Global Governance and the Quest for Justice

VOLUME 2

Corporate Governance

Edited by Sorcha MacLeod

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Volume II: Corporate Governance

Edited by

SORCHA MACLEOD

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Tribute to John Parkinson

PROFESSOR JOHN PARKINSON

John Parkinson's untimely death in February 2004 was a great loss to the world of academia and to those who knew him. A practitioner at city firm Freshfields in his early career, John moved to Bristol University as a lecturer in law in 1980 and was appointed to a Chair in 1995. More recently, he was appointed as the chair of the government's Company Law Review, a measure of the esteem in which he was held. His contribution to the field of company law is undisputed, in particular, his text *Corporate Power and Responsibility* laid the foundations for a stakeholder approach to corporate governance. As Professor Keith Stanton put it, '[t]his put his work at the centre of the ongoing debate on corporate social responsibility and governance.' As such, it made John the ideal person to approach to assist with organising the corporate governance stream at the conference on Global Governance and the Search for Justice held at the University of Sheffield in April 2003. He brought an infectious enthusiasm to the endeavour and he admitted to me that he was very much looking forward to editing the resultant book as it was something he had never attempted before. Everyone who came into contact with him via the conference enjoyed his *quiet joi de vivre* as well as appreciating his insightful comments regarding corporate governance. As his co-editor I valued his help and his constructive criticism despite some fundamental theoretical disagreements! Many of the contributors also received substantial supportive advice and there is no doubt that the volume is better for it. It has been a difficult task to complete this book in John's absence and I hope that he would have been pleased with the result. His dry sense of humour, generosity of spirit and not least his intellectual contribution is sorely missed.

Sorcha MacLeod
Sheffield, January 2006

Preface

Law, as Lon Fuller famously remarked, orders social life by 'subjecting human conduct to the governance of rules';[1] but, as he also remarked, law is not just about *order*, it is about the establishment of a *just* order.[2] Law, formal as well as informal, hard or soft, high or low, purports to set (just) standards and to provide the framework for the (fair) resolution of disputes. Legal rules, of course, are not the only mechanisms for channeling behaviour—market prices, for example, may be as prohibitive as the rules of the criminal code—but it is a truism that it is society's need for effective and legitimate governance that offers the raison d'etre for law.

Fifty years ago, the legal imagination centred on governance within and by the nation state. The municipal legal system was the paradigm; its architecture (especially its division of the public from the private) clean-lined; its organization hierarchical; its modus operandi (even if Austin had over-stated the coercive character of law) largely one of command and control; and its authority unquestioned.[3] Beyond the boundaries of local legal systems, the first seeds of regional and globl governance had been sown but it was to be some time before they would begin to flower. If anyone ruled the world, it was the governments of nation states.

Fifty years on, the landscape of legal governance looks very different. To be sure, the municipal legal system remains an important landmark. However, governance within the nation state no longer respects a simple division of the public and the private; in many cases, hierarchical organization has given way to more complex regulatory networks; each particular regulatory space is characterised by its own distinctive regime of governance and stakeholding; command and control is no longer viewed as the principal regulatory response; and, confronted with various crises of legitimacy, nation states have sought to retain public confidence by aspiring to more responsive forms of governance.[4]

[1] Lon L Fuller, *The Morality of* law (New Haven: Yale University press, 1969) at 96.

[2] Lon L Fuller, 'Positivism and Fidelity to Law—A Reply to Professor Hart (1957–58) 71 *Harvard Law Review* 630.

[3] Cf HLA Hart, *The Concept of Law* (Oxford: Clarendon Press, 1961).

[4] See, eg, Juila Black, 'De-centring Regulation: Understanding the Role of Regulation and Self-Regulation in a 'Post-Regulatory' word' (2001) 54 *Current legal Problems* 103; Norman Douglas Lewis, *Choice and the Legal Order: Rising Above Politics* (London: Butterworths, 1996); Philippe

At the same time that local governance has grown more complex and difficult to map, the world beyond the nation state has moved on. Not only has regional governance developed rapidly (in Europe, to the point at which a Constitution for the enlarged Union is under debate), but manifold international agencies whose brief is global governance are now operating to regulate fields that are, in some cases, narrow and specialised but, in other cases, broad and general. If mapping municipal law has become more challenging, this applies *a fortiori* to governance at the regional or global level where the regulatory players and processes may be considerably less transparent. Moreover, these zones of governance—the local, the regional, and the global—do not operate independently of one another. Accordingly, any account of governance in the Twenty-First Century must be in some sense an account of global governance because the activities of global regulators impinge on the activities of those who purport to govern in both local and regional zones.

To a considerable extent, global governance has grown alongside the activities of organisations whose predominant concerns have been international security and the promotion of respect for human rights. However, it has been the push towards a globalised economy that has perhaps exerted the greater influence—that is to say, 'globalisation' has served to accelerate both the actuality, and our perception, of global governance. With the lowering of barriers to trade and the making of new markets (traditional as well as electronic), the processes of integration and harmonisation have been set in motion and the governance activities of bodies such as the IMF, the World Bank and the WTO have assumed a much higher profile.[5] If nation states still rule the world, their grip on the reins of governance seems much less secure.[6]

Against this background, *Global Governance and the Quest for Justice* is a four-volume set addressing the legal and ethical deficits associated with the current round of 'globalisation' and discussing the building blocks for modes of global governance that respect the demands of legality and justice. To put this another way, this set explores the tension between the order that is being instated by the governance that comes with globalisation (the

Nonet and Philip Selznick, *Law and Society in Transition: Toward Responsive Law* (New York: Harper & Row, 1978); and Gunther Teubner, 'Substantive and Reflexive Elements in Modern Law' (1983) 17 *Law and Society Review* 239, and 'After Legal Instrumentalism? Strategic Models of Post-Regulatory Law' in Gunther Teubner (ed), *Dilemmas of law in the welfare state* (Berlin: Walter de Gruyter, 1986) 299.

[5] See eg, Joseph Stiglitz, *Globalization and its Discontents* (London: Penguin, Allen Lane, 2002). For an account that is less focused on the economy, see Boaventura de Sousa Santos, Toward a *New Legal Common Sense* (2nd ed) (London: Butterworths, 2002).

[6] Compare the analysis in Brendan Edgeworth, *Law, Modernity, Postmodernity* (Aldershot: Ashgte, 2003). According to Edgeworth, governance in the 'postmodernized' environment is characterised by the decline of the monocentric national legal system.

reality, as it were, of globalised governance) and the aspiration of a just world order represented by the ideal of global governance.[7]

Each volume focuses on one of four key concerns arising from globalised governance, namely: whether the leading internationl and regional organisations are sufficiently constitutionalised, [8] whether transnational corporations are sufficiently accountable,[9] whether the distinctive interests of civil society are sufficiently represented and respected[10] and whether human rights are given due weight and protection.[11] If the pathology of globalised governance involves a lack of institutional transparency and accountability, the ability of the more powerful players to act outside the rules and to immunise themselves against responsibility, a yawning democratic deficit, and a neglect of human rights, environmental integrity and cultural identity, then this might be a new world order but it falls a long way short of the ideal of global governance.

In the opening years of the Twenty-First Century, the prospects for legitimate and effective governance—that is to say, for lawful governance—are not overwhelmingly good. Local governance, even in the best-run regimes, has its own problems with regard to the effectiveness and legitimacy of its regulatory measure; regionalisation does not always ease these difficulties; and globalised governance accentuates the contrast between the power of those who are unaccountable and the relative powerlessness of those who are accountable. Yet, in every sense, global governance surely is *the* project for the coming generation of lawyers.[12] If the papers in these volumes set in train a sustained, focused and forward-looking debate about the co-ordination of governance in pursuit of our best conception of an ordered and just global community, then they will have served their purpose—and, if law plays its part in setting the framework for the elaboration and application of such global governance, then its purpose, too, will have been fulfilled.

Roger Brownsword and Douglas Lewis
Sheffield, February 2004

[7] Compare the central themes of George Monbiot, *The Age of Consent* (London: Flamingo, 2003).
[8] Douglas Lewis (ed), *International and Regional Organisations.*
[9] Sorcha Macleod and John Parkinson (eds), *Corporate Governance.*
[10] Peter Odell and Chris Willett (eds), *Civil Society.*
[11] Roger Brownsword (ed), *Human Rigihts.*
[12] Cf Douglas Lewis, 'Law and Globalisation: An Opportunity for Europe and its Partners and Their Legal Scholars (2002) 8 *European Public Law 219.*

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Corporate Governance and the Regulation of Business Behaviour

JOHN PARKINSON

INTRODUCTION

THE TERM 'CORPORATE governance' has a range of meanings. For present purposes two stand out. The first refers to the various ways in which society attempts to control company behaviour in the public interest.[1] Here what is being 'governed' is the company itself, the most obvious modality being regulation by the state 'external' to the company, for example, the requirements of employment law, consumer law, or environmental law. The second meaning is the one more familiar to company lawyers, of 'company-level' governance: in the words of the Higgs review, the 'architecture of accountability' or 'structures and processes' that ensure that those responsible for managing companies do so in accordance with the legitimate objectives of the business.[2] Directors' duties, boards that contain members with a 'monitoring' role, and disclosure of financial and other information are examples of mechanisms of governance so understood. While some would argue otherwise,[3] corporate governance in the second sense can be regarded as a sub-set of governance in the first. That is, company-level controls reflect at least in part a state determination of what corporate objectives should be and of corresponding accountability arrangements. In the Anglo-American corporate world the purpose of such controls is generally viewed as being to enforce a goal of shareholder wealth

[1] See, eg A Demb and F-F Neubauer, The C*orporate Board: Confronting the Paradoxes* (New York, Oxford University Press, 1992) 2-4; ND Lewis, *Law and Governance* (London, Cavendish, 2001) 172.

[2] See D Higgs, *Review of the Role and Effectiveness of Non-Executive Directors* (London, DTI, 2003) 11.

[3] Eg, exponents of the nexus of contracts theory of the company, who emphasise the 'private', contractual origins of governance arrangements. For a critical overview, see WW Bratton, 'The Economic Structure of the Post-Contractual Corporation' (1992) 87 *Northwestern University Law Review* 180.

maximisation, justified as the best means of maximising the wealth of society as a whole.[4] The aims of governance need not, however, be so narrowly defined. It is with using company-level governance (from now on, just 'corporate governance') for the wider purpose of influencing the social and environmental performance of companies that this chapter is concerned.

While policy makers normally look to 'external' regulation as the means of controlling the social and environmental impacts of business, corporate governance is important as well, for two reasons. First, governance arrangements are likely to affect a company's propensity to comply with regulation. Companies are complex organisations and internal accountability structures that can cope with this complexity are needed to secure conformity with law down the lines of command.[5] At a more general level, the *commitment* to compliance is likely to be affected by the incentives that governance frameworks create. Where, for instance, the culture of the organisation is 'short-termist' because of pressures or inducements to maximise current share price, obeying the law may not be regarded as an issue of overriding importance.[6] The second reason for a concern with governance is the well-known limitations of regulation as a means of prescribing socially desired outcomes. These limitations result in part from problems inherent in the use of general rules.[7] For example, regulation has a tendency to be under- (or over-) inclusive, to set only base-line standards when many companies without undue cost could perform to a higher level, and to offer few incentives for continuous improvement. Of particular relevance to this volume's theme of globalisation, there may also be gaps in regulatory coverage. The standards imposed on multinationals by host jurisdictions are often non-existent or inadequate, and there is an absence of binding norms of international law to compensate.[8]

[4] See M Jensen, 'Value Maximization, Stakeholder Theory, and the Corporate Objective Function' (2001) 14 *Journal of Applied Corporate Finance* 8.

[5] See generally, F Haines, *Corporate Regulation: Beyond 'Punish or Persuade'* (Oxford, Clarendon Press, 1997); C Parker, *The Open Corporation: Effective Self-Regulation and Democracy* (Cambridge, Cambridge University Press, 2002).

[6] See S Wilks, 'Regulatory Compliance and Capitalist Diversity in Europe' (1996) 3 *Journal of European Public Policy* 536, contrasting the amenability to regulation of the 'social democratic' European company with the Anglo-American-type company.

[7] See CD Stone, *Where The Law Ends: The Social Control of Corporate Behaviour* (New York, Harper & Row, 1975) ch 18; I Ayres and J Braithwaite, *Responsive Regulation: Transcending the Deregulation Debate* (New York, Oxford University Press, 1992) 110–16; J Black, *Rules and Regulators* (Oxford, Clarendon Press, 1997) ch 1. Alternative regulatory techniques, such as fiscal or economic instruments may overcome some of the problems of 'command and control' regulation, but also have problems of their own. See N Gunningham and P Grabosky, *Smart Regulation: Designing Environmental Policy* (Oxford, Oxford University Press, 1998) 69–83; E Orts, 'Reflexive Environmental Law' (1995) 89 *Northwestern University Law Review* 1227, 1241–46.

[8] See generally, International Council on Human Rights Policy, *Beyond Voluntarism: Human Rights and the Developing International Legal Obligations of Companies* (Versoix, 2002). See also Sullivan in this volume.

The main emphasis of this chapter will be on how corporate governance might be used to overcome some of the limitations of external regulation, by making it an explicit function of governance to encourage 'socially responsible' conduct that includes going beyond what regulation demands. Such an approach might, but does not necessarily, involve departing from the principle of shareholder primacy, on which UK company law has hitherto been based. As far as corporate social responsibility (CSR) that is consistent with the traditional management goal of shareholder wealth maximisation is concerned, there are two types of reason why adopting higher standards of social or environmental performance might also be in the interests of shareholders, or at least not detrimental to them. First, higher standards may bring direct commercial benefits, for example,, where they result in reduced energy costs or better employee relations. Secondly, companies need to be responsive to market and civil society pressures for improved performance, exerted by groups such as consumers, employees, NGOs, and the media, since how the company reacts to these pressures and manages the related risks and opportunities can have significant financial implications.[9] These considerations suggest an approach to corporate governance reform that aims to ensure that companies take full advantage of those situations in which there is a natural convergence of business and societal interests, and also to secure a better alignment of company behaviour with market and civil society pressures.

While reforms with the objective of promoting CSR in this limited sense are likely to be an advance on governance arrangements that encourage a narrow preoccupation with 'shareholder value,' not all problems will be overcome: conflicts between the (long-, as well as short-term) interests of shareholders on the one hand, and those of other groups and the demands of ethical principle and social policy objectives on the other, will undoubtedly remain. Overlaps between public and private interests and the harmonising effect of market and civil society pressures take us only so far. The belief that these conflicts should not always be resolved in favour of shareholders, but rather in accordance with some conception of the requirements of the pubic interest, prompts a more radical approach to CSR and a search for appropriate governance mechanisms to institutionalise it.

Although this wider version of CSR involves a departure from shareholder primacy, it is useful for analytical purposes to distinguish it from 'stakeholder' approaches to the company. While stakeholder models also have that characteristic, they tend to have different focal concerns. CSR, in both the versions identified here, can be seen as an essentially regulatory concept,

[9] These processes, which serve to harmonise corporate and societal interests, might also be strengthened by various forms of 'soft' governmental intervention, separate from corporate governance reform. They include the creation of product labelling schemes or the brokering or endorsement of voluntary codes of standards.

as about the acceptance or imposition of constraints on the pursuit of the profit goal in the wider public interest. Stakeholder models involve replacing that goal with a more open-ended one of balancing the interests of a (defined) set of stakeholder groups.[10] A variety of arguments are relied on in support of stakeholder approaches, for example, that they may be more conducive to economic efficiency or enable effect to be given to the moral imperative of employee participation in enterprise decision-making.[11] While regulatory and stakeholder positions are not always easy to distinguish, it is with CSR as a form of regulation that this chapter is concerned.

The chapter proceeds as follows. The next section will look in more detail at the first version of CSR identified above ('modest CSR'). The following section will then examine some of the ways in which corporate governance arrangements are being, and might be, modified in the UK to give greater effect to it. Bearing in mind the limitations of modest CSR, the final section will consider the feasibility of governance reforms aimed at implementing an approach that goes further and envisages that shareholder interests should be overridden where some interpretation of ethical principle or the public interest demands it ('radical CSR').

MODEST CSR

A brief discussion of the European Commission's definition of CSR in its recent *Communication* is a useful way of clarifying how the term 'modest CSR' will be used in this chapter and the reasons for attempting to promote it. It says CSR is 'a concept whereby companies integrate social and environmental concerns in their business operations and in their interaction with stakeholders on a voluntary basis.' It is 'behaviour by businesses over and above legal requirements, voluntarily adopted because businesses deem it to be in their long-term interest.'[12] A number of elements in this definition warrant examination.

[10] An analogy with the conduct of an individual might make this distinction clearer. A person otherwise committed to pursuing self-interest might decide that it is wrong to tell lies in the course of so doing. The norm requiring truth-telling acts as a constraint on the pursuit of self-interest; its adoption does not signify a transformation of the individual's goal to one of a selfless concern for others. Similarly CSR, even when it consciously involves accepting lower profits, does not, as discussed here, involve a transformation of the purpose of the organisation. As used in the text, 'CSR' is also not intended to embrace 'philanthropic' activity, in the sense of a company's efforts to address social problems that are not of its own making, as distinct from conducting its core activities in a more responsible manner.

[11] On the former, see eg G Kelly and J Parkinson, 'The Conceptual Foundations of the Company: A Pluralist Approach' in J Parkinson, A Gamble and G Kelly (eds), *The Political Economy of the Company* (Oxford, Hart Publishing, 2000) 113, and the latter, R Archer, *Economic Democracy: The Politics of Feasible Socialism* (Oxford, Clarendon Press, 1995).

[12] Commission of the European Communities, *Communication from the Commission concerning Corporate Social Responsibility: A Business Contribution to Sustainable Development* COM (2002) 347 final.

First, while the idea of acting 'over and above legal requirements' has long been a concern of company law scholars in the literature on CSR, the tendency has been to regard achieving mere compliance with law as unproblematic, or at best an issue in the study of regulation rather than corporate law. For their part, regulatory theorists have not always paid much attention to the characteristics of the targets of regulation, as distinct from the regulatory framework within which they are required to operate.[13] Such an approach puts too heavy an emphasis on the design of regulation and the enforcement capabilities of regulators, however, at the expense of a concern with the disposition of the company to comply. A similar issue arises in relation to 'creative compliance,' the phenomenon of companies being technically in compliance, but exploiting or inventing loopholes in the law to evade its purpose. This problem too may not be capable of solution merely by the adoption of more elaborate regulatory techniques.[14] While moves to improve compliance and 'substantive' compliance will not be considered directly here, governance reforms aimed at encouraging companies to be socially responsible in the sense of going beyond the law may also have the effect of strengthening the factors that cause them to act within it, and should be evaluated on that basis.

Secondly, as the EC definition makes clear, voluntariness is integral to CSR, but acceptance that it has a role to play should not be equated with support for deregulation. The case for CSR sketched in the introduction is that it is desirable to encourage 'voluntary' behaviour that satisfies higher standards than those required by law, because there are limits to what regulation can achieve in securing the fulfilment of public policy objectives. That there are such limits is not an argument for reducing regulatory coverage, lowering the thresholds at which mandatory standards are set, or avoiding regulatory solutions to new sources of harm. Particularly given the weaknesses to which modest CSR is itself subject, considered below, it is appropriate to regard it as a supplement or stop-gap, not as an alternative to state regulation.[15] This is not to deny the possible value of regulatory

[13] See Wilks, 'Regulatory Compliance', above n 6), at 550. There is, however, now a growing body of literature that does precisely this. See, eg Haines, *Corporate Regulation*, above n 5; Parker, *The Open Corporation*, above n 5; Ayres and Braithwaite, *Responsive Regulation*, above n7; N Gunningham and J Rees, 'Industry Self-Regulation: An Institutional Perspective' (1997) 19 *Law & Policy* 363.

[14] See, eg D McBarnet and C Whelan, *Creative Accountancy and the Cross-Eyed Javelin Thrower* (London, John Wiley, 1999); D McBarnet, 'When Compliance is not the Solution but the Problem: from Changes in Law to Changes in Attitude' in V Braithwaite (ed), *Taxing Democracy: Understanding Tax Avoidance and Evasion* (Aldershot, Ashgate, 2004).

[15] This would appear to be the Commission's position too. See Commission of the European Communities, Green Paper, *Promoting a European Framework for Corporate Social Responsibility*, COM (2001) 366 final, para 22: '[c]orporate social responsibility should... not be seen as a substitute to regulation or legislation concerning social rights or environmental standards, including the development of new appropriate legislation'. See also *Communication*, above n 12, para 5.1.

flexibility, as where corporate or industry self-regulation substitutes for detailed 'command and control,' but within a public regulatory framework that underwrites minimally acceptable standards.[16]

Thirdly, while CSR refers to conduct that is voluntary, the techniques relied on to promote it might themselves involve the imposition of binding obligations. An example is social and environmental disclosure. There are arguments for leaving disclosure to voluntary initiative, such as that compulsion might stifle development in what is a dynamic area or result in uninformative, formulaic reporting. There are also strong counter-arguments, however, for instance that in the absence of legal requirements, reporting will mainly be confined to companies with a high public profile or niche 'ethical' businesses, or that reports will contain serious omissions or be otherwise misleading.[17] As will be discussed below, the effective promotion of CSR may therefore require mandatory reporting, and there is a range of other possible governance reforms that to a greater or lesser extent rely on the imposition of binding obligations.

Fourthly, as discussed below, commercial self-interest is an important driver of CSR, but this emphasis should not obscure the role of moral responsibility. Rather, ethics and corporate self-interest have a complex interconnection in CSR. For a start, there is no reason to suppose that those who work in companies are inevitably immoral or amoral.[18] They may choose to do the 'right thing' for its own sake. And public pressure for improved standards of responsibility might induce more than a narrow, instrumental reaction directed at alleviating short-term threats to profitability, instead triggering an authentically moral response and a process of organisational reflection. Further, somewhat paradoxically, managements might recognise that a commitment to certain non-instrumental values is in the company's long-term interests, and hence seek to institutionalise such a commitment: areas in which a business may become vulnerable to public criticism are liable to be unpredictable, and securing compliance throughout the organisation with the company's social, ethical, and environmental policies is likely to be easier if there is a widely diffused acceptance of the values that underlie them.[19] On the other hand, countervailing pressures to maximise profits may have a corrosive effect on ethical standards,[20] indicating a role for policy interventions designed to

[16] See, eg the concept of 'enforced self-regulation': Ayres and Braithwaite, *Responsive Regulation*, above n 7, especially ch 4.

[17] See text following fn 88, below.

[18] See Parker, *The Open Corporation*, above n 5, especially at 203–12, 294–95.

[19] On the debate about whether such an approach should be regarded as a truly ethical one, see K Gibson, 'The Moral Basis of Stakeholder Theory' (2000) 26 *Journal of Business Ethics* 245, 246–47.

[20] See L Mitchell and T Gabaldon, 'If I Only had a Heart: or, How can we Identify a Corporate Morality' (2002) 76 *Tulane Law Review* 1645, 1652–54.

protect and expand the 'fragile processes essential to an institution's moral competence.'[21]

Fifthly, while modest CSR is not then purely a market phenomenon, it is nevertheless the case that harnessing commercial self-interest plays a crucial part in driving forward improved standards of conduct. As already mentioned, there are two reasons why socially responsible behaviour may also be in the company's interests. The first is that there is to an extent a natural overlap between what is good for the company and good for society, which overlap may not currently be fully exploited. Examples include reductions in the use of energy or production of waste, employee training and the promotion of gender equality and ethnic diversity in the workforce.[22] Secondly, in addition to this natural overlap, it will often be in the company's interests to respond positively to the preferences of market and civil society actors regarding social responsibility issues, since these may have the capacity to reward or punish companies accordingly. The second of these factors may also reinforce the first, ie, the company may be pressured into taking actions that turn out to be independently profitable. The effect of market and civil pressure may also extend beyond ad hoc responses, encouraging companies to self-regulate, on an individual or industry basis, or to participate in co-regulatory or other voluntary standard-setting schemes. This trend towards 'codification' can serve as a useful means of making more specific the otherwise amorphous content of CSR, and providing a sharper focus for the efforts of campaigners to raise standards.[23]

The two factors in the previous paragraph are often referred to as the 'business case' for CSR.[24] Mention of the business case sometimes provokes scepticism about the likely social benefits of CSR, on the ground that the term suggests that CSR is simply the product of a business agenda, ie, that the real aim of companies and groups representing business in embracing it is to protect profits rather than to effect genuine improvements in social and environmental performance. The inference is that the gains to society will be small and that companies are just as likely to engage in obfuscation or distracting, image-building 'philanthropy' as to make a serious attempt to address the adverse effects of their core activities. This may be an accurate interpretation of the approach to CSR of many in the corporate sector, but it misstates the role that profits play in CSR viewed as an objective of public

[21] Gunningham and Rees, 'Industry Self-Regulation', above n13, at 382.

[22] Eg, D Kingsmill, *Review of Women's Employment and Pay* (London, Cabinet Office, 2001) 7, points to the 'rewards for organizations that find ways to overcome the barriers and constraints that currently limit the role and contribution of women.'

[23] See J Parkinson, 'Disclosure and Corporate Social and Environmental Performance: Competitiveness and Enterprise in a Broader Social Frame' (2003) 3 *Journal of Corporate Law Studies* 3, 11–27.

[24] For a fuller account of the ingredients of the business case, see Arthur D Little, *The Business Case for Corporate Citizenship* (Cambridge, undated).