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Beyond Unprecedented: The Post-Pandemic Economy
Episode 2: “ESG: Losing Its Cool”

[00:00:02] **Lynn Forester de Rothschild ’79:** I think we would all do well to lose ESG.

[00:00:06] **Jeff Ubben:** If the product is required, it’s best to work with that company to reduce the harm.

[00:00:12] **de Rothschild:** We shouldn’t fight about the term. It’s not about what we call it. It’s really about what we do. What is business at its best?

[00:00:21] **[Music and media clips of journalists saying “unprecedented”]:** The coronavirus pandemic has tanked the global economy with unprecedented speed. The steepness of the decline here is unprecedented. This is a crisis that is unprecedented. It is unprecedented, and we just don’t know.

[00:00:36] **Eric Talley:** This is *Beyond Unprecedented: The Post-Pandemic Economy*, a limited-series podcast from Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. I’m Eric Talley, Sulzbacher Professor at Columbia Law School and co-director of the Millstein Center.

[00:00:51] **Talia Gillis:** And I’m Talia Gillis, associate professor of law and Milton Handler Fellow at Columbia Law School. Today, we’ll explore the mounting pushback against the environmental, social, and governance—or ESG—movement. We’ll discuss the rise in anti-woke activism, the politicization of ESG, and what lies ahead for the debate between ESG proponents and opponents. Over the past month, we’ve seen a substantial increase in anti-ESG shareholder activism. These activists are demanding that corporations pull back on their environmental and social initiatives, including efforts related to climate change as well as other socially oriented goals. For example, in the 2022 proxy season, anti-ESG activists submitted a proposal calling on Intel to cease displaying the Pride flag. In another example, asset management firm Strive Asset Management launched a public campaign against Apple, urging a revision of hiring and compensation policies to remove diversity considerations.

[00:01:53] **Talley:** This is an interesting and quite provocative story. It speaks to issues that are as small as individual people up through corporate entities, through national politics. I should even note that Strive Asset Management's co-founder Vivek Ramaswamy is now evidently a candidate for the presidential race in 2024. Talia, you know, you have sort of become a law professor during sort of the era of ESG, ESG activism. How did you experience it sort of coming into the professoriate when it was at full throttle?

[00:02:31] **Gillis:** Yeah, I think it's definitely something that has kind of dominated a lot of conversations among students and kind of as it became more prominent than kind of the other side has spoken up a little bit more. And I see this amongst my students. I should mention that I've also tried to kind of implement some of these policies and gotten a bit of backlash within my house. So even within my household, I have a "do well by doing good" policy with my kids. So I've always told my kids that if you want to minimize or maximize the family pie, then you should adopt inclusive play practices and clean up after yourself. And it's met with a lot of backlash. So I say even internally, I've experienced some of this backlash.

[00:03:10] **Talley:** I am a wounded veteran of similar campaigns. But, you know, the thing that is so interesting about this topic is just how far reaching it can be in just about any domain. And, you know, I think, you know what, today we're going to try to think through some of those issues. And I can't think of anyone better than our guests today, Lynn Forester de Rothschild and Jeff Ubben. Lynn is a founding and managing partner of Inclusive Capital Partners, a San Francisco-based investment management firm that seeks to positively leverage capitalism and governance in pursuit of healthy planet ecology as well as the well-being of its inhabitants. Lynn is also the founder of the Coalition for Inclusive Capitalism and the Council for Inclusive Capitalism and a director of the Estee Lauder companies and Nikola Corporation. She's also a graduate of Columbia Law School. Welcome, Lynn.

[00:04:06] **de Rothschild:** Thank you. Thank you to Columbia Law School. Good to be with you.

[00:04:11] **Talley:** And our second guest is Jeff Ubben, the founder of portfolio manager and managing partner of Inclusive Capital Partners. He's a director of Enviva Inc., Fertiglobe PLC, and, famously, ExxonMobil Corporation. He sits on the board of Duke University and the World Wildlife Fund, the Redford Center and the E.O. Wilson Biodiversity Foundation. Jeff, welcome to the show.

[00:04:35] **Ubben:** Terrific to be here. I am not running for president.

[00:04:40] **Talley:** Not yet, at least. Before we get into the anti-ESG movement as it is, let's back up a little bit and talk about the genesis of the ESG movement and what its precursors were. So back in the previous century, when I was in law school, the idea of socially responsible investing was definitely all the rage, but eventually it sort of quieted down some, and many of its social goals related to diversity, stakeholder values, and so forth have been adopted and more with the ESG movement. From your perspective, let me start with you, Jeff, how did you come to sort of understand and intersect with the ESG movement?

[00:05:21] **Ubben:** I was part of the problem, in my opinion. For 20 years, I was a shareholder activist. And, you know, we focused on financial metrics primarily, exclusively less cost, more profit, you know, more-efficient balance sheet. If we can get the companies sold to private equity, all the better. And, you know, I did that until the point where I figured that I was in the wrong neighborhood. That board served just one constituent, the shareholder. And I thought that was very much part of the problem. It shortened up time horizons. It also became much less interesting to me. Stock prices have gone up a lot to reflect very high sustainable margins that may or may not be sustainable going forward. And so there was much less return attached to financial engineering. The value proposition aligned really well with this new form of governance called stakeholder governance, where if you focus on your carbon footprint or the way you treat your workers and customers, that that very well could be the next 20 years of good governance and high returns. And then ultimately, system change happens, and capitalism becomes a force for good, as it always was supposed to be.

[00:06:35] **Talley:** Lynn, let me bring you into this. I mean, one of the things that I still circulate to my students is this very famous *New York Times Magazine* article by Milton Friedman, which is now over 50 years old, basically saying, hey, you should be unapologetic about maximizing for shareholder value. Now, it was in an era where there was, you know, a larger number of regulatory guardrails that companies faced. And that has changed as well during much of the 1980s. But, you know, certainly as you were going into law school, the idea of, you know, maximize shareholder value, that's what corporations was all about. That was definitely something that I suspect you encountered pretty frequently when you were a student at Columbia. How did you then intersect with the ESG movement or what has become the ESG movement?

[00:07:24] **de Rothschild:** When that Milton Friedman article came out, we also lived in a different society. We lived in a different world. First of all, we believe that a rising tide would lift all boats. Second of all, we also believed that companies and the capital markets, they were by definition a force for good. So there was no talk of ESG. There just were companies behaving in the right way. And I think one way that your students should think about going forward is not to think in terms of, am I for ESG or against ESG. What they really should think about is which companies are profitably solving the problems of people on the planet and are part of the solution and not part of the problem. And I think we would all do well to lose ESG, frankly, because it's turned into this S-show that political grifters are taking on. So why do we need to fight about the term? We shouldn't fight about the term. We should think about what is business at its best. So from my point of view, I'm happy to lose the ESG debate. I'm happy to bury ESG. And let's get back to, what are the businesses of the future? How are shareholders going to make the most money with the best companies?

[00:08:51] **Ubben:** Basically, we imported ESG from Europe. They are a shining light in thinking about these other constituencies. But ESG, the way they executed it, was very exclusionary. It was, there's good and there's bad. And that's not the way the world works. There's this gray area where you deal with companies that are in the problem that are most likely, if inspired with different forms of governance and in some cases new CEOs, to be part of the solution to decarbonize now, even as they're providing an essential good or service, whether it's energy or food or education for that matter. So ESG 1.0, as Lynn said, should be thrown out because it doesn't really—this kind of exclusionary approach, if the product is required, it doesn't make sense to divest from the company that makes that product. It's best to work with that company to reduce the harm or reduce the carbon, you know, in that particular case. That's the future of ESG. That's ESG 2.0. That's really where Inclusive started. We were unafraid to buy things that were boycotted, also because those stock prices tended to be low, and that's kind of the currency with which we work.

[00:10:11] **de Rothschild:** And the other thing that I think happened with ESG is not only the real negative impact of exclusionary investment policies that were not well thought through but also the hypocrisy around the ESG movement. People—there were 635 "ESG funds" and firms, and famously one was BlackRock. They basically had an ESG ETF that charged 40 basis points more than its S&P ETF but essentially had the same stocks in it. So, of course, people are going to get cynical, and they're right to get cynical. It became a product. It became a label. So let's get back to, you know, finding those companies that are really long-term great investments because of what they do for society and the environment.

[00:11:11] **Talley:** Is there a sense in which, you know, part of the current backlash is, in fact, a response to version 1.0? Was that in any way maybe a miscalculation of version 1.0?

[00:11:25] **Ubben:** It was transparent that the asset managers were using it for marketing purposes and marketing purposes only, and therefore they kind of deserved what they're getting. That being said, ESG 1.0 did serve an important purpose: It changed the agenda in a boardroom, and it put things like customer health, worker health, environmental issues into the conversation. I swear I've been on 20 public company boards, and until 2019, none of those issues ever were raised. And I was complicit, by the way, you know. So the boardroom is now different. The investor class either marketed their way through it by gathering assets with a kind of a bullshit product, as Lynn says. Or they ran away, or they are essentially causing friction whereby companies that are able to be part of the solution are being asked to do massive share repurchase still as opposed to keeping the cash because the energy transition is going to be expensive and Big Oil companies, for instance, have tremendous capability to be part of the energy transition to decarbonize now. And that tension where investors would rather that the company just return the cash to really not allow them to be a company in the future, but to stay a company of the past, that's the tension I find most interesting. That is the gray zone that I seek with regards to real investment change, real capital allocation change. This is a really hard thing. And I think what's happened is people like BlackRock told you it was easy. And that's bad because people, consumers, investors need to know this is hard. This is really hard. You can't just buy an ETF and think you did something. And that's the shame of ESG 1.0, which is why it set itself up.

[00:13:30] **Gillis:** So what about the connection to the larger political debates? We've recently seen heightened politicization around ESG. States opposed to corporate, environmental, and social policies have used legislation, divestment, and regulatory investigations to limit or block firms from considering ESG factors. For example, last fall, Florida and other Republican-controlled states announced that they were withdrawing state funds from BlackRock due to its ESG initiatives. Using a new state law, Texas banned 10 firms from doing business with the state on the ground that the blacklisted firms allegedly boycott fossil fuel companies. And in January, 21 Republican attorneys general sent a letter to two big proxy advisory firms in the U.S. challenging their climate and diversity policies. So how are companies and investors navigating this growing politicization of ESG?

[00:14:23] **de Rothschild:** Well, first of all, those states that have banned the firms that have focused on ESG, those states are paying more for their debt because they have less access to debt providers. And so it's not a great policy for those states to follow. I think with respect to investors, again, they have to stay the course. And although I was critical of BlackRock for commoditizing the ESG phenomenon through a more expensive ETF, I think they are getting a bad rap in the case of these states because BlackRock is doing what Jeff said. BlackRock is funding the fossil fuel industry, and they are not voting for ridiculous proxy proposals that might be well-intentioned but on this transition to a cleaner, more inclusive future, companies have got to allocate their capital correctly, they have to be profitable, they have to run their businesses in a prudent way. I think the black and white states, or let's call them red and blue states perhaps, are missing the mark, and they're not serving their pensioners. They're not going to create greater value for the people who need the funds that are being invested, and they're not really achieving a rational business end.

[00:16:01] **Ubben:** I said this is hard. A large part of me is, is I live my life as a joyful pessimist because we've politicized everything and polarized everything. If you sit there in your Big Oil company, and you lose a proxy contest because you wouldn't say you're net zero, and then you say you're net zero, and people say you're greenwashing. And the difference is there's a lot of science to be done to see if you could be a net zero company. The politicians are too short term. Investors are too short term. And the NGOs, they view the world in a purist way, and they cause as much problem as the other two.

[00:16:41] **Talley:** That's super interesting. I love the term "joyful pessimist," and I think, Jeff Ubben, you and I should hang out because I consider myself a sad optimist.

[00:16:50] **de Rothschild:** I take the words of Madeleine Albright: an optimist who worries.

[00:16:54] **Talley:** All right. So there's another angle on this that I'd like to get your thoughts on. One of the arguments you're increasingly hearing now, I guess, by conservative lawmakers and anti-ESG activists is that businesses shouldn't be meddling in public policy, right? Businesses should be staying out of politics, that they should really be sticking to their knitting on running their business and not trying to, you know, effect broader policy changes outside of that narrow scope. Where do you come down on this question of what role, if any, corporate actors play in the larger political realm?

[00:17:32] **Ubben:** The two most celebrated ESG industries—ESG 1.0—are health care and social media because they don't carbon emit. The two biggest lobbyists in Washington are health care and social media. The worst outcomes in the world for the highest-cost system in this country is our health care system. So it's clearly predatory. It doesn't work. All the energy goes into fossil fuels, you know, who obviously have been lobbying their own way through this, this thing. So, I mean, I kind of agree with you to a certain extent. If we would just get these guys out of Washington, it would be much, much better. Big energy companies are spending time in Washington. Contrary to the hyperbole from Greenpeace, they really do want a carbon price. They want a price signal because carbon abatement is a reinvestment opportunity. And fossil fuels is a mature business. So instead of sending cash back to shareholders because your business is maturing and declining over time, it's a much more interesting place to work if you have a place to put your cash, and carbon management economy is coming. The Big Oil guys in Washington trying like crazy to get a carbon price—which actually destroys demand for their core product—surprisingly, they are all over this and are trying to make this happen, and the politicians are too afraid. They think they're too short term. They think they're going to get voted out of office. The CEOs of these companies really are at the center of change. They have a 15-year-old child at home calling them a polluter, and the investor class is a bit of the problem, and the policy makers are also, of course, a bit of the problem because they're too short term. This is a very long-term challenge.

[00:19:32] **de Rothschild:** So I think that's a really interesting angle to answer your question, Eric, because corporations are deeply involved in government and policy and politics for their own end: How should or should corporations be involved in political or social discussions? I've thought a lot about this because, for instance, Marc Benioff [chair, CEO, and co-founder of Salesforce] famously said he was going to move out of Indiana if they put their anti-gay legislation through, and the legislation got stopped because they were afraid of corporate behavior. He took a social stand. I was in favor of that. I think that is very brave. But not everybody would agree. And this is where I think a board is really important. The Georgia voting law, I mean, that was a law that was going to keep people away from the polls. And you have big companies like Delta and Coke based in Georgia, and they had to decide whether they were going to, in that case, stand up for democracy, not because one is Republican or Democrat—just because we cannot function in business if our society is torn apart because we've lost democracy. So I think there are lots of interesting questions for boards about how far do we go. I think it's for every company to decide, and I think it's for customers to decide what they think of that company, which I think was very much on Marc Benioff's mind: He knew who his audience was, and I think it's customers and investors to decide.

[00:21:20] **Gillis:** Jeff and Lynn, we want to wrap up with a crystal ball question: What are your predictions on the long-term prospects for ESG proponents versus opponents? Will the anti-ESG movement prove largely to be theater without much lasting impact, or will this growing standoff between pro- and anti-ESG movements ultimately change how companies and investors approach environmental and social issues in the long term?

[00:21:45] **Ubben:** I think ESG goes away. I think what you're going to see is the ESG, you know, by already green companies at really high prices in 2021, the performance of that product is going to be bad. Those of us who look more at the ambiguity of the situation and took on the challenge of fundraising with an ESG fund that owns Exxon, for instance, our returns are going to be better. And over time, everybody is going to invest this way. They're going to find companies that are cheap for whatever reason—in the case of Exxon, it was because they were a carbon emitter—and then if they can make the company more investable through engagement, their returns will be better, and we'll have one investment style, which is the stakeholder model where you have to consider all of these constituencies because there's value to be created in doing so. And the supremacy that margins and other kind of issues around financial engineering, that starts to wane because these, these are imperatives. And companies that can solve the climate and income inequality imperative will get the highest valuations. And if they start as a company that's considered part of the problem, and you make them less part of the problem, or you make them part of the solution, your returns will be great. So ESG will disappear for all the right reasons, and it'll be about how do you derive long-term returns at your companies.

[00:23:24] **de Rothschild:** I agree that ESG will go away, and I agree in the context of, a rose by any other name shall smell as sweet. I think we can drop ESG and go back to what is business at its best, and business at its best serves its customers, it serves its workers, it serves its communities, and it creates great returns, or decent returns, for shareholders. And I think that should be our focus. It's not about what we call it. It's really about what we do.

[00:24:03] **Talley:** I want to thank both of you for an engaging podcast.

[00:24:07] **Ubben:** You bet. Cheers. Thanks, guys.

[00:24:09] **de Rothschild:** So happy to be back with Columbia.

[00:24:12] **Gillis:** Our guests today were Lynn Forester de Rothschild and Jeff Ubben. Join us next time for another episode of *Beyond Unprecedented*. And make sure to follow us on Apple, Spotify, or wherever you get your podcasts. Thanks so much for listening.

[00:24:26] **Talley:** *Beyond Unprecedented* is brought to you by Columbia Law School and the Ira M. Millstein Center for Global Markets and Corporate Ownership. This podcast is produced by the Office of Communications, Marketing, and Public Affairs at Columbia Law School. Our executive producer is Michael Patullo. Julie Godsoe, Cary Midland, and Martha Moore, producers. Editing and engineering by Jake Rosati. Special thanks to Erica Mitnick Klein and Molly Calkins at the Millstein Center, with research assistance from Alice Legrand. If you like what you hear, please leave us a review on your podcast platform. If you're interested in learning more about law, the economy, and society, visit us at law.columbia.edu, or follow us on Facebook, Twitter, and Instagram.