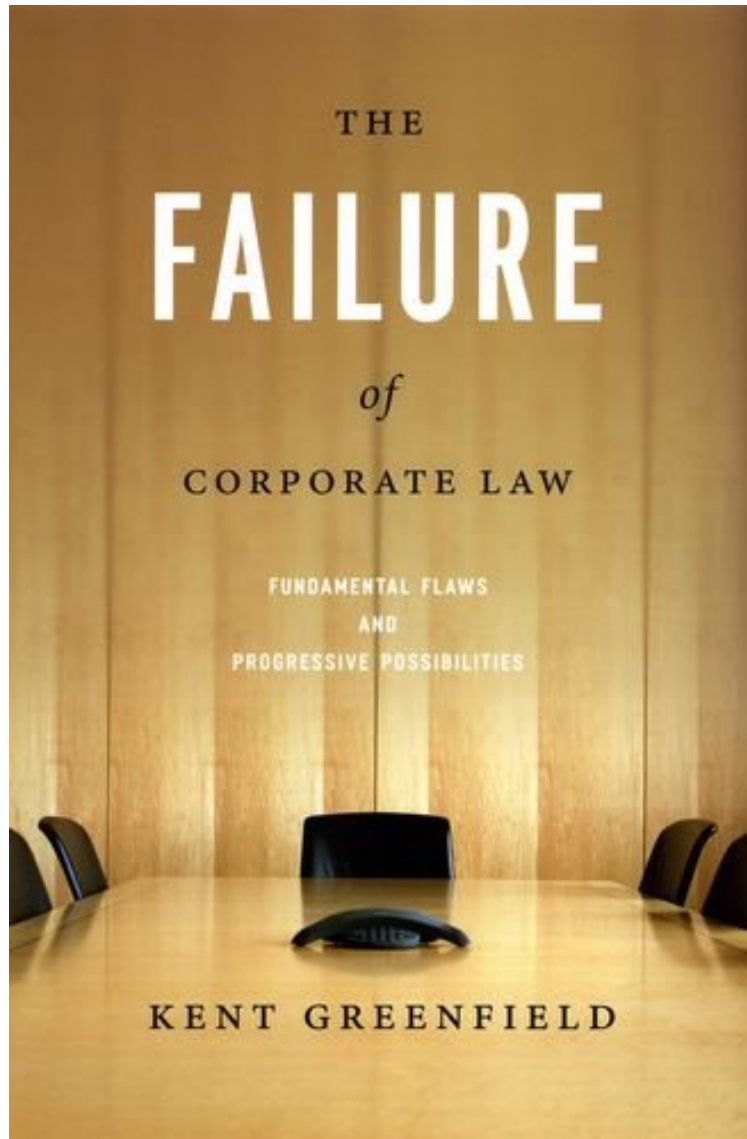


The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities

Kent Greenfield

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Kent Greenfield : The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities before purchasing it in order to gage whether or not it would be worth my time, and all praised The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities:

1 of 1 people found the following review helpful. Read it to Understand Our post-Citizens United Dysfunctional

CountryBy Doctor WhoI came across the author of this book on a law school blog while teaching a unit on "corporate free speech" in a business law class, and then found this particular book cited in a law review article on how to address the environmental effects of the BP oil spill. The book itself is a rejection of the last twenty or thirty years of "law and economics" misreading of the history and nature of corporations law and makes the argument that corporations are not simply bundles of private contracts, but as I have always and continuously argued in my classes, public entities chartered by the state to serve a public purpose (providing jobs, paying taxes, helping build up this country) so that excuses for not regulating excessive executive pay and bonuses or for hiding taxable corporate income abroad simply do not wash. Anyone who wants to understand how we got to this place where corporate "persons" have more rights than real persons, and why the law is so out of joint we need OWS to reclaim America should read this book. And also read Sandy Levinson's *Our Undemocratic Constitution*. And then get active. I am requiring this book in my spring term course in business law, which is ironic since with cuts in public funding for public universities, we are out there seeking corporate donations to train the next generation of cogs in the corporate machine...0 of 0 people found the following review helpful. Great bookBy DavidGreat book. Well-argued response to corporate excesses.5 of 5 people found the following review helpful. Extraordinary Legal ScholarshipBy CorpGovNetKent Greenfield posits that corporation law shouldn't be thought of as "private" law, which governs the relationships of individuals, but as a branch of "public" law, such as constitutional, tax, or environmental law. Corporations are sanctioned by the state and our goals for them should include more than just maximizing profits for shareowners. Corporate laws determine the rules for some of the largest most powerful entities in the world and America is exporting our model abroad. I've warned audiences around the world not to adopt our regulatory scheme wholesale. While my advice has been vindicated by the latest financial meltdown, it is good to see an extraordinary legal scholar pushing for thoughtful change. "Our nation could choose, and should choose," writes Greenfield, "to require that democratic values govern corporations, rather than having corporate values govern democracy." Some functions are just too important to be left to for-profit companies. Airline security is one. Another would be ensuring an economy that meets our collective goals, not just the goals of shareowners, as modeled by a law-and-economic view. Greenfield's discussions are well argued. I found his critique of "enablingism" and the role of corporate law limited to establishing default rules parties would choose if they actually negotiated them, to be enlightening. As he points out, it simply reinforces status quo market power, rather than ameliorates it. In this trickle-down theory of law, we get only the rights we can pay for. It's a theory based on the premise that "what is good for shareholders is good for corporations, and what is good for corporations is good for society." Yet, income inequality in America is worse than in any other developed nation and is the worst since WWII. What is good for the workers may be a better placeholder for society as a whole than what is good for shareholders. Workers have every incentive to keep their firms alive, whereas shareowners are generally willing to take greater risks because they are more diversified. Our present legal conception is not inherent in capitalism but was inherited from the laissez-faire politics of the Gilded Age. Corporate law, like labor law, tax law, and environmental law should be predicated on collective political decisions about social goals and ideals. Non-utilitarian values such as equality and human dignity should inform corporate law, just as they inform other areas of law. A central tenet of the book is that internal governance procedures can lower external enforcement costs. Plus they follow the corporation outside the boundaries of states and countries. Greenfield critiques the law-and-economics paradigm, arguing that shareowners aren't the only ones entitled to ownership claims. Even though a stakeholder approach should be more efficient overall, he argues it is reasonable for society to forgo the possibility of very high corporate profits to avoid disproportionate harm to workers and communities. This is especially so, given that only a small portion of affluent shareowners stand to reap the gains from high profits, since 1% own 34% of all shares and 10% own 77%. Greenfield formulates five principles for those developing public policies in the area of corporate governance: 1. The ultimate purpose of corporations should be to serve the interests of society as a whole. 2. Corporations are distinctively able to contribute to the societal good by creating financial prosperity. 3. Corporate law should further principles 1 and 2, reminding us "there is no such thing as a limited liability society." 4. A corporation's wealth should be shared fairly among those who contribute to the creation of that wealth. 5. Democratic corporate governance is the best way to ensure the sustainable creation and equitable distribution of corporate wealth. I like Greenfield's values. He backs up his arguments with research on real behavior, not just with economic theory. For example, "an individual's decision about whether or no to comply with rules is more strongly influenced by legitimacy than it is by estimates of the gain or loss associated with that behavior." Monitoring costs are "deadweight losses." The more we can reduce them by involving workers, the more productive our corporations will be. Recommendations include: * Enlarging board fiduciary duties to include workers and other stakeholders. Relaxation of profit maximization norm and support for stakeholder statutes. * A federal law that protects workers from fraud, similar to SEC Rule 10b-5 that protects investors. More efficient labor markets will allocate labor to where it will be most productive. * Ending Delaware's dominance. Federal chartering... short of that, states should exert their prerogative of regulating the internal affairs of companies. In other areas of law, the state with greatest interest typically prevails. Corporate law should be no different.

When used in conjunction with corporations, the term public is misleading. Anyone can purchase shares of stock, but public corporations themselves are uninhibited by a sense of societal obligation or strict public oversight. In fact, managers of most large firms are prohibited by law from taking into account the interests of the public in decision making, if doing so hurts shareholders. But this has not always been the case, as until the beginning of the twentieth century, public corporations were deemed to have important civic responsibilities. With *The Failure of Corporate Law*, Kent Greenfield hopes to return corporate law to a system in which the public has a greater say in how firms are governed. Greenfield maintains that the laws controlling firms should be much more protective of the public interest and of the corporations various stakeholders, such as employees. Only when the law of corporations is evaluated as a branch of public law as with constitutional law or environmental law will it be clear what types of changes can be made in corporate governance to improve the common good. Greenfield proposes changes in corporate governance that would enable corporations to meet the progressive goal of creating wealth for society as a whole rather than merely for shareholders and executives.

Kent Greenfield takes us into fertile and promising territory that has been generally neglected by both politics and social reform: the corporation as a potential engine of progress. His critique is grounded in the extraordinary fallacies and failures of corporate law, and he demonstrates with remarkable clarity how a series of essential changes in the premises and obligations of the corporation can turn the nature of the beast in very positive directions.