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ETHICS AND SOCIALLY RESPONSIBLE INVESTMENT: A PHILOSOPHICAL APPROACH, by William Ransome and Charles Sampford[1]

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THE LONG-STANDING MOVEMENT for socially responsible investment (SRI) has undergone a global revolution over the past decade, seeking to move from a boutique, niche market to the mainstream of the financial economy.[3] A phenomenon once dismissed as just belonging to idiosyncratic, faith-based investors who wished to avoid bankrolling "sin stocks"—such as companies peddling alcohol or gambling[4]—SRI now spans a broader constellation of financial actors concerned about numerous social and environmental causes, ranging from animal welfare to Aboriginal rights. In recent years, there has also been a tendency for SRI to be viewed primarily as a means to promote sustainable development.[5]

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1. (Farnham, UK: Ashgate, 2010) 179 pages. William Ransome is a Research Fellow and Program Director for Corporate Governance and Social Responsibility at the Key Centre for Ethics, Law, Justice and Governance at Griffith University in Australia. Charles Sampford is the Director of the Institute for Ethics, Governance and Law, a joint initiative of the United Nations University, Griffith University, Queensland University of Technology, and the Australian National University.
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3. Among the main literature, see Marcel Jeucken, *Sustainable Finance and Banking: The Financial Sector and the Future of the Planet* (London, UK: Earthscan, 2001); Cary Krosinsky & Nick Robins, eds, *Sustainable Investing: The Art of Long Term Performance* (London, UK: Earthscan, 2008); Matthew Kiernan, *Investing in a Sustainable World: Why Green is the New Color of Money on Wall Street* (New York: AMACOM, 2008); Russell Sparkes, *Socially Responsible Investment: A Global Revolution* (London, UK: Wiley, 2002).
4. Russell Sparkes, "A Historical Perspective on the Growth of Socially Responsible Investment" in Rodney Sullivan & Craig Mackenzie, eds, *Responsible Investment* (Sheffield: Greenleaf, 2006) 39.
5. For an early perspective on this emerging goal, see Susan Meeker-Lowry, *Economics as if The*

Pension funds, mutual funds, banks, and other financiers in many jurisdictions increasingly affirm the value of investing responsibly, in a manner that parallels the more established movement for corporate social responsibility (CSR). Evidence of these trends includes industry surveys of the SRI market's growing size—for instance, it is reportedly now worth nearly 20 per cent of Canadian investments[6]—and the legion of signatories to SRI codes of conduct, such as the United Nations Principles for Responsible Investment (UNPRI).[7] While SRI still has its detractors, who allege that it politicizes investment decision making or hurts financial returns,[8] it is rapidly becoming established as a legitimate and influential approach to investment.

Despite this seemingly positive trend, there are reasons to be cautious about financial markets' commitment to social justice and environmental protection.[9] Many funds masquerading as "socially responsible" appear to be little different from conventional investment portfolios.[10] So-called social investors often rely on limited business case criteria for taking action, such that environmental and social issues only garner their attention if they are perceived to be "financially material."[11] Furthermore, the SRI sector's own voluntary codes of conduct, such as the UNPRI, offer relatively facile and unambitious standards that largely ignore structural impediments to sustainability in the financial economy as a whole.[12]

Earth Really Mattered: A Catalyst Guide to Socially Conscious Investing (Philadelphia: New Society, 1988).

6. Social Investment Organization, *Canadian Socially Responsible Investment Review 2010: A Comprehensive Survey of Socially Responsible Investment in Canada* (Toronto: Social Investment Organization, 2011) at 9.
7. *The Principles for Responsible Investment*, online: UNPRI <www.unpri.org>. As of early 2011, the UNPRI boasted nearly 900 signatories holding assets worth approximately 25 trillion US dollars. Katie Gilbert, "Principles for Responsible Investment Drive ESG into the Mainstream," *Institutional Investor Magazine* (4 February 2011).
8. *See e.g.* Jon Entine, *Pension Fund Politics: The Dangers of Socially Responsible Investing* (Washington: The AEI Press, 2005); Richard Copp, Michael L Kremmer & Eduardo Roca, "Should Funds Invest in Socially Responsible Investments During Downturns? Financial and Legal Implications of the Fund Manager's Dilemma" (2010) 23 Acct Res J 254.
9. See generally Benjamin J Richardson, *Socially Responsible Investment Law: Regulating the Unseen Polluters* (New York: Oxford University Press, 2008).
10. Paul Hawken, *Socially Responsible Investing: How the SRI Industry has failed to respond to people to want to invest with conscience and what can be done to change it* (2004), online: Natural Capital Institute <http://naturalcapital.org/docs/SRI%20Report%2010-04_word.pdf> at 16.
11. United Nations Environment Programme Finance Initiative, *The Materiality of Social, Environmental and Corporate Governance Issues in Equity Pricing* (Geneva: United Nations Environment Programme Finance Initiative, 2004) at 4.
12. Benjamin J Richardson, "Can Socially Responsible Investment Provide a Means of

In this context we can thus appreciate the significance of *Ethics and Socially Responsible Investment*, a new book that offers one of the most insightful and critical perspectives of SRI in a field of literature that has too often succumbed to cheerleading and glibness.[13] In contrast to the focus of many writings on SRI's supposed financial advantage, Ransome and Sampford examine the ethical and conceptual underpinnings of SRI. In explaining the philosophical and practical shortcomings of current approaches, they identify ways to restore SRI to its proper ethical foundations. The authors' theoretical ambitions are matched by some careful empirical research on the SRI market in Australia, which provides a case study of the drivers and obstacles to SRI with potential relevance to other countries.

A compact book of just 179 pages, *Ethics and Socially Responsible Investment* is divided into eight chapters. The first traces SRI's historical evolution into a global movement and its relationship to the better-known debates about CSR. The second chapter critiques the limitations of "single value"[14] SRI, which has become increasingly driven only by the prospect of greater financial returns. The next two chapters delve into the meaning of ethics, the difficulties of applying them to SRI, and ways to strengthen SRI's philosophical foundations. Chapters five and six examine the Australian SRI market and argue that corporate engagement is potentially far more effective than portfolio screening as a means of ethical investment. The penultimate chapter considers the impact of fiduciary law on SRI and downplays the legal barriers to SRI stressed by many other commentators. The book concludes with some visionary statements about the future of SRI as the foundational link in an "ethical chain"[15] of corporate social and environmental responsibility that reconnects the market with civil society.

This book has a number of strengths. First, the authors effectively link their analysis of SRI to the related debates about CSR.[16] An unfortunate attribute of much SRI and CSR literature is the tendency for scholars to work in separate camps. There should be greater sharing of insights between SRI and CSR researchers because of overlapping issues. For example, reforming the fiduciary duties of institutional investors to enable SRI is more likely to work if there are concomitant reforms to the fiduciary responsibilities of those who manage corporations.

Environmental Regulation?" (2009) 35 Monash UL Rev 262 at 276-81.

13. See *e.g.* Peter Camejo, ed, *The SRI Advantage: Why Socially Responsible Investing Has Outperformed Financially* (Gabriola Island: New Society, 2002); Stephen Davis, Jon Lukomnik & David Pitt Watson, *The New Capitalists: How Citizen Investors are Reshaping the Corporate Agenda* (Boston: Harvard Business School Press, 2006).
14. *Supra* note 1.
15. *Ibid* at 135.
16. *Ibid* at 23-28.

Ransome and Sampford appreciate this issue, thus giving their book appeal to a wider audience concerned about corporate accountability.

A second strength of their book is the clear exposition of different ethical theories and their potential application to SRI. Readers without a background in ethics should have little difficulty understanding the authors' discussion of deontological, teleological, and virtue ethics.[17] In arguing for a pluralistic approach to ethical investment, they avoid imposing their own definition of SRI other than to propose that it must at a minimum mean "extra-financial normative criteria."[18] While their unwillingness to define the precise ethical parameters of SRI might disappoint some readers, the authors persuasively explain the drawbacks of alternative approaches. In their view, "simplistic and absolute normative criteria in ethical investment ... pre-empt genuine and enlightening debate about complex and nuanced real-world ethical issues."[19] By contrast, Ransome and Sampford endorse "the pluralist view of moral value, which is willing to accept some ethical variety, but not at the risk of abandoning reflective rigour or accountability."[20] In other words, they don't view ethical pluralism as a synonym for the miasma of moral subjectivism and relativism, but rather see it as a process of democratic ethical deliberation that enables critical reflection on SRI choices in specific contexts. For example, while many environmentalists oppose nuclear power because of the problems of disposing of its hazardous by-products, some welcome it as a climate-friendly energy source.[21] Ransome and Sampford offer a flexible approach to discuss and negotiate the ethical dilemmas posed by such examples. On the other hand, one might be skeptical of their assumption that investors are willing to engage in ethical deliberation. The members of a typical pension or mutual fund tend to be apathetic about its investment policies and unwilling to avail themselves of any opportunities to be consulted.[22] More likely, the ethical pluralism proposed by Ransome and Sampford would just involve the fund managers and trustees of investment portfolios.

A third virtue of their book is its focus on Australia and the inclusion of extensive empirical research on Australian fund managers' attitudes and practices

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17. *Ibid* at 45-50, 57-77.
18. *Ibid* at 12.
19. *Ibid* at 54.
20. *Ibid* at 82.
21. Marc Fisher, "Mixed Greens: How the New Nuclear Splits Greens," *Washington Post* (3 June 2007), online: <http://blog.washingtonpost.com/Rawfisher/2007/06/mixed_greens_how_the_new_nucle.html>.
22. Benjamin J Richardson, "Fiduciary Relationships for Socially Responsible Investing: A Multinational Perspective" (2011) 48 Am Bus LJ 597 at 601-06.

regarding SRI. The SRI literature is dominated by discussion of North American and Western European trends, with some tendency to universalize those regions' experiences without regard to jurisdictionally specific contexts. The Australian case studies include excerpts from some very illuminating interviews, which highlight the degree of ignorance or antipathy to SRI that still pervades some quarters of the financial sector.

Although *Ethics and Socially Responsible Investment* makes a seminal contribution to the literature, it does not provide a comprehensive account of SRI, and some of its analyses and conclusions are disputable.

One deficiency is the lack of discussion on the banking sector. If social investors wish to influence corporations, all sources of corporate financing—including bank loans and corporate bonds—must be sensitive to the social and environmental impacts they enable. While the book's focus on equity investment addresses the main arena for SRI, some other commentators have done a better job in mapping the full range of financial actors and instruments that social investors can harness to influence corporations.[23]

Secondly, the authors' contention that shareholder engagement and activism is potentially the most effective means of SRI, or at least in the Australian context, is highly debatable. While dialogue and pressure on corporate management might effectively address ethical issues that require a more nuanced and subtle perspective, Ransome and Sampford are wrong to suggest that ethical screening, such as divesting from companies that produce land mines or tobacco, leads those who engage in it to become mere "bystanders."[24] Rather, screening can be highly effective in combination with engagement strategies; companies that are excluded or threatened with exclusion can become more willing to listen to aggrieved investors. Furthermore, Ransome and Sampford should not equate screening with a "narrow, absolutist interpretation of ethical obligations."[25] While some screening methods are rigid and one-dimensional, the SRI industry increasingly relies on more sophisticated tools such as "best-in-class," which is used to select companies that perform best in their economic sector according to various performance indicators. This approach builds on the assumption that corporate environmental and social behaviour should be judged in relation to an industry sector's average performance because only firms operating in the same sector face comparable sustainability

23. See Jeucken, *supra* note 3.
24. *Supra* note 1 at 112.
25. *Ibid.*

challenges.[26] Ransome and Sampford also somewhat overlook that engagement strategies can sometimes be time-consuming and resource-intensive to implement and thus are often only feasible for a small fraction of a fund's investment portfolio.

The book's legal analysis is also incomplete. While the focus on fiduciary duties appropriately addresses the principal legal issue affecting SRI, the authors hardly acknowledge many others, such as taxation law and securities regulation. SRI is unlikely to flourish without a more enabling regulatory and policy framework in which revamped fiduciary duties are just one element. The authors' analysis of fiduciary law itself is also somewhat inadequate. For example, their discussion about the legal significance of beneficiaries consenting to SRI ignores the ambivalent case law about whether in fact beneficiaries may issue instructions to trustees of funds and whether trustees are under any legal obligation to consult with beneficiaries.[27]

Further, the book says little about the substantive ethical issues of concern to social investors. Readers are informed about the underlying ethical theories and concepts, but actual controversies such as climate change and water, which are high on the SRI agenda, are not probed. Consequently, the authors don't yield much insight into how the challenges of building ethical foundations for SRI play out in specific contexts. The authors' abstract discussion of ethical theories would have resonated more potently with readers if those theories had been applied to some specific SRI issues and campaigns.

Finally, among other possible complaints, the authors tend to rely quite heavily on a limited survey of existing literature, such as the writings of Russell Sparkes.[28] The book's brief six-page bibliography[29] does not do justice to the considerable volume and range of scholarship on SRI, particularly that which has been published in the last decade. The legal literature on SRI is sparsely covered,[30]

26. See Anastasia O'Rourke, "The Message and Methods of Ethical Investment" (2003) 11 J Cleaner Production 683.

27. For analysis of these legal issues, see Richardson, *supra* note 22.

28. *Supra* note 1 at 16-19.

29. *Ibid* at 169-74. Notable omissions include: Carmen Juravle & Alan Lewis, "Identifying Impediments to SRI in Europe: A Review of the Practitioner and Academic Literature" (2008) 17 Bus Ethics: Eur Rev 285; Kiernan, *supra* note 3; Sonia Labatt & Rodney White, *Environmental Finance: A Guide to Environmental Risk Assessment and Financial Products* (Hoboken: Wiley, 2002); Sullivan & Mackenzie, *supra* note 4; World Wide Fund for Nature (WWF), *Shaping the Future of Sustainable Finance: Moving from Paper Promises to Sustainable Performance* (London, UK: WWF, 2006).

30. Omissions include: Rosy Thornton, "Ethical Investments: A Case of Disjointed Thinking" (2008) 67 Cambridge LJ 396; Richardson, *supra* note 9.

and even the coverage of the Australian literature is incomplete, which is surprising given the book's focus on that jurisdiction.[31]

Despite such gaps and limitations, *Ethics and Socially Responsible Investment* still covers a lot of ground and makes a valuable contribution to the scholarly literature on SRI. Ransome and Sampford provide a welcome ethical antidote to the SRI movement's increasingly narrow preoccupation with the business case for investing responsibly. Their book should be read by anyone who cares about SRI and the future of financial markets.

31. Notable lacunae include: Australian Conservation Foundation (ACF), *False Profits: How Australia's Finance Sector Undervalues the Environment* (Melbourne: ACF, 2006); Donald Ross & Dorothy Wood, "Do Environmental and Social Controls Matter in Australian Capital Investment Decision-making?" (2008) 17 Bus Strat & Env't 294.