



1-1-2012

Legal, Moral, and Ethical Considerations for Regulating Corporate Governance

Notre Dame Journal of Law, Ethics & Public Policy Editors

Follow this and additional works at: <http://scholarship.law.nd.edu/ndjlepp>

Recommended Citation

Notre Dame Journal of Law, Ethics & Public Policy Editors, *Legal, Moral, and Ethical Considerations for Regulating Corporate Governance*, 26 NOTRE DAME J.L. ETHICS & PUB. POL'Y 1 (2012).

Available at: <http://scholarship.law.nd.edu/ndjlepp/vol26/iss1/1>

This Introduction is brought to you for free and open access by the Notre Dame Journal of Law, Ethics & Public Policy at NDLScholarship. It has been accepted for inclusion in Notre Dame Journal of Law, Ethics & Public Policy by an authorized administrator of NDLScholarship. For more information, please contact lawdr@nd.edu.

INTRODUCTION

LEGAL, MORAL, AND ETHICAL CONSIDERATIONS FOR REGULATING CORPORATE GOVERNANCE

In the first decade of the 21st century, corporate governance has become a recurring and ever-present topic weighing heavily on the minds of Americans, and indeed, the world community. Phrases like ENRON, Sarbanes-Oxley, Dodd-Frank, “Too Big to Fail” and, most recently, “Occupy Wall Street” have entered the popular vocabulary, demonstrating the heightened public awareness of corporate governance issues.

This Symposium explores the difficult questions underlying these labels by analyzing the legal, ethical, and moral considerations for regulating corporate governance in the 21st century. What are the desired ends of corporate governance? Is it still simply to maximize profit? If not, to what extent should other factors be relevant in corporate decision-making? And how should sustainability—financial, environmental, and otherwise—fit into the corporation’s decision-making calculus? To whom or to what do corporate officers and directors owe a fiduciary duty? From where are these fiduciary duties derived? Should the law view officers and directors differently in discharging their respective duties? What factors should be considered when determining whether to prosecute a corporation? What influence do third party actors, such as nongovernmental organizations and institutional investors, have in the corporate governance debate? To what extent should corporations have a say in the political process through the contribution of campaign funds? What sorts of financial mechanisms can be put into place to act as a safety net to prevent, or at least mitigate, the next financial crisis? And how will corporate actors use those mechanisms?

These are but some of the questions that the authors in this Symposium seek to address.

In the wake of the financial crisis of 2008–2009, the Federal government’s effort to stem the economic downward spiral triggered contentious debates about regulating corporate governance. Parties in these debates struggled to even agree on the causes for the market meltdown, and thus legislative efforts such

as the Dodd-Frank Wall Street Reform Act evolved along party lines. There is a felt need to look deeply into the legal, ethical, and moral factors that may have set the conditions for the financial crisis to play out the way it did.

To that end, the *Notre Dame Journal of Law, Ethics & Public Policy* has collected pieces from experts across the field for this Symposium to identify the nature of these legal, ethical, and moral factors and their significance to all the actors in corporate governance regulation: the corporate officer and director, the government regulator, the courts, the corporate lawyer, the institutional investor, and academia.