

BOOK REVIEW

Beate Sjøffell, Towards a Sustainable European Company Law: A Normative Analysis of the Objectives of EU Law, with the Takeover Directive as a Test Case (2009, Wolters Kluwer, The Netherlands) 560 xxix pp

This is a refreshing and optimistic book that challenges the reader to face the limitations of conventional company law but then to consider the potential of company law to achieve a sustainable development. The book takes issue with the predominance of shareholder primacy and seeks a reassessment of the objectives corporate law. The author argues that the EU offers a space in which corporate law might provide a positive change for the good of society and the environment. As the author says herself in the book's preface: 'the global challenges we face environmentally, socially and financially necessitate a new approach: a new and more comprehensive way of legal thinking.'

The book is structured in six parts with a total of twenty chapters. The first chapter explains the challenges faced by society. The author identifies the pressing global challenges as: 'a looming environmental crisis, which poses a threat to the basis of our very existence, and a growing recognition of the appalling injustice of many thousands of people dying every day of poverty-related causes and many millions lacking the bare necessities of life.' The second part of the book contains an analysis of the fundamental issues in company and securities law that forms the groundwork for the analysis of legislative objectives.

Part III goes on to explore the legislative objectives of EU company law and securities law framed by the general objectives of EU law as set out in the EU Treaties. This part includes a normative discussion of the interrelation between economic and social development and environmental protection. The author suggests that the general objectives of EU law entail legal obligations for the Community institutions on a number of levels. In particular, she argues that sustainable development has a strong legal position among the general objectives of the Community, underpinned by the growing recognition in the EU that 'humanity, the natural environment and our economy are inextricably intertwined'. She suggests on this basis that sustainable development is, and should be, the overarching objective of the EU, because sustainable development encompasses most, if not all, of the general goals of the EU. The author identifies several obligations for the Community institutions arising from the significance of the principle of sustainable development. First, all Community activities must be grounded in the general objectives and, secondly, there should be a balancing of the different objectives. Thirdly, the Community

institutions have a duty to work towards the achievement of the objectives and, fourthly, this might entail a duty to undertake specific action. The final obligation is derived from Article 6 EC, that 'in its very essence, requires the balancing of environmental, social and economic interests, and demands the active integration of environmental protection in all areas, with the aim of achieving sustainable development.'

The author provides in parts IV and V a case study evaluation of the Takeover Directive after developing an analytical structure based on the underlying values and legislative objectives identified in EU law. The author finds that the Takeover Directive fails to meet the objective of an economic development that also integrates the environmental and social aspects of a sustainable development.

The author's main conclusion is that 'we have both a legal basis and a normative imperative for sustainable development as the new law, and that much remains to be done before this becomes a reality on all levels and in all sectors.' The book's concluding chapter sets out the lessons to be learned from the failure of the Takeover Directive and also suggests a direction for future research and legislative work. The three key lessons that the author suggests include the need to move beyond simple market thinking which has tended to dominate the company and securities law debate, and that it is misguided to focus exclusively on the interests of the shareholders and that it is equally misguided to ignore the board, and finally it is necessary to have a more comprehensive approach to company and securities law. The author makes clear the need for a broader outlook with sustainable development as the overarching principle so that 'economic sectors of the law will have to operate in line with the objective of economic development within the framework of sustainable development, instead of the other way around.' The author emphasises the need to clarify and redefine the roles of the shareholders and the board in order to achieve 'a more balanced division of labour between the shareholders as the ultimate monitoring organ and the board with its normative role if taking into account and ensuring a balance between the involved and affected interests of the company.' The author calls for the purpose of the company to be 'formulated in such a way as to have the economic interest of the enterprise at its core; and to clarify the relationship between economic profit and sustainable development: profit within the framework of sustainable development – not voluntary corporate social responsibility in so far as there is room within the framework of profit maximisation.'

The book is not only enjoyable to read but it is also very thoroughly researched and offers a wealth of sources in its bibliography and footnotes. It will be of interest to academics and researchers as well as to policy makers nationally and internationally. Its fresh vision provides a

welcome antidote to the predominance of law and economics on company law scholarship and should gain it a place on university library shelves. Moreover, this book is likely to make an important contribution to the debates in corporate and securities law. Following the global financial crisis there is currently much soul searching and a desire for answers to the questions the crisis has raised. It is clear that we cannot go back to our old ways, although already there are signs that this might be the case. There is a clear need for a new vision of the company and how it should be run and regulated. This book offers such a vision. Of course much more needs to be done but the author at least opens up a new route for our research and legislative progress. As the author herself remarks, 'We need to go further, to look beyond simple solutions and start searching for the complex and tentative answers to the pervading questions of our time.'

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