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Environmental Law

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ENVIRONMENTAL LAW

REVIEWED BY RONALD BRUCE ST JOHN*

ENVIRONMENTAL LAW, THE ECONOMY, AND SUSTAINABLE DEVELOPMENT: THE UNITED STATES, THE EUROPEAN UNION AND THE INTERNATIONAL COMMUNITY, edited by Richard L. Revesz, Philippe Sand, and Richard B. Stewart. Cambridge and New York: Cambridge University Press, 2000. ISBN 0-521-64270-1. 437 pages, notes, index. (Cloth)

DAVID G. VICTOR; THE COLLAPSE OF THE KYOTO PROTOCOL AND THE STRUGGLE TO SLOW GLOBAL WARMING. Princeton and Oxford: Princeton University Press, 2001. ISBN 0-691-08870-5. 178 pages, notes, works cited, index. (Cloth)

RONIE GARCIA-JOHNSON; EXPORTING ENVIRONMENTALISM: U. S. MULTINATIONAL CHEMICAL CORPORATIONS IN BRAZIL AND MEXICO. Cambridge and London: The MIT Press, 2000. ISBN 0-262-57136-6. 200 pages, appendixes, notes, references, index. (Cloth) (Paper).

An important issue facing environmental law today is the appropriate allocation of responsibility for addressing environmental problems at different levels of decision-making in a multi-jurisdictional system. The thirteen essays found in *Environmental Law, the Economy, and Sustainable Development* are the product of a colloquium on comparative and international environmental law at New York University's Villa La Pietra in Florence. Focused on the United States, the European Union, and the international community, the authors provide a comparative analysis of environmental regulation in multi-jurisdictional systems together with related issues.

Each of the three systems addressed differs significantly in cultural, economic, institutional, legal, and political terms, but all share structural similarities and address related issues in instituting measures to protect the environment while simultaneously promoting economic growth. Moreover, each system addresses environmental interdependencies that transcend their component constituencies -

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states in the United States, member states in the European Union, and nations in the case of the international community. These transjurisdictional questions vary from cross border issues, like acid deposition or water pollution on the one hand, to global problems, such as ozone depletion and climate change on the other.

There can be no doubt, as Richard B. Stewart points out in the introduction, that economic and environmental interdependencies, trade flows, and capital mobility have important implications for environmental regulation in multi-jurisdictional settings. Industrial firms face intense competition on national, regional, and international levels; consequently, they are deeply and rightly concerned about the costs imposed on production methods and processes by stringent environmental regulations. Afraid the cost of compliance with tough environmental standards will disadvantage companies vis-à-vis competitors, industrialists and environmentalists alike worry that a "race to the bottom" in regulation can result. The U.S. chemical industry has proved something of an exception in this regard, as Ronie Garcia-Johnson has pointed out, as it has often exported environmentalism to associated industries and firms around the world.

The essays in *Environmental Law, the Economy, and Sustainable Development* focus on six related but distinct clusters of regulatory concerns. First, contributors address the question of where decision-making responsibility for environmental regulation should reside in a multi-jurisdictional system. A second cluster of issues centers on the appropriate structure for decision-making institutions as well as the procedures necessary for developing legal rules governing the regulation of environmental risks. Third, contributors explore issues surrounding the selection of regulatory instruments for environmental protection.

The relationship between trade measures and environmental protection constitutes a fourth set of issues examined. The fifth cluster of issues deals with risk assessment and risk management. Finally, the contributors employ a wide variety of methodological approaches to analyze environmental regulation in multi-jurisdictional settings. Most contributions draw on economic methodologies; however, public choice analysis is also used to examine the economic and political forces shaping government policy decisions. Others employ more traditional legal and institutional analyses yet acknowledge the significance of economic considerations in environmental protection regulation.

This is an important book. It provides an informed and readable discussion of the many facets of environmental regulation in multi-jurisdictional regimes. A real strength is the balanced representation of contributors from a wide range of American and European backgrounds. Stephen Breyer and Veerle Heyvaert, in discussing the regulation of risk in institutions, state in their concluding paragraph that their chapter "does not aspire to firm conclusions." (p. 352) The

same could be said for many of the chapters in this book. On the contrary, their real contribution, through the identification of core issues, is to frame future dialogue on environmental regulation in multi-jurisdictional systems.

David Victor, author of *The Collapse of the Kyoto Protocol and the Struggle to Slow Global Warming*, is the Robert W. Johnson, Jr. Senior Fellow for Science and Technology at the Council on Foreign Relations in New York City. He argues that the science behind global warming is real and convincing; consequently, the dangers associated with global warming, like rising sea levels and catastrophic climate changes, merit serious efforts to control emissions. That said, he views the architecture - strict emission targets and trading - of the Kyoto Protocol as fatally flawed, arguing persuasively that the issue of global warming demands a very different solution. In so doing, he touches on many of the multi-jurisdictional issues raised in the Revesz, Sands, and Stewart volume.

As Victor emphasizes, emission levels vary with economic growth and technological change; unfortunately, neither can be planned by governments according to precise targets. Since they cannot plan emission levels, governments can never be certain they will be able to comply with emission targets like those set in the Kyoto Protocol. The proposed solution, in terms of the Protocol, was a system of emission trading that would allow governments (and companies) to trade emission credits and debits. Developing a system of emission trading, Victor suggests, would necessitate the creation of permits worth some two trillion dollars, the largest single invention of assets by voluntary international treaty in the history of the world. He contends that international law does not provide an effective vehicle to secure such assets since states dissatisfied with their allocation can refuse to join the scheme or later withdraw. The Kyoto agreement also fails to provide for adequate monitoring and enforcement. The enforcement mechanism outlined in the Protocol would enable countries to sell tens of billions of dollars worth of emission permits and later withdraw with no penalty. In short, Victor feels the incentives for nations to cheat on their Kyoto obligations would be strong but the mechanisms in place to prevent or deter cheating would be weak.

If the international community is serious in an attempt to slow global warming, the author believes it must recognize the flaws in the Kyoto Protocol and replace it with an approach that makes less use of emission trading. In *The Collapse of the Kyoto Protocol*, he outlines an alternative strategy that combines the advantages of emission trading with a "safety valve" to enable participating governments to issue new emission permits at an agreed upon price. Victor argues this approach would cap the cost of compliance with international limits on greenhouse emissions while at the same time facilitating agreement between governments on how best to share the burden.

The Collapse of the Kyoto Protocol is a clear, concise, and well-

written analysis of a complex and poorly understood issue. Given the George W. Bush administration's rejection of the Kyoto Protocol, its publication is timely as Victor's analysis encourages dialogue about the most appropriate response to global warming. This book should be of interest to the growing community of policy makers actively engaged in the search for workable solutions to the question of global warming. It is also recommended to atmospheric scientists, biologists, and foresters concerned with greenhouse gases as well as economists and political scientists concerned with related environmental issues. Finally, it provides legal scholars with a thought-provoking analysis of the difficulties involved in employing international treaties as the regulatory device for complex international behavior like a global, tradable emission permit system.

The U.S. chemical industry and its multinational subsidiaries have suffered a serious public image problem since Rachel Carson published the *Silent Spring* in 1962. Warning about DDT and other toxins, Carson described in a best-seller the devastating impact of agricultural chemicals on interconnected natural systems. Firms in the industry, over the next four decades, struggled to contend with increasing regulations and civil society attacks. Today, the chemical industry continues to be generally perceived, rightly or wrongly, as one of the worst polluting industries in the world. It is also an industry prone to occasional catastrophes, such as the Bhopal spill in 1984 in which a leak from a Union Carbide plant located in India resulted in the death of more than 2000 people.

Given the recent history of the chemical industry, Ronie Garcia-Johnson, an Assistant Professor of Environmental Policy at the Nicholas School of the Environment at Duke University, takes an unorthodox stance when she argues the chemical industry, given its poor environmental record, has special incentives to promote shared environmental standards. In *Exporting Environmentalism: U. S. Multinational Chemical Corporations in Brazil and Mexico*, a book based on a University of Michigan Ph.D. dissertation, she examines the role of governments, nongovernmental organizations, and advocacy groups in promoting environmental ideologies. Where activists and researchers often assume anti-environmental and anti-regulatory stances on the part of corporations, she takes the opposite tact, focusing on the transnational promotion by the chemical industry of environmental ideas and practices.

Garcia-Johnson uses a comparative study of multinational chemical corporations in Brazil and Mexico, based on field research in both countries, to examine the flow of ideas, values, and strategies from parent companies in the United States to their subsidiaries in Latin America. She carefully selected these two states on the grounds that, if multinational corporations were exporting ideologies and practices related to the environment, it would likely occur between these two

regional powers and the United States. Not only is the United States tightly linked to both Brazil and Mexico, it has frequently exported ideologies to them in the past. Moreover, both states have large chemical industries that include domestic and foreign producers.

Under the banner "Responsible Care," the U.S. Chemical Manufacturers Association in the 1980s developed a program to stress environmental responsibility and public accountability in the industry. Designed to limit government intervention as well as to reduce pollution, adherents to the program conducted regular self-evaluations and then publicized reports on their alleged progress. Multinational chemical corporations later exported the Responsible Care approach to their own subsidiaries as well as to host country firms.

They took this action, according to Garcia-Johnson, for three interrelated reasons. First, to avoid a competitive disadvantage, multinational corporations sought to raise the environmental health and safety standards of domestic companies in their host countries. They did so because companies in countries with less stringent environmental regulations, or with stringent laws but inadequate enforcement capacity, could produce goods at a lower cost, and thus enjoy a competitive advantage over producers operating in countries with more stringent and enforced laws. Second, the multinational corporations expected to realize a competitive advantage if domestic industries adopted the same environmental standards as the United States because the latter was generally in the temporal and technological lead. Finally, there was widespread recognition that host countries tended to hold the industry responsible for individual environmental problems and not just the specific companies involved. To minimize host country intervention, multinational corporations encouraged domestic chemical corporations in Brazil and Mexico to adopt multinational standards.

Garcia-Johnson's research clearly demonstrates that the U.S. chemical industry has exported environmentalism to industry associations and firms around the world. In the process, chemical producing companies and their industrial allies have influenced international policies and agreements related to the chemical industry. Finally, she demonstrates the full extent to which the involvement of multinational corporations in environmental politics has shifted from the reactive to the proactive and preemptive.

The global chemical industry is a special business case; therefore, there are comparative limits to this study in terms of its applicability to other industries inside or outside the United States. That said, *Exporting Environmentalism* is an intriguing and thought-provoking analysis of an important global industry that invites consideration and comparison with others. It makes a real contribution to our understanding of how and why multinational companies promote environmentalism.