost these lawsuits. Carpenter and Sanders note that antitrust law prevented Microsoft from acquiring Intuit, but they make no mention of antitrust as they applaud Microsoft for "so aggressive[ly] adding free software features to its popular Windows platform that new software firms routinely include partnership with Microsoft as part of their entry strategies."[16]

With respect to mergers, Hitt et al., note that periodic bouts of heightened antitrust enforcement encourage firms to diversify rather than engage in horizontal mergers[17] and that antitrust litigation may serve as an effective tool against hostile takeovers.[18] Similarly, Wheelen and Hunger state that "periods of strict enforcement of U.S. antitrust laws directly affect corporate growth strategy" by driving firms to "diversify into unrelated industries" rather than acquiring competitors.[19]

IV. COOPERATIVE STRATEGIES

A. Strategic alliances defined

Broadly speaking, textbooks provide two strategies for dealing with competitors. The firm may choose a competitive strategy where "it seeks to gain superior economic performance by contending with

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15 WALKER, *supra* note 11, at 6, 77 & 107.

16 CARPENTER & SANDERS, *supra* note 11, at 203–06. This is not to say that Carpenter and Sanders give unqualified support to what antitrust analysis would describe as monopoly maintenance. Indeed, they warn that "[a]ny firm that invests in resources and capabilities that support retaliation to the exclusion of innovation and change may only be prolonging its inevitable demise." *Id.* at 206.

17 HITT ET AL., *supra* note 11, at 173.

18 *Id.* at 301.

19 WHEELEN & HUNGER, *supra* note 11, at 102–03. *See also* CARPENTER & SANDERS, *supra* note 11, at 220–21.

other firms."[20] Alternatively, the firm may choose a cooperative strategy and work together with its competitors "to reach the common goal of obtaining superior economic performance."[21]

Strategic management texts tend to see strategic alliances among competitors as at least neutral with respect to industry rivalry. Barney goes so far as to define strategic alliances as a cooperative strategy where "industry competitiveness is not reduced."[22]

B. Collusion

Wheelen and Hunger define collusion in terms familiar to antitrust as "the active cooperation of firms within an industry to reduce output and raise prices in order to get around the normal economic law of supply and demand."[23] Hitt et al. expressly point out that firms use collusion "to reduce competition."[24] In this respect, collusion differs from strategic alliances "in that collusive strategies are often illegal."[25]

Aside from whether they violate the law, a difference of opinion exists about the advisability of collusive strategies. Saloner et al. argue that if rivals "can agree not to compete, they will be much more profitable."[26] Barney argues that tacit collusion can provide firms with a sustainable competitive advantage provided that the industry has sufficient barriers to entry and the firms can maintain the appropriate level of self-discipline.[27] Hitt et al., however, suggest that competition-

[20] BARNEY, *supra* note 11, at 246.

[21] *Id.*

[22] *Id.*

[23] WHEELEN & HUNGER, *supra* note 11, at 195. *See also* BARNEY, *supra* note 11, at 246 ("A collusive strategy exists when several firms in an industry cooperate to reduce industry competitiveness and raise prices above the full competitive level.").

[24] HITT ET AL., *supra* note 11, at 264.

[25] *Id.* Saloner is more emphatic, stating that firms engaging in collusion "will violate the law." SALONER ET AL., *supra* note 11, at 211.

[26] SALONER ET AL., *supra* note 11, at 211. *See also* WALKER, *supra* note 11, at 97 (suggesting that oligopolies "make more money" because "they collude").

[27] BARNEY, *supra* note 11, at 265–67.

reducing strategies such as collusion have "the lowest probability of creating a sustainable competitive advantage[,] . . . which should be the core objective" of the business.[28]

1. EXPLICIT—Strategic management texts vary greatly in the coverage of collusion, although most differentiate between express or explicit collusion and tacit collusion. Walker, for example, offers an unusually thorough discussion of explicit collusion, but he uses a typical definition of explicit collusion as a strategy by firms to "coordinate their major decisions through ongoing face-to-face communication."[29]

In a departure from other texts, Walker goes on to define cartels as a subset of explicit collusion where firms not only "organize and communicate directly to raise profits through noncompetitive behavior, such as price fixing, capacity restraints, coordinated investments, and entry deterrence," but also to "decide on cartel administration and policies, for example, the penalties for cheating."[30] Walker teaches that cartels are difficult to manage and last about five years on average.[31]

Notwithstanding his portrayal of cartels as a distinct form of explicit collusion, Walker suggests explicit collusion in general and cartels in particular violate the antitrust and competition laws in the United States and Europe,[32] although he suggests that other jurisdictions may tolerate explicit collusion.[33] Strategic management texts,

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[28] HITT ET AL., *supra* note 11, at 265–66.

[29] WALKER, *supra* note 11, at 101.

[30] *Id.*

[31] *Id.* at 102.

[32] *Id.* at 97, 101. *See also* WHEELEN & HUNGER, *supra* note 11, at 195 ("Explicit collusion is illegal in most countries and in a number of regional trade associations, such as the European Union."); *id.* at 264 ("Explicit collusion strategies are illegal in the United States and most developed economies (except in regulated industries)."); SALONER ET AL., *supra* note 11, at 211–12; BARNEY, *supra* note 11, at 255 ("explicit collusion . . . is illegal in most developed countries").

[33] WALKER, *supra* note 11, at 97 ("This type of communication is against antitrust laws in the United States and Europe but can be found in other parts of the world.").

including Walker,[34] also recognize that firms do not need to directly communicate with each other to cooperate, and they are much more evasive about the legality of tacit collusion.[35]

2. TACIT—Strategic management textbooks recognize that firms do not have to communicate directly with each other in order to cooperate. Tacit collusion, as Hitt, et al., observe, is a competition-reducing strategy that occurs "when several firms in an industry indirectly coordinate their production and pricing decisions by observing each other's competitive actions and responses."[36]

a) HOW TO ENGAGE IN TACIT COLLUSION—Most texts contain a brief discussion of tacit collusion. Barney, however, devotes an entire chapter to the subject. Simple game theory demonstrates both that cooperation produces substantially greater profits than competition and that each of the firms in a cooperative arrangement has significant incentives to cheat.[37] This is the basic problem of cooperation that Barney attempts to solve.

One approach to solving the problem would be to create a centralized authority to enforce cooperation. In some industries, social norms perform this function.[38] Not all industries, however, enjoy social norms that support cooperation and limit cheating.

Collusion provides firms with a way to engage in cooperative strategies without reliance on a centralized authority. Successful collusion neutralizes the threat of rivalry.[39] Once successful, however, each firm has an incentive to cheat in a variety of ways. Although

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[34] *Id.*

[35] WHEELEN & HUNGER, *supra* note 11, at 196 ("Even tacit collusion can, however, be illegal.").

[36] HITT ET AL., *supra* note 11, at 264. *See also* WALKER, *supra* note 11, at 97 ("[T]acit collusion occurs through a system of public, unstated, informal rules and roles to follow, such as a leader-follower setup for setting industry prices, or through signals sent between firms, such as announcing product plans or investment decisions.").

[37] BARNEY, *supra* note 11, at 247–48.

[38] *Id.* at 248.

[39] *Id.* at 251.

game theory suggests various ways in which cheating may occur, Barney finds conflicting evidence from game theory about the impact of different forms cheating on the ability of the parties to maintain cooperation, and profitability is uncertain. Game theory does not yet provide a reliable way for players to ascertain the intent of their competitors.[40]

Barney then considers the utility of explicit collusion. The success of collusion, after all, depends on how firms perceive their rivals will respond to cheating, and the "easiest way to answer this question is for firms to communicate directly with each other."[41] Given the illegality of explicit collusion, however, he concludes that "colluding firms seeking to choose joint profit-maximizing cooperative strategies *must* use tacit collusion."[42]

Successful tacit collusion depends on signaling to competitors. Signals may be either tough (the firm signals it will respond to cheating by more aggressively reducing prices or increasing production) or soft (the firm signals it will respond to cheating with less aggressive price reductions or production increases), but either way, the signaling firm may suffer lower economic performance as result.[43] What matters is not the cost of the signal by itself, but the cost of the signal netted against the profits created by maintaining collusion.[44]

Barney suggests different tactics depending whether the cheating will take the form of price cuts or production increases. Generally speaking, soft signals such as the "puppy-dog ploy" work better in industries where price serves as the major basis for competition.[45]

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[40] *Id.* at 255.

[41] *Id.* at 246.

[42] *Id.* at 255 (emphasis added).

[43] *Id.* at 256.

[44] *Id.*

[45] *Id.* at 257–58. (The "puppy-dog ploy" is an attempt to look nonthreatening to competitors by avoiding "tough investments" such as a new production processes that might otherwise "enable the firm to implement a cost leadership strategy.")

Tough signals such as the "top-dog strategy" work best where increased production is the most likely form of cheating.[46]

Barney also addresses two firm-specific challenges associated with tacit collusion. First, since tacit collusion provides enhanced financial performance, firms tend to lose the degree of organizational efficiency that competition would otherwise force them to maintain.[47] Second, because tacit collusion is a fragile arrangement, a firm needs to maintain the efficiency necessary to revert to competition.[48]

b) THE LEGALITY OF TACIT COLLUSION—In contrast to the near uniform that opinion that explicit collusion violates antitrust law, strategic management textbooks vary quite a bit in their assessment of the legality of tacit collusion. While Hunger and Wheelen suggest that tacit collusion "can . . . be illegal" without further explanation,[49] Hitt et al. give the impression that tacit collusion does not violate the law. Rather, they seem to call for new laws, arguing that "governments in free-market economies need to determine how rivals can collaborate to increase their competitiveness without violating established regulations."[50] Walker does not even suggest that tacit collusion could violate antitrust law.

Saloner et al. offer the clearest and most accurate discussion of tacit collusion under the antitrust laws. Section 1 of the Sherman Act prohibits collusion in general, even if the cooperation has the purpose or effect of avoiding "ruinous competition."[51] The issue is not the legality of tacit collusion, but the difficulty of proving an agreement without evidence of direct communication.[52] Although sympathetic

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[46] *Id.* at 259. (The "top-dog strategy" requires a business to make tough investments that "may not generate positive economic profits directly," such as the expansion of manufacturing capacity, in order to convince competitors that they will be punished if the collusion does not continue.)

[47] *Id.* at 267.

[48] *Id.* at 266.

[49] WHEELEN & HUNGER, *supra* note 11, at 196.

[50] HITT ET AL., *supra* note 11, at 265.

[51] SALONER ET AL., *supra* note 11, at 211.

[52] *Id.* at 212 ("In the absence of this kind of direct communication, the courts can have difficulty in determining whether a 'contract, combination or conspiracy' has occurred.").

toward the use of "conscious parallelism" in antitrust cases, they note that "since the mid-1950s the courts have ruled that mere parallel action in an oligopoly, without additional evidence of unlawful behavior, is not in and of itself illegal."[53]

Finally, Barney points out that while "conscious parallelism" may violate the antitrust laws, prosecution for tacit collusion "varies substantially on the preferences and ideology of the administration in power in Washington, D.C."[54] In answer to that age old question posed to lawyers by their clients, "Can I get away with this?," the answer is almost certainly yes.

V. CHALLENGES FOR ANTITRUST STAKEHOLDER MANAGEMENT AND SUSTAINABILITY

The eight years from 2001 to 2009 witnessed repeated and very public lapses in business ethics, beginning with the collapse of Enron and continuing through subprime mortgage debacle, the Madoff scandal, and, more recently, the revelations regarding manipulation of LIBOR. At the same time, concerns about larger social issues such as inequality and climate change have increased. Perhaps partially as a result, two concepts from the field of business ethics have made tentative appearances in a few strategic management textbooks, stakeholder management and sustainability.

A. Stakeholder management

Stakeholders include "any group or individual who can affect or is affected by the achievement of the organization's objectives."[55] In contrast to the argument famously advanced by Milton Friedman that business managers had one ethical duty, to maximize profits,[56] stake-

[53] *Id.* at 212.

[54] BARNEY, *supra* note 11, at 256.

[55] R. EDWARD FREEMAN, STRATEGIC MANAGEMENT: A STAKEHOLDER APPROACH 46 (1984).

[56] *See* Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N. Y. TIMES, Sept. 13, 1970 (Magazine), at 32. As some commentators have noted, Friedman established some boundaries to the monomaniacal pursuit of profit maximization: managers must play by "the rules of the

holder management theory holds that managers "bear a fiduciary relationship to stakeholders."[57] Consequently, managers should identify and balance the interests of the various stakeholders in business decisions.[58] The theory has profound implications not only for the strategic management of the firm, but also, at least potentially, for the firm's relationship to its competitors.

Although in-depth treatment of stakeholder management has become a staple of business ethics textbooks,[59] the theory has its origins in R. Edward Freeman's writings on strategic management.[60] Nevertheless, some of the major texts simply ignore stakeholder management theory.[61] Others offer only the basic framework, definitions, and a limited discussion of stakeholder management.[62] Expanding the

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game, which is to say, engage[] in open and free competition without deception or fraud." *Id.* at 125. *See also* H. Jeff Smith, *The Shareholders vs. Stakeholders Debate,* 44 MIT SLOAN MGMT. REV. 85, 86 (2003) (Friedman's theory "is sometimes misstated as urging managers to 'do anything you can to make a profit,' even though the shareholder theory obligates managers to increase profits only through *legal, non-deceptive means.*"). The widespread use of lobbying by corporations renders these boundaries problematic. After all, firms have a great deal of influence over the content of the rules of the games and, if they are pursuing a profit maximization strategy, these companies should use that influence to ensure that the rules do not restrain their single-minded pursuit of profits.

[57] R. Edward Freeman, *Stakeholder Theory of the Modern Corporation, in* ETHICAL ISSUES IN BUSINESS: A PHILOSOPHICAL APPROACH 247 (Thomas Donaldson & Patricia Hogue Werhane eds., 1999).

[58] Of course, this leaves open the difficult question of *how* to include these competing interests in the decision. *See, e.g.*, Kenneth E. Goodpaster, *Business Ethics and Stakeholder Analysis*, 1 BUS. ETHICS Q. 53 (1991).

[59] *See, e.g.*, JOSEPH W. WEISS, BUSINESS ETHICS: A STAKEHOLDER AND ISSUES MANAGEMENT APPROACH (5th ed. 2007); ARCHIE B. CARROLL & ANN K. BUCHHOLTZ, BUSINESS AND SOCIETY: ETHICS AND STAKEHOLDER MANAGEMENT (7th ed. 2009); O. C. FERRELL ET AL., BUSINESS ETHICS: ETHICAL DECISION MAKING & CASES 28–53 (9th ed. 2013).

[60] FREEMAN, *supra* note 55, is generally credited as the first major work on stakeholder management theory.

[61] *See, e.g.*, BARNEY, *supra* note 11; WALKER, *supra* note 11.

[62] *See, e.g.*, WHEELEN & HUNGER, *supra* note 11; CARPENTER & SANDERS, *supra* note 11; HITT ET AL., *supra* note 11.

set of textbooks to include texts without the Harvard Business Publishing case may provide a richer overview. Two such textbooks stand out. The first, Harrison and St. John,[63] enthusiastically embraces stakeholder theory as one of the "core topics and current issues in the field."[64] The authors of the second, Campbell et al.,[65] offer a more skeptical view, suggesting some doubt as to whether "it can be coherently argued" that firms "have some degree of responsibility" to consider the concerns various stakeholders.[66]

1. COMPETITORS AS STAKEHOLDERS—Campbell et al. define stakeholders as "the people who can influence or are influenced by the organization."[67] Harrison and St. John similarly suggest that stakeholders consist of the "constituencies that have a strong interest in the activities and outcomes of an organization and upon whom the organization relies in order to achieve its own objectives."[68] Such broad definitions naturally give rise to the question of whether the firm should treat competitors as stakeholders. On the one hand, competitors influence and are influenced by the firm. On the other, one could argue that the firm does not rely upon competitors to achieve its objectives, i.e., stakeholder theory may work "equally well in a monopoly context."[69] The answer, according to both texts, is yes,

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[63] JEFFREY S. HARRISON & CARON H. ST. JOHN, FOUNDATIONS IN STRATEGIC MANAGEMENT (6th ed. 2014).

[64] *Id.* at *iii*.

[65] DAVID CAMPBELL ET AL., BUSINESS STRATEGY: AN INTRODUCTION (3d ed. 2011).

[66] *Id.* at 327.

[67] *Id.* at 324.

[68] HARRISON & ST. JOHN, *supra* note 63, at 11–12. *See also* WHEELEN & HUNGER, *supra* note 11, at 75 (stakeholders are groups who "affect or are affected by the achievement of the firm's objectives"); CARPENTER & SANDERS, *supra* note 11, at 52 (stakeholders consist of anyone "who can make it more difficult or easier to execute a strategy"); HITT ET AL., *supra* note 11, at 20 ("Stakeholders are the individuals and groups who can affect the firm's vision and mission, are affected by the strategic outcomes achieved, and have enforceable claims on the firm's performance.").

[69] Freeman, *supra* note 57, at 252.

competitors are stakeholders.[70] While this conclusion may appear shocking at first, the idea that managers must consider the interests of competitors becomes less so when one considers the complex business relationships that modern firms may have with competitors. For example, Apple, Google and Microsoft not only offer competing operating systems, they also offer complementary software applications that run on each other's operating systems. One cannot easily reduce the best interests of any one of these companies to driving the other two into bankruptcy.

Recognizing competitors as stakeholders is one thing. How to identify and incorporate their interests into the firm's decision making is quite another. The latter task will be discussed below as part of part of the process of stakeholder management.

2. THE STOCKHOLDER-STAKEHOLDER DEBATE—Campbell points out that stakeholder theory continues to be subject to considerable debate.[71] Those who suggest that managers have no moral or ethical obligation other than to increase the wealth of the firm's shareholders (the stockholder position) point out that profitable firms stimulate economic growth and hire more employees. This leads to increased demand for goods and services, and that leads to more profits, growth, and employment. Consequently, putting any stakeholder considerations ahead of profit maximization not only constitutes theft from the shareholders, it threatens the "virtuous cycle" on which the prosperity of society depends.

Proponents of stakeholder theory (the stakeholder position), however, argue that businesses no less than individuals are citizens in the larger society and as such have both rights and responsibilities. Fur-

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[70] CAMPBELL ET AL., *supra* note 65, at 325 ("stakeholders will include . . . competitors"); HARRISON & ST. JOHN, *supra* note 63, at 30 ("stakeholders include domestic and international competitors"). *See also* CARPENTER & SANDERS, *supra* note 11, at 54 ("stakeholders . . . run the gamut from employees to customers to *competitors* to governments" (emphasis added)); WHEELEN & HUNGER, *supra* note 11, at 77. *But see* HITT ET AL., *supra* note 11, at 20 (their limitation of stakeholders to those who have "enforceable claims on the firm's performance" suggests they would not include competitors as stakeholders).

[71] CAMPBELL ET AL., *supra* note 65, at 319–21.

thermore, since the firm receives benefits from society, it has reciprocal obligations to society. Consequently, various stakeholders, not just shareholders, reasonably expect to benefit from the business, and these shareholders have a right to influence the objectives of the firm.

Campbell et al. also note that some businesses take an "instrumental view" of stakeholders, that is, "organizations take stakeholder opinions into account only insofar as they are consistent with other, more important economic objectives, for example profit maximization."[72] The instrumental review relegates the debate to a question of means, not ends, and poses no challenge to the traditional economic assumption that businesses seek to maximize profits. The "normative view," however, sometimes requires hard choices between stockholders and other stakeholders since "organizations should accommodate stakeholder concerns not because of what the organization can 'get out of it' for its own profit, but because it should observe its moral duty to each stakeholder."[73]

Harrison and St. John largely avoid the debate. While they agree with that firms may have ethical obligations to various stakeholders,[74] Harrison and St. John emphasize that stakeholder management may correlate with higher financial performance.[75] They caution that stakeholder management, although it "implies that more resources are allocated to satisfy the needs of stakeholders" than might otherwise be necessary, really constitutes an investment that will provide a net return to the business when "stakeholders *reciprocate* by treating the firm well in return."[76] In other words, managers are unlikely to face a choice between accommodating the interests of shareholders and the interests of other stakeholders. If true,[77] then there is no challenge to the traditional economic assumption since a business will behave as

72 *Id.* at 327.

73 *Id.*

74 HARRISON & ST. JOHN, *supra* note 63, at 6, 85.

75 *Id.* at 10, 12–13, 72, 85.

76 *Id.* at 13.

77 While Harrison and St. John's position may seem too good to be true, the text cites empirical literature in support. *See e.g.*, *id.* at 20 n.38.

though it seeks to maximize profits regardless of whether its managers hold an instrumental or normative view of stakeholders.

3. THE STAKEHOLDER MANAGEMENT PROCESS—The process begins with the identification and prioritization of the various stakeholders and their interests.[78] Stakeholders consist of anyone who affects or is affected by the firm, and Campbell et al. outline a number of classification techniques to identify the stakeholders and their interests, including internal versus external stakeholders, the degree to which they are affected by the business (narrow versus wide stakeholders), whether they seek to participate in the business (active versus passive), and their willingness to participate (voluntary versus involuntary).[79] These are not mutually exclusive categories. Competitors, for example, are external, involuntary stakeholders.[80]

Notwithstanding the variety of ways to classify stakeholders, classification of stakeholders does not by itself answer the question of priority. That requires managers to distinguish between primary and secondary stakeholders. Campbell et al. define primary stakeholders as those whose cooperation or participation is essential to the survival of the business.[81] Harrison and St. John suggest that primary stakeholders are those who "contribute the most to the value a firm creates," but they concede that managers tend to prioritize the stakeholders most vital to the firm's survival.[82] Secondary stakeholders, by contrast, consist of "those without whose 'continuing participation' the company can probably still exist."[83]

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[78] Harrison and St. John call this stakeholder analysis to draw a distinction with communicating, motivating, and building relationships with stakeholders, which they call stakeholder management. *Id.* at 12.

[79] CAMPBELL, *supra* note 65, at 325–26.

[80] *Id.*

[81] *Id.* at 325. Alternatively, Campbell points out that one could argue for giving priority to narrow stakeholders, that is, those most directly affected by the firm. *Id.*

[82] HARRISON & ST. JOHN, *supra* note 63, at 12.

[83] CAMPBELL ET AL., *supra* note 65, at 325. *Cf.* WHEELEN & HUNGER, *supra* note 11, at 77 (secondary stakeholders "have only an indirect stake in the corporation" that "is usually not covered by any written or verbal agreement").

Harrison and St. John, however, include competitors with customers and suppliers as "very important" and presumably primary stakeholders.[84] Campbell does not directly address the issue of whether competitors are primary or secondary stakeholders, but their existence does not seem essential for the firm's success, and the other texts that address issue seem to agree that competitors are secondary stakeholders whose interests must be considered even if they do not take priority over the interests of primary stakeholders.[85]

B. *Sustainability*

Although the concept of sustainability has its origins in the 1987 report by the United Nation's World Commission on Environment and Development that defined sustainable development as "development that seeks to meet the needs and aspirations of the present without compromising the ability to meet those of the future,"[86] the concept has made little headway into the major strategic management textbooks.[87] This lack of discussion contrasts with increased interest in the topic by businesses. A recent survey by McKinsey & Co., for example, found that most businesses are attempting to incorporate sustainability into their business practices.[88]

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[84] HARRISON & ST. JOHN, *supra* note 63, at 36.

[85] *See* WHEELEN & HUNGER, *supra* note 11, at 77; Carpenter & Sanders, *supra* note 11, at 54–56 (excluding competitors from "key players").

[86] UNITED NATIONS, REPORT OF THE WORLD COMMISSION ON ENVIRONMENT AND DEVELOPMENT: OUR COMMON FUTURE 49 (General Assembly Resolution 42/187) (Dec. 11, 1987), *available at* http://www.un-documents.net/our-common-future.pdf.

[87] This is not to say there is a lack of teaching materials on the subject of sustainability. A great deal of material from a variety of sources designed to teach sustainability as part of strategic management are available. *See, e.g.*, Lynn S. Paine, et al., *Governance and Sustainability at Nike (A)* (Harv. Bus. Sch. Case No. 9-313-146, June 17, 2013); Erica Plambeck & Lyn Denend, *Walmart's Sustainability Strategy (A)* (Stan. Graduate Sch. of Bus. Case No. OIT-71A, Rev. Dec. 6, 2010); NANCY E. LANDRUM & SANDRA EDWARDS, A PRIMER ON SUSTAINABLE BUSINESS § 9.2 (2012).

[88] McKinsey & Co., *The Business of Sustainability: McKinsey Global Survey Results (2011)*, http://www.mckinsey.com/insights/energy_resources_materials

Wheelen and Hunger provide the most extended discussion of sustainability in the major strategic management textbooks, and the text points out that sustainability as a business concept has expanded to include "economic and social as well as environmental concerns."[89] In other words, business should "operate in the interest of all current and future stakeholders in a manner that ensures the long-term health and survival of the business and its associated economic, social, and environmental systems."[90] Thus, the concept of sustainability requires managers to consider the impact of their decisions not only on the environment, but also on stakeholders and society as whole, while operating the business at a profit.

Sustainability may seem daunting, Campbell et al. suggest that "the sustainability of business is an aspiration rather than a realistic policy agenda,"[91] but it is most easily understood as a voluntary undertaking by the firm to internalize the costs of its operations. This in turn suggests that a new understanding of efficiency may be emerging in strategic management.

VI. CONCLUSION

The strategic management textbooks examined in this article indicate that the last decade has shown few changes in strategic management teaching (as opposed to research and theory) about competition. Michael Porter's basic insights, generic strategies, and Five Forces framework remain the starting point for analysis. These texts do suggest, however, an increasing emphasis on cooperative strategy and tactics as well as stakeholder management and sustainability concepts borrowed from business ethics. In other words, strategic management has begun to pull away from teaching students that maximizing the wealth of the firm's shareholders should be the sole objective, thereby challenging a fundamental assumption of antitrust analysis. At the

/the_business_of_sustainability_mckinsey_global_survey_results (last visited Jan. 26, 2013). *See also*, David Kiron et al., *Sustainability Nears a Tipping Point*, 53 MIT SLOAN MGMT. REV. 69 (2012).

[89] WHEELEN & HUNGER, *supra* note 11, at 75.

[90] LANDRUM & EDWARDS, *supra* note 87, § 1.1.

[91] CAMPBELL ET AL., *supra* note 65, at 333.

very least, it suggests that the intent of managers in setting competitive strategy may be quite different from profit maximization. This alone suggests the need for more research into antitrust and the concepts taught in strategic management. After all, it has long been established that the rule of reason requires consideration of "the purpose or end sought to be attained, . . . not because a good intention will save an otherwise objectionable regulation or the reverse; but because knowledge of intent may help the court to interpret facts and to predict consequences."[92]

[92] Chi. Bd. of Trade v. United States, 246 U.S. 231, 238 (1918).

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