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**Environmental Protection and the Social Responsibility of Firms:
Perspectives from Law, Economics, and Business, edited by Bruce
L. Hay, Robert N. Stavins & Richard H.K. Vietor**

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The editors provide solid suggestions to EJ scholars and activists to collaborate with the goal to improve the EJ movement. They recommend that scholars not only report on what is happening, but offer solutions, advocate for positive change, and link EJ to other fields to build theory as well as practice. Environmental justice activists should strive for a coordinated national strategy; build and mobilize resources; frame problems in terms of class, gender, and national inequities as well as race-based problems; and forge stronger links to the mainstream (corporate) environmental organizations. The editors and authors sought to assess the EJ movement and initiate a dialogue that will ultimately strengthen the movement. For students, scholars, activists, and practitioners ready to engage in the dialogue, this is an excellent place to start.

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Environmental Protection and the Social Responsibility of Firms: Perspectives from Law, Economics, and Business. Edited by Bruce L. Hay, Robert N. Stavins & Richard H.K. Vietor. Washington, D.C.: Resources for the Future Press, 2005. Pp. 218. \$39.95 paperback.

The current paradigm of environmental regulation, now in its fourth decade, faces increasing challenges under the strain of an expanding population and burgeoning conflicts over resource quantity and quality. One alternative for addressing this strain and for correcting un-regulated environmental harms is an increased role for corporate social responsibility (CSR). The concept of CSR has regained broad appeal in response to perceived negative social and environmental effects from market globalization and trade liberalization over the last decade or so. The questions that confound advocates of CSR, however, is how far it can be legitimately pushed before the courts reign in the discretion of corporate managers to protect shareholder interests and whether society is best served by corporations that seek to increase public welfare by means other than maximizing profits.

In *Environmental Protection and the Social Responsibility of Firms*, authors Einer Elhauge, John Donahue, Mark Roe, Paul Portney, Dennis Aigner, Daniel Esty, Forest Reinhardt, Eric Orts, and David Vogel offer a glimpse of a future where corporations, not regulations, can be, but maybe ought not be, the environment's savior. Editors Bruce L. Hay, Robert N. Stavins, and Richard H. K. Vietor advance the interdisciplinary discussion of CSR by drawing from the language and concepts of the disparate fields

of social science and legal, business, and economic theory and then offering a standardized lexicon. The text serves as a useful handbook and reference for policy makers, academics, and practitioners interested in understanding, if not advancing or implementing, CSR practices. The book is most useful for its comprehensive review of the legal and economic constraints and authority for CSR and its analysis of the economic sustainability of profit-sacrificing behavior and of CSR's social and democratic consequences. The authors grapple constructively over the extent corporations can or should commit shareholder resources to environmental protection, providing testable hypotheses for future work. This makes the text especially useful for academics by suggesting a roadmap for research and analysis still needed for a practical understanding of just how workable and desirable a paradigm of corporate self-regulation and social engineering through CSR might be.

Given the broad successes of American environmental regulation, one might ask what is the perceived need for CSR? America's critical resources are generally cleaner and safer for human enjoyment and consumption today, 30 years after enactment of the nation's first significant national environmental regulations. Yet numerous ecosystems across the nation and the world remain in steady decline despite what is perceived as a heavily regulated field. One of the many facets of this disconnect is that environmental regulations have been designed to target the low-hanging fruit of resource degradation and pollution, such as open discharges to waterways, smokestack emissions, and burial of hazardous waste. The laws that delivered these original environmental successes overlook the more pervasive and far more subtle environmental problems of today, including species decline and habitat loss, among others. Therefore, this era's challenge will be to mitigate pollution sources and ecosystem degradation not so amenable to regulation, such as global climate change, the mass exportation of environmental degradation overseas, and non-sustainable resource consumption, to name a few looming environmental problems. These problems present policy makers with the critical question of whether the current paradigm of government regulation is sufficient for environmental protection, or must alternate solutions be pursued? Can or should corporations – despite often being seen as being representative of, if not primary contributors to, the world's foremost environmental problems – be part of the solution?

One problem arises with that proposition: Corporations are supposed to be soulless. A corporate manager's chief duty should be profit maximization, achieved within the bounds established by law for the benefit of the shareholders, according to the dominant view and along the lines of the Milton Friedman approach to economics and corporate governance. Society, then, having achieved optimal wealth, derives the greatest utility through profit maximization and can, through democratic

processes and individual choice, redistribute the accrued benefits according to its needs by this approach. Einer R. Elhauge, Professor of Law at Harvard Law School, posits in his essay that corporations are soulless because corporate structure insulates shareholders from normative forces—social and moral sanctions—that might otherwise engender greater profit-sacrificing behavior for the benefit of society, known as corporate social responsibility.

Perhaps surprisingly, the legal, business, and economic communities have been confused over whether corporations and corporate managers can voluntarily commit shareholder resources to profit-sacrificing environmental protection and, if so, to what extent managers may do so given their fiduciary duties when no shareholder benefit is apparent, even in the long term. Elhauge's essay, the book's most significant contribution and perhaps most thought-provoking essay, should put an end to that confusion. He answers the question unequivocally in the book's first entry, which establishes the text's fundamental argument by challenging the canonical view of law and economics that corporate managers have a legal duty to maximize profits. Elhauge establishes conclusively that corporate managers have the legal discretion necessary through the "business judgment rule" to sacrifice a "reasonable" amount of shareholder profits for public-interest objectives, drawing for his support from such sources as common law doctrine, state corporate governance statutes, and American Law Institute principles.

Elhauge explains why, from a purely economic perspective, such discretion is imperative and why an enforceable legal duty to maximize profits, limiting manager discretion, "would take away the human element that helps justify allowing the use of the corporate form at all." This discretion is an essential prerequisite to achieving the goal of the corporate structure, which, according to Elhauge, is not to maximize profits but to maximize shareholder *welfare*. Elhauge says the two are not equivalent because shareholders have numerous, non-financial social and moral interests at stake as well. "Considering the other factors," Elhauge concludes, "reveals that managerial discretion to sacrifice corporate profits in the public interest is not just inevitable, but affirmatively desirable." Elhauge makes forceful arguments that CSR—and the economic, social, and moral sanctions that drive it—can and should play a more important role in achieving public-interest objectives given that "even the most efficient and socially optimal legal rules will fail to cover much undesirable conduct" because mere "conformity with the law does not suffice to render corporate conduct socially desirable."

Daniel C. Esty then asks the ultimate question facing policy makers that requires a deeper and broader evaluation: "Do we really want corporations guided by something other than the law?" Putting too much reliance or discretion on corporate managers to fix our social problems,

environmental or otherwise, is fundamentally counter-majoritarian, and in that sense fundamentally at odds with democracy. "What if," Esty worries, "companies 'get it wrong' and devote their CSR energies and dollars to issues that are not public priorities?" or worse, are opposed to society's interests? Fostering CSR might insulate corporate managers further from market pressures, giving "an already favored and powerful section of American society yet more power, discretion, and authority not just to wield their authority inside the firm, but also to make quasi-political decisions." His personal generosity to worldwide problems notwithstanding, does anyone really want Bill Gates to hold any more political sway than he already does?

Even more fundamentally, perhaps CSR is not the correct solution because the problem is being mis-identified. Mark J. Roe suggests that the "twin pressures" of heightened global market competition and the acceleration of technological change, not instabilities in corporate law and transactional and financial pressures, are responsible for runaway profit maximization. If Roe's "product market cum technology explanation" is the predominant factor in observed profit maximization and its negative consequences, "then reforms to further insulate managers from shareholders – even if sound otherwise – would advance their public-regarding goal only weakly, because strong product and technological pressures would persist."

If this is so, what then might be the solution to correct the dire state of our natural environment? Maybe the solution is that old paradigm of environmental regulation that has been so successful over the last 30 years. As David J. Vogel asserts in the final comment of the book, our critical environmental challenges "cannot be addressed without more and better government regulation." Vogel asks, "Can anyone seriously believe that American greenhouse gas emissions be reduced...without federal regulation...?" The answer to this and the broader questions presented by the editors of *Environmental Protection and the Social Responsibility of Firms* is that a combination of normative forces, applied to both democratic processes and corporate managers, will probably be necessary to achieve the right level of corporate social responsibility and the proper legislative reforms necessary to meet this era's environmental challenges.

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