SARAH ALTSCHULLER & DAN FELDMAN

The Bottom Line

Corporate social responsibility works, and progressives shouldn't abandon it. A response to Aaron Chatterji and Siona Listokin.

It is surprising and a bit disheartening to see two progressive thinkers embrace an old canard frequently found in the pages of the *Economist*, the *Wall Street Journal,* and other business-oriented publications: the notion that the corporate social responsibility (CSR) movement has "misguided" progressives into thinking that large companies can be "cajoled" into undertaking socially conscious activities. Yet Aaron Chatterji and Siona Listokin make precisely this argument in "Corporate Social Irresponsibility" [Issue #3]. In advising progressives to turn away from CSR, the authors perpetuate the myth that companies must choose between profits and responsible business practices.

To be fair, Chatterji and Listokin do not attack all CSR; they concede the validity of "strategic CSR," which they define as business behavior in which a

SARAH ALTSCHULLER *and* DAN FELDMAN *are attorneys at Foley Hoag LLP. Feldman was a director for Multilateral and Humanitarian Affairs at the National Security Council during the Clinton Administration.*

"management team is engaging in an activity that can have a positive impact on society [while] also acting in the interests of their bosses, namely the company's shareholders." Instead, the bulk of their attack is reserved for what they deem "nonstrategic CSR," or "business behavior that is at direct odds with short- and (reasonably) long-term profit maximization." As attorneys in the only stand-alone CSR legal practice of a U.S.-based law firm, we proffer that *all* responsible CSR is in fact "strategic CSR." We have never seen one of our large multinational clients undertake a CSR program that is "nonstrategic," as Chatterji and Listokin define it. Indeed, that term appears to be merely a convenient strawman.

Chatterji and Listokin's first mistake is underestimating the strategic thinking of corporate managers. Smart business leaders are rarely bullied into adopting CSR practices that are not beneficial to the interests of their shareholders. Nevertheless, the growing importance of a wide spectrum of stakeholders to a company's bottom line has fundamentally changed business calculations over the past few decades. In today's global economy, a successful company can no longer be concerned solely with its shareholders, employees, and consumers. It must also take into account issues related to the activities of suppliers and business partners; national and local governments; international financial institutions; multilateral organizations; the media; educational institutions; and a wide spectrum of advocacy and nongovernmental organizations (NGOs) including human rights, environmental, consumer, labor, and religious groups. Thus, just as globalization is here to stay, so too is CSR, which provides companies with an invaluable tool to manage the risks of the globalized marketplace, in part by meeting the concerns of these stakeholders.

These risks are significant. In U.S. courts, for example, companies face legal liability under federal laws like the Alien Tort Claims Act (ATCA)—which allows non-citizens to bring civil claims in federal courts—as well as state tort laws and federal and state sanctions statutes. At least 40 ATCA cases have been brought against more than 100 companies since 1993, many alleging complicity in human rights abuses abroad. Billions of dollars have been sought in damages from these companies, leading not only to significant legal defense fees and lost opportunity costs, but also to some high-profile settlements (such as that involving energy giant Unocal in a case alleging rights violations in Burma). Companies may also be sued in non-U.S. fora that similarly provide for civil liability stemming from breaches of fundamental human rights, such as torture and forced labor.

Reputational damage caused by allegations of poor human rights practices can be even more immediate, and potentially even more significant, than legal risks. While Chatterji and Listokin disparage the reputational effects of CSR initiatives, strategic business managers recognize that sound CSR practices can forestall or avoid boycotts, hostile shareholder resolutions, divestment efforts, attacks on corporate property, negative media attention, and NGO campaigns. When its "brand" is perhaps its most valuable asset, a company must seek to protect its reputation in any way possible. For example, as a result of its operations in Sudan, Talisman Energy experienced what industry experts called a "Sudan discount" of its share price. In a 2002 Toronto *Globe and Mail* article, one financial analyst stated that, as a result of this "discount," Talisman traded at about five times enterprise value while its peers traded at six times the same multiple. The analyst also predicted that once Talisman's Sudan asset was sold, the company's stock value would rise. Indeed, Talisman ultimately sold its stake in the Sudanese operations in 2003 and put in place an extremely robust CSR program. As a result, industry analysts and NGOs have credited it with making notable progress in resuscitating not only its reputation but also its stock price. Chatterji and Listokin do not appear to question other expenditures that have a non-quantifiable but positive impact on share price, such as p.r. or advertising dollars, yet when this money is directed instead at systemic CSR efforts that help to improve a company's reputation without merely "greenwashing" it, they balk.

To be sure, some companies undertake CSR endeavors solely for reputational advantages. But evidence demonstrates that implementing comprehensive CSR programs can produce a range of significant and tangible benefits for companies, in addition to burnishing their reputations. In a study for the World Bank examining corporate codes of conduct, we found that business leaders reported more stable workforces, enhanced relationships with host governments, and easier compliance with post-Enron corporate governance reforms due to their CSR initiatives. Similarly, in a project we undertook to develop human rights training programs for a consortium of petroleum companies, corporate representatives told us that they were driven to implement more and better CSR mechanisms not simply out of fear of liability and risk, but also for positive business reasons including brand protection, increased customer and employee loyalty and retention, better morale, the ability to anticipate and manage business risks more effectively, improved relationships with stakeholders and public opinion leaders, and the ability to respond better to the growth of socially responsible investment opportunities.

Indeed, as the most recent survey by KPMG examining the social and environmental performance reporting of the world's top 250 companies concluded, "A growing number of companies (and their stakeholders) believe that long-term business success depends not only on a healthy balance sheet but also on social and environmental performance." Most importantly, the study noted that "economic considerations" were the fundamental reason for a company's involvement with CSR, since "the economic reasons were either directly linked to increased shareholder value or market share, or indirectly linked through increased business opportunities, innovation, reputation, and reduced risk."

In addition to underestimating the wisdom of company managers, Chatterji and Listokin also fail to account for the tremendous value that CSR offers as a forum for engagement between companies and civil society. In this age of economic globalization, many multinational companies have assets greater than the gross domestic products of the countries in which they operate. These companies frequently have more power than many nation-states to affect the flows and utilization of economic and environmental resources. The growth of CSR initiatives over the past decade has been fueled not by opportunistic CEOs, but by the failures of government regulation. In operating on the front lines of commerce, companies not only have the incentive, but also the resources, to ensure that they are effectively monitoring their workplaces to prevent violations of both local laws and emerging international standards. Yet, by naively suggesting that activists transfer their energies from lobbying businesses for social change to lobbying governments, Chatterji and Listokin do not deal with the failures of many governments to implement and monitor laws that are already on their books.

Powerful social change can emerge from corporate boardrooms, and progressives have a key role to play in this process.

Chatterji and Listokin also ignore the fact that companies do not draft codes of conduct in a normative vacuum. Instead, they produce voluntary behavioral guidelines in a socio-economic environment already filled with debates among businesses, NGOs, and governments about appropriate corporate standards. Documents like the "Voluntary Principles on Security and Human Rights," the International Labor Organization's (ILO) "Declaration on Fundamental Principles and Rights at Work," and the Global Sullivan Principles are all high-profile public efforts to place normative frameworks on corporate activity. CSR guidelines, therefore, should be evaluated against a wide-ranging set of existing and prospective standards. So, even while governments and other regulatory agencies may be slow to challenge corporate behavior, companies have encountered a diverse and nimble set of organizations ready to scrutinize, and publicize, the corporate actions they deem unacceptable.

Finally, a significant underlying flaw in Chatterji and Listokin's thesis is that they describe CSR as a relatively static field, and their analysis lumps together very different industries, with differing business concerns. This prevents them from recognizing two important aspects of the rapidly maturing CSR field. First, the authors ignore progress made in integrating CSR and governmental goals, perhaps because they see the two as mutually exclusive. They blame a "patchwork of confusing codes, voluntary standards, and weak or nonexistent monitoring" for supposedly "crowding out" government regulation, but they fail to recognize the ways in which the market has fostered a relative convergence on key components of these codes. Far from the "race to the bottom" described by the authors, many industry sectors have largely agreed on code components that mirror standards espoused by multilateral organizations like the UN-affiliated ILO.

Second, the authors ignore the remarkable dynamism that characterizes the CSR field, but which varies considerably by industry sector. Some sectors are today quite "mature" in terms of CSR initiatives and sophistication (e. g., apparel and footwear manufacturing, extractives, and agribusiness), whereas others are just beginning to wake to the new business demands of their stakeholders (e. g., technology and health care). Thus, some companies and sectors are still at the stage of adopting and refining codes of conduct (what we term CSR 1.0), while others have developed remarkably robust monitoring, benchmarking, and communication strategies around both singular and multilateral sets of standards (CSR 2.0). Some companies have even begun to push against the limits of what constitutes CSR and are addressing a new generation of social issues associated with their operations (CSR 3.0). For instance, how far down the sourcing chain are companies responsible for monitoring, and how can companies engage with their suppliers in developing mutually beneficial practices and standards? As companies wrestle with these questions, CSR is increasingly no longer applicable just to large multinational companies that fear the reputational risk to their brands, but increasingly to small and more regional companies that have been told by the larger companies to which they source (e. g., Costco or Best Buy) that they must put in place more robust CSR mechanisms.

The power of major multinationals to effect change throughout their supply chains and across national boundaries is a major reason for progressives not to abandon CSR. When a company like Wal-Mart changes its factory supply standards, promotes environmental design, and commits to purchasing from sustainable fisheries, substantial social change reaches beyond the scope of what could have realistically been brought about through government regulation. Powerful social change can emerge from corporate boardrooms, and progressives have a key role to play in this process. That said, we do not suggest that progressives should abandon the crucial role they also play in pushing public officials for effective regulations. Certainly the role of governments will, and should, remain central. The most effective trajectories of social change, however, are often generated when private and public energies coalesce around shared agendas and a common set of values. CSR provides an extremely valuable medium by which these agendas and values can be negotiated and defined. D