

COMMENTARY TO PROFESSOR MURRAY

*Ashley Burlesci-Niukkanen**

Every day I hear the phrase: “There is no ethical consumption under capitalism.” Social Enterprises seem to be an answer to that statement, but they need some work before they can truly challenge it.

We are asked on a daily basis to become more ethical consumers. It is fair to say that we feel good when we spend an extra dollar or two to make certain political statements at the checkout counter—whether it be our choice to buy Rainforest Alliance certified bamboo sheets, Endangered Species chocolate bars, or Patagonia clothing. The label says that the consumer is helping the rainforest, the elephants, or the child laborers; but to what extent is the entity that produces the product prioritizing the social good?

When I read Professor Murray’s Essay, I immediately thought of a few companies that impact my everyday life: Oatly, Eat Just, and Daiya Foods. They are all for-profit corporations that,¹ unlike the social enterprise forms described by Professor Murray,² intend to embody a social enterprise by simply producing a more sustainable product by removing animal ingredients from the equation.³ Consumers who buy these products typically buy them with their ethical desires in mind, whether it be for animal rights, global health, or environmental reasons.

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¹ See *About Oatly*, OATLY, <https://www.oatly.com/int/about-oatly> (last visited Jan. 19, 2021); *Who We Are*, DAIYAFOODS.COM, <https://daiyafoods.com/who-we-are/> (last visited Jan 19, 2021); *Mission*, EAT JUST, INC., <https://www.ju.st/en-us/stories/mission> (last visited Jan. 19, 2021).

² See generally J. Haskell Murray, *The History and Hope of Social Enterprise Forms*, 23 TRANSACTIONS: TENN. J. BUS. L. 207 (2021).

³ See EAT JUST INC., IMPACT REPORT (2020) (available at <http://content.ju.st.s3.us-west-1.amazonaws.com/EatJust-ImpactReport-2020.pdf>); *Sustainability Report*, OATLY (2019), <https://sustainability.oatly.com/>; see also Daiya Foods, *supra* note 1.

Oatly AB, a huge Swedish oat-milk corporation, recently sold a 10% stake of its company to Blackstone.⁴ Oatly brands itself as public health and sustainability oriented.⁵ Furthermore, the social good of producing these types of products has resulted in a dramatic decrease in the sale and consumption of dairy,⁶ an increase in bankruptcies in the dairy industry,⁷ and a 222% increase of consumption of oat milk just between 2018 and 2019.⁸ However, regardless of the social good that Oatly has produced, the consumers of Oatly, who chose Oatly in the past for ethical reasons, were shocked and hurt by this deal between Oatly and Blackstone.⁹

Why? Because Blackstone has been accused in the past of participating in the deforestation of the Amazon rainforest.¹⁰ Oatly is now on the defensive, having to explain to millions of confused and angered consumers its decision to take on Blackstone as an investor. So, why did it choose Blackstone? I summarize the relevant facts as follows:

Fact: Climate change is real, and we see the impacts of it every day. The gulf coast saw it recently with the intense tropical

⁴ Ben Dummett, Miriam Gottfried & Juliet Chung, *Oat-Milk Company Oatly Draws Investment From Blackstone-Led Group Including Oprah*, WALL ST. J. (July 14, 2020, 7:53 AM), <https://www.wsj.com/articles/oat-milk-company-oatly-draws-investment-from-blackstone-led-group-including-oprah-11594701001>.

⁵ See OATLY, *supra* note 1.

⁶ *Plant-Based Retail Market Overview*, GOOD FOOD INST., <https://www.gfi.org/marketresearch> (last visited Jan. 29, 2021).

⁷ See Olivia Rockeman & Lydia Mulvany, *Milk Processors Are Going Bankrupt as Americans Ditch Dairy*, BLOOMBERG ECON. (Jan. 10, 2020, 7:15 AM), <https://www.bloomberg.com/news/articles/2020-01-10/distaste-for-dairy-sends-milk-processors-to-bankruptcy-court>.

⁸ *Will Oat Become the King of Plant-based Milk?*, GLOBAL TIMES (Mar. 12, 2020, 5:18 PM), <https://www.globaltimes.cn/content/1182398.shtml>.

⁹ See Jessi Devenyns, *Oatly Faces Boycott Backlash for its Investment from Blackstone*, FOOD DIVE (Sept. 8, 2020), <https://www.fooddive.com/news/oatly-faces-boycott-backlash-for-its-investment-from-blackstone/584778/>.

¹⁰ See Anna Lappe, *Follow the Money to the Amazon*, THE ATLANTIC (Sept. 4, 2019), <https://www.theatlantic.com/ideas/archive/2019/09/follow-money-amazon/597319/>; see also Katy O'Donnel, *Warren says Blackstone Worsening Climate Change in New Private Equity Salvo*, POLITICO (Dec. 16, 2019, 1:13 PM), <https://www.politico.com/news/2019/12/16/elizabeth-warren-blackstone-086197>. But see The Blackstone Group, *Setting the Record Straight on Blackstone's Investment in the Brazilian Company Hidrovias*, BLACKSTONE GRP. INC. (Sept. 10, 2019), <https://www.blackstone.com/blackstone-hidrovias-brazil/>.

storms,¹¹ the west coast is on fire,¹² the Arctic is still melting,¹³ and deforestation is increasing.¹⁴

Fact: A large amount of pollution is produced by the food industry in our current system.¹⁵ Recent studies have shown that in order to stay within our planetary boundaries for pollution, it is pertinent that we make changes towards a plant-based diet.¹⁶ “Synergistically combining improvements in technologies and management, reductions in food loss and waste, and dietary changes towards healthier, more plant-based diets, with particular attention to local contexts and environmental pressures, will be a key challenge in defining region specific pathways for the sustainable development of food systems within the planetary option space.”¹⁷

Fact: Investors are becoming increasingly interested in sustainable options and brands,¹⁸ but maybe not fast enough.

¹¹ See *Hurricanes and Climate Change*, UNION OF CONCERNED SCIENTISTS (July 16, 2019), <https://www.ucsusa.org/resources/hurricanes-and-climate-change#:~:text=Human%2Dmade%20global%20warming%20creates,0.1%C2%B0C%20per%20decade>.

¹² See Alejandra Borunda, *The Science Connecting Wildfires to Climate Change*, NAT'L GEOGRAPHIC (Sept. 17, 2020), <https://www.nationalgeographic.com/science/2020/09/climate-change-increases-risk-fires-western-us/#close>.

¹³ See Kate Ramsayer, *2020 Arctic Sea Ice Minimum at Second Lowest on Record*, NASA (Sept. 21, 2020), <https://climate.nasa.gov/news/3023/2020-arctic-sea-ice-minimum-at-second-lowest-on-record/>.

¹⁴ See *Deforestation and Forest Degradation*, WORLD WILDLIFE FOUND., <https://www.worldwildlife.org/threats/deforestation-and-forest-degradation> (last visited Jan. 29, 2021).

¹⁵ See Marco Springmann et al., *Options for Keeping the Food System Within Environmental Limits*, 562 NATURE 519, 519–25 (2018); see also Sarah Gibbens, *Eating Meat Has 'Dire' Consequences for the Planet, Says Report*, NAT'L GEOGRAPHIC, (Jan. 16, 2019), <https://www.nationalgeographic.com/environment/2019/01/commission-report-great-food-transformation-plant-diet-climate-change/>.

¹⁶ See Springmann et al., *supra* note 15, at 522.

¹⁷ *Id.*

¹⁸ See Emily Chassan, *Venture Investors Double Their Bets on Faux Meat Startups*, BLOOMBERG (July 27, 2020), <https://www.bloomberg.com/news/articles/2020-07-27/venture-investors-double-their-bets-on-faux-meat-startups?sref=pqQBM94V>; see generally Deepak Choudhury et al., *Commercialization of Plant-Based Meat Alternatives*, 25 TRENDS IN PLANT SCIENCE 1055, 1055–58 (2020).

Oatly believes that it can tackle these issues by utilizing already existing investment and market structures and changing them from the inside.¹⁹

Our bet is that when Blackstone's investment in our oat-based sustainability movement brings them larger returns than they would have been able to get elsewhere . . . a powerful message will be sent to the global private equity markets, one written in the only language our critics claim they will listen to: profit.²⁰

Oatly also claimed that it purposely decided not to draw from traditionally green investors because of this bet.²¹

Under this rhetoric, Oatly theorizes that profit and larger returns will send a message to these huge investors that sustainable products are more profitably. But, what about social problems that are not profitable? Now do not get me wrong, I am all about tearing down the dairy industry by infiltrating one of their biggest investors. That is what capitalism is all about, right? Survival of the fittest, and all of that mess?

My problem with Oatly's theory is that it plays into an issue that Professor Murray highlighted in his article: shareholder wealth maximization.²² In Professor Heminway's commentary to the article, she discussed that shareholder wealth maximization does not preclude sustainability. Nevertheless, the questions I want to challenge are: Are we really going to change the world into a more sustainable place if our goals are still to make the rich richer? Is it really ethical consumerism if our dollars are distributed to the very same people who are causing the most harm to our planet? The consumers who are boycotting Oatly say no, and maybe they are right.

That is why I believe that it is important that we work to improve incentive structures in social enterprise forms in the ways that Professor Murray suggests. Maybe through these changes, we can tackle the real issue: finding ways to work within our current system to maximize social good without fretting over the wealth of the shareholders, or in the non-profit world—the wishes of the donors.

¹⁹ *Change Isn't Easy*, OATLY, <https://www.oatly.com/int/climate-and-capital> (last visited Jan. 29, 2021).

²⁰ *Id.*

²¹ *Id.*

²² *See supra* note 2.

The stakeholder needs to be at the forefront of the mind of every decision made by social enterprises, because in many cases the stakeholder is at the forefront of the mind of the consumer. Stakeholders need the option to be in the room when decisions are made by social enterprises. I believe that it is important for the self-proclaimed ethical consumer, *as the consumers of products produced by social enterprises*, that the businesses we support at the grocery store or online, are just as focused on the environment and the social good as we are.