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Corporate Purpose—and EVA Once More?

Columbia Law School Symposium on
Corporate Governance “Counter-Narratives”: On Corporate Purpose and Shareholder Value(s)

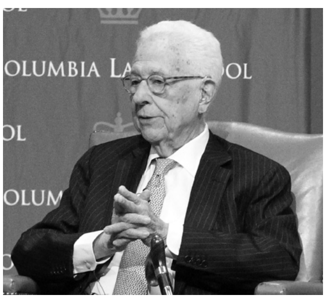
Columbia Business School

COLUMBIA LAW SCHOOL SYMPOSIUM

Corporate Governance “Counter-Narratives”: On Corporate Purpose and Shareholder Value(s)

SESSION I: CORPORATE PURPOSE AND GOVERNANCE

Columbia Law School | New York City | March 1, 2019



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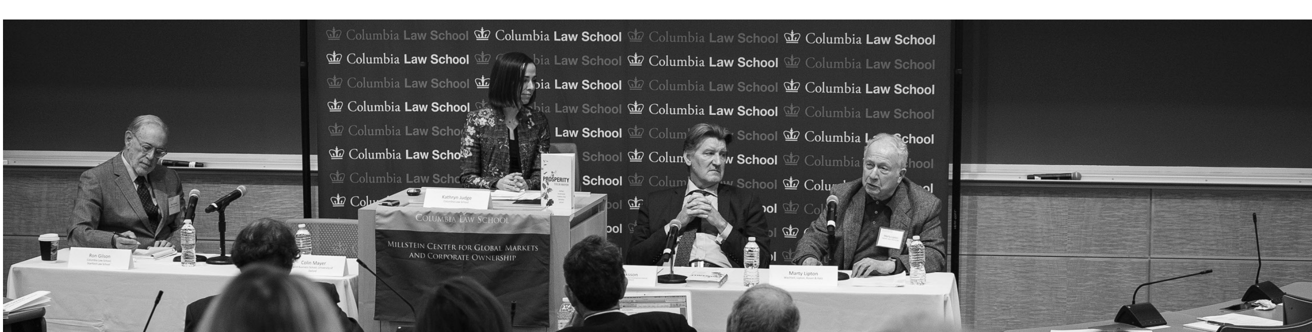


There have been many recent and very public examples of what is widely viewed as a breach of trust between corporations and the public. For capitalism to survive and thrive going forward, we need to repair that trust. It is a multifaceted problem that will require multifaceted solutions. – Kristin Bresnahan

Kristin Bresnahan: Good morning, I'm Kristin Bresnahan, Executive Director of the Millstein Center for Global Markets and Corporate Ownership, and I'm especially pleased to welcome you all to Columbia Law School and to the Millstein Center's conference: Corporate Governance "Counter-Narratives": On Corporate Purpose and Shareholder Value(s). Today is going to be a fascinating day of great conversations, and we're very glad you all are here to take part in them.

When I started at the Millstein Center last summer, one of the first things Ira Millstein said to me was that he wanted it to focus on issues on the corporation's role in society and on exploring plausible alternatives to shareholder primacy as the primary aim of and guide for managing corporate enterprises. We both believe that such an exploration is a critical step in righting the course of capitalism—which, while producing impressive returns for shareholders during the last several decades, has contributed to environmental problems and growing inequality.

Over the past eight months, the sense of urgency around these issues and the future of democratic capitalism has risen to the top of concerns of the collective consciousness, becoming the focus of presidential candidates, much debated proposed legislation, and countless books, articles, and op-eds, many of which have been written by people in this room. We've all seen headlines like "The Millennials and the Younger Generations Are Souring on Capitalism."

What does all this mean for the future of American business? There have been many recent and very public examples of what is widely viewed as a breach of trust between corporations and the public. For capitalism to survive and thrive going forward, we need to repair that trust. It is a multifaceted problem that will require multifaceted solutions.

Fortunately, we have gathered many great minds that have spent a lot of time thinking about these issues here today, and they're going to get us on the right track for exploring what we're going to do about it. I'm very proud of the fact that we will be hosting conversations representing a wide variety of perspectives, and I'm hoping that everyone here will be challenged to think about these issues in a different way when they leave today.

This conference is just the beginning of a larger project that we hope will frame research designed to answer questions about how best to address these issues, and in that effort we are excited to work alongside and collaborate with other organizations interested in the same goal, including the Coalition for Inclusive Capitalism and the World Economic Forum.

So, with that I'm going to turn the microphone over to the center's founder, Ira Millstein. Thank you.

Ira Millstein: Thank you, Kristin. Good morning, everyone. Thank you all for joining us and coming out for this important discussion.

Today we live and work in a very complex and constantly evolving capital market system, one that is filled with both political and economic uncertainty. This means that corporations need to be able to evolve with the changing times.

The corporation has three legs: management, the board of directors, and shareholders. Management's role has been vital from the beginning as the engine of corporate performance. For much of the 20th century, managers exercised considerable control over public companies. But once passive boards are now embracing a more active role in oversight and planning. Over the past decade, a coalescence of economic power has reinvigorated shareholders into more active involvement with the companies they invest in. Once faceless groups of shareholders of different varieties now have more significantly concentrated power, particularly the ability and inclination to wield considerable influence over the corporation through its directors.

Today's reality is that shareholders play a critical role in the success and

Directors and corporations are not immune from the power of the capital markets, the power of shareholders to impact stock price, and the ability to raise capital, executive compensation, and a host of other sensitive points. So for me, the looming question for all of us is this: Can we find a way to help public companies achieve the necessary balance between shareholder value and stakeholder demands, which may require shareholders to forgo shorter-term profit, either temporarily or even longer-term? – Ira Millstein

longevity of a company. They provide the capital that corporations require for growth—and just to sustain their operations. So corporations cannot turn a blind eye to shareholders or their demands for faster and visible so-called "shareholder value." And shareholder value, over decades, has become the shareholder primacy standard that now prevails in corporate America. The corporation's purpose was to generate profit for shareholders.

It has increasingly been argued that this mindset has inhibited growth and innovation while boosting shareholder returns in the short term. And this mindset is now being challenged. The challenge is coming from a variety of forces and in unexpected ways from what we call corporate "stakeholders." There is currently growing momentum from a diverse group of stakeholders to think beyond quicker profits. Such stakeholders include not only the shareholders, but also employees, suppliers, customers, and the community from which the corporation draws its resources or that may otherwise be affected by its actions.

The most recent proxy season illustrates my point. Proxy demands for governance changes, including the #metoo movement, gun safety, climate and environmental change, human rights, and the opioid crisis, are on the rise. Corporations are being asked to take the lead. The calls won't go away. These shareholder demands cannot be ignored. Rather, they now must be balanced with shareholder demands for short-term profits and price swings.

So the management and oversight of a public corporation is a balancing act. And the question for all of us is: How do directors strike the right balance? Also, do the current institutional structures—including existing laws, regulations, and incentive structures—encourage this balance?

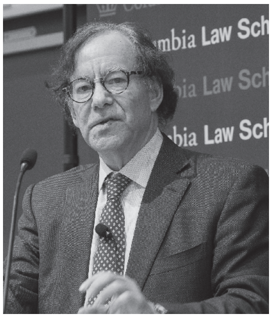
Under our existing legal framework, as long as directors satisfy their fiduciary duties, the law gives directors incredible flexibility, principally through the business judgment rule. In fact, there are very few situations where director decisions are subject to the more stringent standards of review of enhanced scrutiny or entire fairness. Directors should take solace from knowing they are legally empowered to make decisions they deem to be in the best interests of the corporation, which includes balancing stakeholder demands when appropriate. But does the current legal framework provide the freedom and protection that directors need to act?

Directors and corporations are not immune from the power of the capital markets, the power of shareholders to impact stock price, and the ability to raise capital, executive compensation, and a host of other sensitive points. So for me the looming question for all of us is this: Can we find a way to help public companies achieve the necessary balance between shareholder value and stakeholder demands, which may require shareholders to forgo shorter-term profit, either temporarily or even longer-term?

I believe these will be difficult judgment calls based, we hope, on some form of empirical studies. I have no answer yet for myself, only questions. First, the interests of management, boards, and shareholders will have to be aligned—and this will require deft handling. We can't afford internecine warfare. This implicates governance. But are we convinced that better governance will improve corporate performance? Do we need this, or is it obvious? Is it necessary?

Do we need to consider a different form of governance such as private equity? Do directors need to be more

So the way I look at the ambition of today is that we had a narrative, the Friedman approach—and really the ALI approach—in which the shareholders are first. But today we're asking: Is that a sustainable story? And if it's not, then what are the alternatives? – Jeff Gordon



and better informed on corporate operations and their extrinsic forces to make informed decisions? Do we need some legislative or regulatory changes to accompany private efforts to balance? There are many more questions, many of which will emerge from this conference. The conference, sponsored by the Millstein Center, goes to the core of the center's reason for being: gathering the best and brightest to raise even more important questions and attempt to provide the knowledge that lead to answers as neutrally as possible, without bias or ideologies.

Bresnahan: Thank you, Ira. Now, let me introduce Professor Jeff Gordon, who is one of the co-directors of the Millstein Center.

Jeff Gordon: Thank you, Kristin. I've known Ira for almost my entire career as a legal academic. Ira and Mark Roe and I have been going at these issues for a very long time. The fascinating thing is that although the questions are perennials, the answers change over time. And that's because the owners of companies change—and the markets and the world change with them.

So the way I look at the ambition of today is that we had a narrative, the Friedman approach—and really the ALI approach—in which the shareholders are first. But today we're asking: Is that a sustainable story? And if it's not, then what are the alternatives?

In thinking about today's conference, we have had the good fortune that Colin Mayer, a distinguished Oxford don, has written an exciting new book that he calls "Prosperity"—one that provides what is, in several ways, a radical take on some of these questions.

So, Colin is the anchor tenant for today's event, and we greatly appreciate his trekking across the Atlantic—and with Brexit maybe he'll even stay, but you never know.

We also thank His Honor Leo Strine for his willingness to engage in this debate today. We all know Chief Justice Strine as a judge who puts all the academics to shame, because he has a day job and manages to produce more articles in the law journals than most of the rest of us who don't have the excuse of being a judge. And Bruce Greenwald, who is a Columbia business school professor who packs in students in the courses he teaches, will also be here later in the day.

So it's going to be a day of narratives and alternatives to the narratives. And although the Millstein Center's advisory board was, I think, the instigator of this day, there are many on that board, and many associated with the center, who have different perspectives on these questions: What's the issue to be solved, and how do we solve it? I think it's the right time to be addressing these things in a fresh way.

Now let's begin our first panel with Professor Colin Mayer, who is the Peter Moores Professor of Management Studies at Oxford's Said Business School. Colin is also the academic lead for the British Academy's Future of the Corporation program, whose mission is to examine the changing relationship between business and society by looking at the interaction between statements of corporate purpose and public perceptions of business. He is also a director of the energy modeling company Aurora Energy Research Ltd., and advises companies, governments, international agencies, and regulators around the world.

Colin, the podium is all yours.

Prosperity—and the Purpose of the Corporation

Colin Mayer: Thanks, Jeff, for the kind words. And thanks to you and Kristin for inviting me to participate in this wonderful conference. It's a great pleasure and privilege to be here.

I'm going to talk about one of the most important institutions in our lives. It's not the state, religion, or Columbia Law School. It's an institution that clothes, feeds, and houses us, that employs us and invests our savings, and it's the source of economic prosperity and the growth of nations around the

Companies are not just nexuses of contracts. They're also nexuses of relations of trust based on principles and values enshrined and upheld by the board of directors. Now that notion of capitalism is also a coherent, self-contained idea—one that's about solving problems by owners and boards of directors who are committed to the solution of those problems by building up relations of trust with other parties. – Colin Mayer

world. But at the same time, it's been the source of growing inequality and harm to the environment. In response to this double potential, for good and for ill, the British Academy and the National Academy of the Humanities and Social Sciences last January launched a major program of research that Jeff just mentioned called "The Future of the Corporation."

It brought together more than 30 academics from across the humanities and the social sciences around the world, including many academics in this country—including one now sitting right in front of me, Jeff Gordon!

The objective of the program is to consider how business can and should change in the coming decades to address the economic, social, and political challenges it faces, as well as the normal commercial and financial ones; and how it should best take advantage of the tremendous technological advances now in progress.

In November 2018, it published 13 papers based on that research along with a report that summarized the findings. What emerged was a remarkable degree of consensus. Despite the fact that people all worked independently and came from very different academic backgrounds, and from very different institutions and parts of the world, there was a really striking degree of consensus around three themes.

The first was the need for and urgency of change; the second was the reconceptualization of business; and third was identification of the instruments and the key policy drivers required to bring about change. And underpinning these three conclusions is one key factor: the general loss of trust in business.

Every year for the past 35 years, Ipsos MORI, the market research company, has been undertaking a survey of which professions in Britain people trust to tell the truth. At the top, alongside doctors, nurses, and teachers I'm pleased to say, come university professors. We might not have much power, pay, or prestige; but at least people trust us to do nothing, earn nothing, and take no credit for it.

Near the other end come business leaders, just above realtors, professional footballers, journalists, trade union leaders, and, at the rock bottom, politicians. And this low esteem for business leaders is not just a bankers' phenomenon; bankers are actually separately reported, and ranked above business leaders. And this is not just a post-financial crisis phenomenon; it's been true for nearly all 35 years of the survey.

Mistrust of business is profound, pervasive, and persistent. Why is that the case? I suggest the answer has a lot to do with the Friedman doctrine that there is one and only one social purpose of business: to increase profits while staying within "the rules of the game." That principle has been the basis of business practice, policy, and teaching around the world ever since. But it wasn't always so.

Indeed the corporation was established under Roman law to undertake the public functions of collecting taxes, minting coins, building infrastructure, and maintaining public buildings. For nearly all of its 2,000-year history, the corporation has combined its commercial activities with a public purpose. It's only over the last 60 years that this notion that there is only one purpose of business—to make money—has emerged. It is this that is the source of great inequality and environmental degradation—and, I would argue, of that pervasive mistrust.

And the problem is only going to get worse because, while technology offers tremendous opportunities for enhancing the well-being of society, it also poses serious risks. As technology accelerates, so too does the lag between business innovation and effective regulatory and policy responses.

But things are changing. Two months ago, Larry Fink, the CEO and President of BlackRock, wrote a letter in which he said that "every company needs a purpose—not a strap line or a marketing campaign, but a statement of its fundamental reason for being, what it does on a daily basis. Purpose is not the sole pursuit of profits, but the animating force for achieving them." And Fink is not the only leader of a multitrillion-dollar asset management firm to have said that; the leaders of Vanguard and State Street have also weighed in with much the same message.

Moreover, it's not just the leaders of investment management firms that are saying this. Britain, in some respects, led the world in setting corporate governance standards. Since the Cadbury Committee set out in 1992 what has become known as the Corporate Governance Code, those standards have provided the basis of corporate governance codes for companies around the world, including those governed by the OECD principles on corporate governance.

But last July, the Financial Reporting Council issued a new corporate governance code that declared that the objective of corporate governance is not just to address the agency problem of aligning managerial interests with those of shareholders; corporate boards are now also charged with ensuring that their companies give clear statements of and then carry out their corporate purposes. It is the role of the board of directors to ensure that companies make that commitment and have the resources to make good on it.

Two months ago, the Financial Reporting Council and the Financial Conduct Authority issued a statement about the stewardship of investment management businesses saying that such firms should have a purpose that is not simply about maximizing the returns of their beneficiaries, but also influencing the social policies of the companies in which they invest.

There's also been, as I'm sure you're aware, a significant change in political attitudes.

Elizabeth Warren has proposed her Accountable Capitalism Act, which would require corporations with revenues of at least $1 billion to have a public charter with a stated public purpose. In France, President Macron has suggested putting the notion of raison d'être at the core of the French commercial code. In Britain, the Labour Party opposition has reintroduced the idea of renationalizing the companies that Britain led the way in privatizing in the 1980s—an idea that would have been inconceivable just three years ago.

Now all of this reflects a profound change in people's attitudes towards the role of companies in society; and it illustrates the speed, breadth, and scale of the change that's in motion. But in particular, it reflects the fact that we need to reconceptualize our notion of business around why it exists, what it's there to do, and why it was created—in other words, its purpose. Then business policy and practice should follow from and reinforce that purpose.

The purpose of business is not to produce profits. The purpose of business is to produce profitable solutions to the problems of people and planet. Profits are produced as part of this process, but profits per se are not the purpose of business. Everyone who runs a successful business knows that to be the case. Successful businesses don't profit from creating problems for people and planet. Instead, they commit to pursuing the common purpose of the corporation, and they make a commitment to other parties—customers, suppliers, local communities—whose efforts in turn contribute to that common purpose.

That sense of and commitment to common purpose gives rise to reciprocal relations of trust, which provide the basis of the mutual benefits that accrue to all the parties to the firm, including the shareholders. It gives rise to more loyal customers, more engaged employees, more reliable suppliers, and to more patient and supportive shareholders and prosperous societies. And that prosperity in turn gives rise, in a virtuous cycle, to greater revenues, lower costs, and therefore more profits for businesses.

Now underpinning the operation of this cycle is the trustworthiness of companies in upholding those corporate purposes. That trustworthiness is dependent on the values of the business, their honesty and integrity, and cultures of commitment to those corporate purposes. These three notions of purpose, trustworthiness, and enabling values are what underpins the critical factors that make possible a reconceptualization of business in the 21st century.

To achieve this reconceptualization requires a fundamental rethinking of four sets of policies:

The first is in relation to law and regulation. Law, at present, we associate with shareholder rights and the fiduciary responsibilities of directors to promote the interests of shareholders. That's a mistake. The law should aim to promote corporate purpose and the fiduciary responsibilities of directors to do the same.

We view regulation in a Friedman context as setting forth and enforcing the rules of the game. But, again, that should not be the primary aim of regulation. Regulation should instead be designed to align corporate purposes with public purposes in those companies where it's appropriate to do so, in particular in the case of utilities, infrastructure companies, private/public sector providers, and banks and auditing companies. In such institutions, it's completely appropriate—and in fact critically important—to think about how one can align the private interests and purposes of companies with those of the public interest.

A second set of policies relate to ownership and governance. Ownership today continues to be associated with shareholders and, in particular, institutional shareholders. But ownership should be viewed as entailing not just the rights of shareholders but their *responsibility* and obligation to uphold corporate purposes. There are many types of owners that are best suited to performing that function in particular circumstances. Examples are families, foundations, employees, the state, as well as institutional investors.

Governance, as I just described it, has typically been associated with the agency problem of aligning managerial interests with the shareholders,' but as has been recognized in the recent corporate governance codes, the more important, or overarching, goal may instead be aligning the interests of management with corporate purposes.

The third set of policies relate to measurement and performance. At the moment, we measure the financial performance of companies by recognizing the costs of financial and material capital; but increasingly we're appreciating that what is actually more important in the 21st-century company are other forms of assets, such as human, natural, and social assets. We should be measuring and recognizing expenditures on replenishing those assets as value-adding forms of investment. And the profits of the companies should be stated not just net of the cost of physical capital, but net of the costs associated with maintaining human, social, and natural capital.

The final set of policies relate to finance and investment. In the past, we have associated finance mainly with contractual arrangements between suppliers and users of finance, partly because the tax system favors debt over equity. But even when capital comes in the form of equity, it tends to be supplied mainly by dispersed shareholders with whom it's impossible for companies to have relationships. We need to recognize that strong relationships between investors and companies are important both in the provision of debt finance, particularly in the case of banks, and for companies seeking to attract "relational" shareholders.

In so doing, we need to recognize the potential importance and value of blockholders as well as dispersed shareholders. Moreover, corporate investment depends not just on relationships with the private capital market, but also on relationships with the public sector, because there are many areas–-particularly large, long-term infrastructure investment—where private capital markets on their own are simply unable to provide the types or amounts of financing that companies need.

In such areas, it is especially important that there are strong relations of trust between government and business. It is there where the aligning of the interests of companies with the public interest is particularly important—say, by including statements of public purpose in their charters or their articles.

So, those four sets of policies around law and regulation, ownership and governance, measurement and performance, and finance and investment are the basis on which to bring about the desired change in business. None of the proposed changes is radical; in fact, many of them have already, in one form or another, been adopted. Consider, for example, the creation of the public benefit corporation, which has a stated public purpose, alongside its commercial purpose.

The incorporation of licenses within statements of public purpose is being seriously contemplated as a way of addressing the problems associated with privatization to avoid the risk, particularly in the U.K., of "renationalization." The forms of ownership that are required to produce relations between companies and investors are commonplace around the world in the form of blockholders and, in particular, family holdings. The corporate governance reforms that I've just been talking about—those requiring board consideration of social problems in corporate decision-making—have already been introduced in the U.K.

Lots of organizations have committed themselves to measuring human, social, and natural capital. There are various ways of adjusting profits in terms of, for example, impact investing that have been proposed. And the closer relationships between providers of finance and users of finance is very much a feature of the way in which some banking systems operate, including the close relationships between private capital markets and public sources of finance. This is important not just in terms of promoting the interests of society and future generations, but also in improving the performance of companies and their investments.

I want to illustrate this point by introducing an example from the most troubled industry we've had during the last few years—namely, the banking sector. But I am referring to one of the most successful banks in the world over the past 20 or so years. It earned high returns for its shareholders not only before the financial crisis, but during and after the crisis. It's one of the most highly rated banks in the world. And it has one of the best credit ratings—and one of the best liquidity and solvency ratios—of any bank in the world.

It's also a bank with a clearly defined purpose, a purpose that puts its customers first alongside the interests of its employees—while at the same time it also has an objective to be the lowest-cost provider of any of its competitors. It's succeeded in doing that for the past 44 years. And it's one of the fastest growing banks in Britain. But it's not a British bank; it's a Swedish bank—called Handelsbanken. One of the features of this bank is that it has one of the highest degrees of customer satisfaction, certainly of any bank in Britain, and in most of Europe as well.

And as one might expect, Handelsbanken has inspired much greater loyalty among its customers. That's a reflection of what I was describing just now as the reciprocal relations. Give, and you will be given. What underpins this is the governance and the values of the organization.

One major underlying principle behind the bank's success is its devolved, decentralized decision-making down to the individual branches and avoiding centralized control of the bank. Indeed the bank's mantra is; the branch is the bank.

The branch manager makes decisions about everything from the pricing of products, what products are sold, which customers they're going to serve, and how the products are marketed. What that does, of course, is to empower the branch and the branch manager to make decisions. They don't have to refer decisions up all the time in the organization. That allows those branch managers to build relations of trust with their customers, which gives rise to that observation of greater loyalty.

But what underpins the bank's success with customers is the notion of trust, of people working in the organization, that allows that devolution and decentralization of decision-making. And what underpins that trust is a very strong set of values. Those values are firmly embedded in the people who run those branches. The consequences are that because of its more loyal customers, the bank has a more stable financial source. It therefore has better financial performance and ratios than other banks.

But there's a second interesting feature associated with that element of trust in the employees. It doesn't pay its employees any bonuses.

We're told all the time that you've got to pay your employees a bonus. Handelsbanken pays no bonus until they retire at the age of 60—a truly long-term investment incentive—at which stage they get a share in the profit-sharing scheme of the bank called Oktogenen.

The third interesting feature of the bank is its ownership structure. It's listed on the Swedish stock market. It's actively traded, but it has two dominant shareholders, one of which is Oktogenen, which is the bank's own profit-sharing scheme, and the other is its Swedish industrial holding company called Industrivarden.

What this illustrates is that the bank has exactly the principles that I've just been talking about in terms of a clearly defined purpose, strong underlying values, a process of measuring performance in relation to human and social capital, and the relation of incentives to those measures of performance. It has a governance structure that is aligned with the delivery of that corporate purpose in terms of the delegation of decision-making, and it has an ownership structure in which there are identifiable "anchor" shareholders who are likely to have the strongest interest in and commitment to upholding that long-term purpose.

The significance of this arrangement is in terms of the way in which we conceptualize our notions of capitalism. This is the point on which I want to draw this to a close. At present, we regard capitalism as an economic system of the means of private ownership of the means of production and their operation for profit, and we see ownership as being a bundle of rights over the assets of the firm that confers strong forms of authority on the possessors of those ownership rights. We view companies as nexuses of contracts that are managed by boards of directors for the benefit of their owners.

That is a very coherent, internally consistent notion of capitalism; namely private ownership for profit by owners that have strong forms of authority on other parties with whom it contracts. But there's a parallel notion of what capitalism is—that is, an economic and social system whose mission is to produce profitable solutions for the problems of people and planet by private and public owners who do not profit from producing problems for people or planet. Ownership is not just a bundle of rights, but also a set of obligations and responsibilities to uphold those purposes.

Companies are not just nexuses

of contracts. They're also nexuses of relations of trust based on principles and values enshrined and upheld by the board of directors. Now that notion of capitalism is also a coherent, self-contained idea—one that's about solving problems by owners and boards of directors who are committed to the solution of those problems by building up relations of trust with other parties.

What aligns the private interest of companies with the public interest, according to the traditional model of capitalism, is a combination of competitive product markets, labor markets, and financial markets—and, in cases where markets fail, regulation. But what underpins the need for this alternative view that I'm talking about is that between market efficiency and regulatory effectiveness, there is a void; and this void is increasingly becoming a chasm as technology accelerates, and as evidence proliferates of both market failures and government failures.

In that void we rely on business to transform our private self-interest into collective, communal interest in a common purpose. To do that we depend on the trustworthiness of companies to uphold and contribute to that sense of purpose. Trust is one of the most important and largely unrecognized assets of companies, because ultimately a trustworthy corporation is a commercially successful corporation and the competitiveness of nations depends on the trustworthiness of its corporations—for the prosperity of the many, not just for the few, and for the future as well as the present. Thank you very much.

Kathryn Judge: Thanks, Colin. And for those of you who haven't read it, Colin's book does a remarkable job of laying out, in much greater detail than what we've just heard, a coherent vision of an alternative paradigm that is possible. And, to discuss that vision and to discuss the broader question of how we go about building a counternarrative, we have a remarkable panel to round out what has been a great start to the day.

We're going to start with Ron Gilson, who is the Marc and Eva Stern Professor of Law and Business at Columbia Law School and Meyers Professor of Law and Business emeritus at Stanford Law School. Ron is also a Senior Fellow at the Stanford Institute of Economic Policy Research, a Fellow of both the American Academy of Arts & Sciences and of the European Corporate Governance Institute, and he was one of the reporters of the American Law Institute's Corporate Governance Project. Ron's academic work focuses on the law and economics of corporate governance and acquisitions, along both comparative and domestic dimensions, and on the economic structure of transactions and complex contracting, including venture capital contracting.

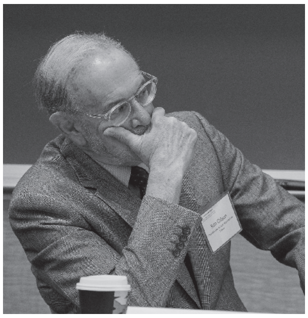
Legal and Political Challenges to Corporate Purpose

Ron Gilson: Thank you, Kathryn. Following Colin is always a difficult role; the combination of a spectacular presentation style and equally interesting ideas is bound to give you a sense of sweeping up after elephants. But that said, I very much appreciate the opportunity to participate in this panel. Sweeping up after elephants is an important task.

As I expect will be repeated throughout the day, this is a very unusual moment in corporate governance. Colin's presentation and, soon to come, Marty Lipton's provide perspectives on a set of issues that are as important as any I can recall in my 40-some years of studying corporate governance. Here we have two leading participants in the corporate governance debate over the years, a world-class academic and a world-class lawyer, announcing the need for a radical change in the way we do business in order to avoid a populist apocalypse. I really can't remember a similar conversation where the stakes are claimed to be so high—maybe hostile takeovers in the '80s and activist investors now, but these claims always reflected a significant amount of hype—and we're going to have the conversation with just the right people. For that reason alone, our discussion should be fascinating.

I'm going to address, in my Warhol moment, both Colin's presentation and its compatibility with the work that Marty has done in his "New Paradigm." My focus will be on three general points. The first is to ask whether in fact Colin and Marty have the issues framed right. The second is how do we get from these broad statements of principles to the claimed better place. The third is a more general and more troubling problem: does the link between managerialism and the defense of capitalism against the populist hordes confuse corporate governance and real governance?

I'll start with Colin's remarks. Colin tells us that we require a "radical reinterpretation" of the nature of the corporation. That reinterpretation involves each company's board creating a sacred text that sets out the corporation's purpose in some larger way—something between a little red book and a mission statement—whose end is to cause the company, through the exercise of crafting such a statement, to focus on the way the company's business and its interests interact with broader social policy. Under current circumstances, Colin tells us, neither the shareholders nor current corporate governance practice succeed in aligning corporate and social interests.



My simple prediction is that large institutions… will shift their indexed holdings to the most socially responsible manager… and they'll take a little bit of reduction in return because that in fact is what the managers of their beneficiaries want… [T]he result will be to shift… to a different set of activists. One set was after money—and maybe you can make a deal with those people. The other is driven by principle, which is harder to compromise. If my concern… proves right, the problem then is less socialism… but rather an activist-driven Green New Deal. – Ron Gilson

Marty, as I understand the motivation for the New Paradigm, is pretty much on the same page. Marty puts it well when he says, "Capitalism is at an inflection point." And in another nicely turned statement, he says, "The prioritization of the wealth of shareholders at the expense of every other stakeholder has given rise to a deepening inequality and populism that today threaten capitalism from both the right and the left."

The New Paradigm is Marty's response to this pincer threat to capitalism. He envisions an implicit partnership between corporate governance and stewardship. An *implicit* partnership, of course, is not a partnership at all; it's a group of people who have shared interests and voluntarily act in ways that reflect that overlap—people my age will recall Kurt Vonnegut's concept of a "karrass" in *Cat's Cradle*. That kind of partnership will allow business to address what for Marty and Colin is the real culprit—one that we all know well from the rhetoric of the last 10 years: corporate "short-termism."

Here Marty's view differs at the edges from Colin's. Marty typically has not favored imposing legal restrictions on management decision-making, even if management gets to define them. But this difference in formal implementation isn't critical, I think, because Colin's formal reinterpretation of the board's duties to require a statement of broad purpose is effectively unenforceable other than through ownership. To be sure, Colin floats the idea that a fiduciary duty can be imposed on directors to follow the corporate statement of purpose—and that, if the board does not pursue that purpose, courts will intervene to decide whether the balance among shareholders and other stakeholders was struck correctly. I expect that this proposition will strike every corporate lawyer in the room as utterly implausible—Colin's fiduciary duty is a business judgment-style standard that is highly unlikely to have any bite.

And that leads us to where Colin's talk ended—namely, to the structure of corporate ownership, and to Colin's attraction to families and other kinds of controlling blockholders. Colin notes that two management-related shareholders hold 20+% of Handelsbank's voting power with a charter limit of 10% on the votes any single shareholder can hold. Here the problem is the framing of the dilemma that has brought us here today: in a period of genuine and warranted concern about income inequality, the idea of concentrating control of major corporations in a small number of families or in management is not an issue of just *corporate* governance. It's an issue of *real* governance. In the U.S., we assign distributional decisions to those who are politically accountable for them, and allocational decisions to those who are disciplined by the market. Putting control over distributional decisions in boards of directors that, however diverse along other dimensions, are made up of older rich people who are accountable to no one hardly seems like a response that will placate the populists. At any rate, dealing with distributional issues requires thinking about how we run our democracy, not our corporate democracy, and is hardly going to be resolved by changes in corporate governance. Put bluntly, neither Colin's radical reinterpretation nor Marty's new paradigm will placate Jeremy Corbyn in the U.K. or Bernie Sanders in the U.S.

I now want to come back to Colin and Marty's framing of what seems to be the underlying problem: the curse of corporate short-termism. Each of them I think has it half right. Markets sometimes lack information that management has but cannot easily share with the market, and so can cause management to choose an investment horizon that is too short. But such market myopia is only one side of the problem. The other half is that managements can also be "hyperopic" when assessing the promise and value of their current strategy.

Governance, whether it's a radical reinterpretation or a new paradigm, confronts a single core problem. When we're operating through a board and through management, how does the board distinguish between two cases: where the market lacks management's private information, and so short-termism is likely to be the problem—and where management is holding what amounts to an out-of-the-money call option on their career and so behaves just the way that option pricing theory predicts—that is, the value of management's position is increased by extending the option's duration, making the argument that if their shareholders are patient and give them more time, the expected payoffs will materialize.

The old General Motors and GE currently provide examples of such hyperopia. A third example is closer to home for me: PG&E deferring maintenance of transmission lines and so providing Northern California both electricity and fires. So, we also have evidence of managerial skewed beliefs about the future payoffs from their current strategies.

Both myopia and hyperopia are important problems. And in some cases, identifying them isn't hard. But balancing short-term and long-term considerations when managing companies is a very difficult task, maybe the greatest challenge facing managements and boards. And for investors, distinguishing between shortsighted and well-disciplined managements—and between farsighted companies and those for whom the payoff will never materialize—is often impossible.

With that setup, what do we make of this joint Anglo-Saxon reframing of corporate governance? Albert Hirschman is the author of what is widely viewed as the most important piece of informal corporate governance scholarship. It's a book called *Exit, Voice, and Loyalty*. Near the beginning, Hirschman asks: "How do I identify when, in the face of a poorly performing organization, when we should leave, when we should yell, and when we should stay?"

Getting this question right is, as I suggested, one of the biggest challenges facing boards. And so I want to direct you to a different Hirschman book that speaks to the set of issues that Colin and Marty talk about: that business has dug itself so deep a hole that we can't climb out of it without making social interests an integral part of corporate governance. The book is called *Shifting Involvements: Private Interest and Public Involvement*. There Hirschman lays out an endogenous, long cycle in which public concern shifts back and forth between private interests and the public interest.

To illustrate the working of this cycle, I remind us of one piece of history. Long ago in a galaxy far away—Marty will remember it—people became concerned that the efforts of a Georgetown academic named Donald Schwartz to persuade Congress to federalize corporate law might actually work. The result was the American Law Institute's "Principles of Corporate Governance," which turned out to be a way to marginalize Schwartz's effort. Academics understood what was happening. If something's going on that you don't like, what's the answer? We study it. If we study it long enough, the Hirschman cycle runs—as it did in the case of federal incorporation.

So the puzzle today is this: On both sides of the Atlantic, there's been a Hirschman-like swing of the pendulum toward public interests. What's going on? Here I offer just a speculation—or more, really, a question to both Colin and Marty. On Colin's side of the Atlantic, one can't help but note the sharp difference between Colin's radical reinterpretation of corporate law and Jeremy Corbyn's and the Labour Party's approach to the same set of issues.

Labor's agenda, as I read the newspaper accounts, is renationalization, worker representation on corporate boards, limits on dividend payments, and some other pretty intrusive initiatives. Colin's proposal of requiring a corporate purpose beyond maximizing profits seems radically more favorable to management. I have no idea, though Colin may, about any correspondence between the timing of the British Academy project and Corbyn's succession to Labour Party leadership. We see the same thing on our side of the Atlantic. Senator Warren's Accountable Capitalism Act that Marty refers to essentially covers much of the same ground as, and shares many of the aspirations of, Corbyn and the Labour Party.

Let me close by talking about the feasibility of the two presentations. Focusing on feasibility is not to deny the power of the underlying theme, but rather to think about how we might get from here to there. I've mentioned my concern with Colin's framing—that the courts won't enforce it, and that the concerns of populists are not likely to be met by creating an even more unequal distribution of power within the country. Marty's solution, as one might expect from a very good lawyer, is more technical. Here I will just suggest that the real question being asked by the New Paradigm isn't a matter of corporate governance; it's really a matter of asset management.

For example, Exxon has tried to keep off the ballot an institutional investor-backed proxy proposal requiring greater disclosure of the impact of climate change on Exxon's business. The proponents included a sovereign wealth fund with $1.2 trillion under management. Although $1.2 trillion sounds like a lot, it's actually not. There's another group, Climate Action 100+, with 323 institutional investors as members that in the aggregate have assets under management of $32 trillion. That number can be significant if there is an issue that joins that group—that makes them an implicit partnership. And that does concern me.

I have six points of concern.

Point One: The first point starts by noting that the business of the three large index holders is pretty straightforward. Profitability depends on massive economies of scale, and hence on attracting assets.

Point Two: Asset flows in the index fund industry, in contrast to active management, don't depend on the managers' performance because performance by definition does not differ among competitors in terms of returns (only in terms of fees), and the price differentials are marginal.

Point Three: A large and growing amount of institutional assets have been voting for ESG-based proxy proposals to accommodate the perceived preferences of their own beneficiaries; the fund managers think such voting will attract asset flows, and this behavior—which is not necessarily consistent with value maximization by companies or their investors—is an example of what Jeff Gordon and I call the "agency costs of agency capitalism."

Point Four: The three largest index holders have different records with respect to voting on climate change. Vanguard is the least climate friendly. BlackRock's somewhere in the middle. State Street is much more friendly. And the differences are not insignificant.

Point Five: My simple prediction is that large institutions who are the index funds' customers will shift their indexed holdings to the most socially responsible manager—that is, the manager that votes the way the 323 institutions in the Climate 100+ want; and they'll take a little bit of reduction in return because that in fact is what the managers of their beneficiaries want.

Point Six: The result will be to shift the shareholder activists that Marty and Colin have been concerned about for the past ten or fifteen years to a different set of activists. One set was after money—and maybe you can make a deal with those people. The other is driven by principle, which is harder to compromise. If my concern about the way institutional investors will push money managers to vote proves right, the problem then is less socialism, whatever the term means these days, but rather an activist-driven Green New Deal. However, good shareholders are at one thing or another, and designing cost-effective responses to climate change probably isn't one of them.

That said, I'll stop. But, again, my concern with two enormously well argued positions is not about the goals they hold up—it's how do we reach them. A different, but more realistic answer is just *better* management. Take Costco, a big box store that treats its employees well but still competes extremely well against Sam's Club, which does not. There is more than one way to run a company; and if we can do a better job of persuading institutions that good managers, rather than short-sighted (or excessively optimistic) managers, are what we want, we may do better than radical reinterpretations and new paradigms.

Judge: That was great, Ron, thanks. Last but certainly far from least is Marty Lipton, founding partner of Wachtell, Lipton, Rosen & Katz, who advises major corporations on mergers and acquisitions and matters affecting corporate policy and strategy. Marty is the author of *The New Paradigm—A Roadmap for an Implicit Corporate Governance and Stewardship Partnership,* which argues that corporations and shareholders can forge a meaningful and successful private-sector solution to attacks by short-term financial activists.

Some Thoughts on *The New Paradigm*

Marty Lipton: Thanks, Kathryn. When I listened to Ira's introduction, I said to myself, it's only people of our age—Ira's and mine—who are able to realize that this discussion has actually been going on for a very long time, and that most of the major issues are still not settled. And I'm not quite sure how we're going to settle them. Ron Gilson, as you might expect, pretty much summed up my views exactly as I would state them, so I won't repeat what he has said about them. Ron was also right in saying that my views pretty much coincide with

So what do we do about all of this? One overriding concern of mine has been regulation and legislation. It seems to me that the history of the world has shown that, as you increase the amount of legislation and regulation, and you move away from competitive market determination of these basic economic issues, you move toward and even encourage a totalitarian approach to government and its concomitant, economic failure. – Marty Lipton

Colin's, and that Colin has written a truly unique and magnificent book.

Let's start with the amazing scope of the book. Like the history of the corporation, the book really does start 2,000 years ago and work its way up to not just the current time, but even extends into the future. I think that if we're ever going to solve the problems that we've been discussing, this book is going to provide the basis, or the framework, for solving them. Now, I'm not saying that the book has provided definitive answers to our problems; but there's no question that the book—and the comments of Colin and Ron and Mats this morning—do a great job of identifying and articulating all the important issues. So, we're no longer dealing with something where we don't understand what the issues are. What we've come to recognize is that we are dealing with pretty complicated issues that are very difficult to resolve in ways that end up satisfying the majority—hopefully the vast majority—of people.

But clearly we have not reached that point of agreement or consensus—in fact, it's just the opposite. I'm not sure I can count all of the new paradigms that have been proposed in the last half dozen years to address the problem. Some of the organizations that have been established have aimed to focus capital on the long term. Consider, for example, the Coalition for Inclusive Capitalism—or some of the older organizations like the Council of Institutional Investors and ISS—and I could spend the rest of my ten minutes just listing these organizations and their goals and proposals.

And the law reviews are replete with articles calling for and offering blueprints for fundamental changes in corporate governance. In fact, I got my first major lesson in dealing with law reviews in 1979. I wrote an article that flew in the face of the Chicago school of economics, and they've been after me ever since—with my detractors urging me to recant, or at least defend, my arguments, and my admirers urging me to write more articles.

So what do we do about all of this? One overriding concern of mine has been regulation and legislation. It seems to me that the history of the world has shown that, as you increase the amount of legislation and regulation, and you move away from competitive market determination of these basic economic issues, you move toward and even encourage a totalitarian approach to government and its concomitant, economic failure. If you look at the history of socialism and communism from their beginnings to the present, you see either failure and abandonment of socialism, or the rise of totalitarian governments that become only more extreme over time. Even as in the case of China 30 years ago, when a new regime comes in aiming to create a market economy, it often doesn't take long before you end up with a totalitarian regime.

And with that sense in mind, I've always felt that it's important to try and solve the problems without government regulation. Ron aptly made reference to Ralph Nader and that point in time. The issue back then was not corporate governance. It was really about antitrust; and the debate ended up without any conclusions or resolution. But the ALI spent the next 13 years mulling things over, and accomplishing absolutely nothing. I have the two volumes on my office shelf there; and if you remove all the dust, you'd find a bright blue cover. But no one ever looks at them anymore.

Now there's a new effort underway. Ed Rock is going to try and do a restatement of corporate governance, and I'm sure it will turn out to be an excellent work. But I have my doubts that it will solve any of these problems. And I should confess that I have the same doubts about my own New Paradigm. As I mentioned, there are a lot of organizations and propositions. I wrote a proposal for the World Economic Forum a few years ago called the New Paradigm that focused on the issues of corporate governance and investor stewardship. Although it was published in September of 2016 and handed out at forum in Davos in January of 2017, it hasn't gotten much of a hearing.

Since then, a relatively new group of major investors and large corporations called the Investor Stewardship Group has encouraged me to come out with an updated version of the New Paradigm. Like the first version, the revised New Paradigm consists of principles for both corporate governance and investor stewardship, and principles meant to guide engagements of and interactions between corporate boards and investors.

All of these principles are consistent with those you heard about from Colin earlier: purpose, commitment, trustworthiness, and culture. I think we can all agree that those are the issues that we're dealing with and need to be solved. And I continue to believe that we can solve them.

For example, there is not much dispute today about what corporate boards and corporate management should do. There have been arguments about that over the past 30 years, and they've all been resolved. Almost every major corporation today pretty much follows a set of corporate governance principles that everybody else—whether they believe the principles or not—seems willing, or at least resigned, to follow. So there's not much debate going on now about board responsibilities.

But in the case of the responsibility of shareholders and investors, I'd say there are still major disagreements. To me, it seems clear that the concept of stewardship holds the key to solving the problem. Take Elizabeth Warren's stakeholder bill. Basically what it does is to impose classic stakeholder governance on corporations with a billion dollars or more in revenue each year. The problem with that solution is that, unless the shareholders—who today own approximately 80% of all large corporations—support the principles of stewardship, you're not accomplishing very much.

If BlackRock and State Street and Vanguard all come out and say, we're for purpose and culture, we agree with all of this, but then continue to vote for proposals by activist hedge funds, then we don't accomplish anything. And that's what's happened. There's nothing new in the New Paradigm, and there's really nothing new in the last 30 years. But the competitive features of the investment management business have essentially prevented a real resolution of the problem. Unless we can get the major investment institutions to buy into supporting purpose and culture, we will not solve the problem.

Kristin just held up a zero to me, which either means I'm out of time—or my whole approach to this was a zero, and I should leave knowing that I have failed. I failed once before here in Columbia. I came here in 1955 as a teaching fellow to get a JSD degree studying under Adolf Berle. I arrived with great enthusiasm—and Mr. Berle was really a terrific person. He had only one fault. He insisted that he would accept no thesis other than one that discussed the changes in corporate law that would result from the fact that shareholdings were moving from individuals into pension funds and institutions. And so my thesis should discuss the changes in corporate law that had to take place to accommodate this movement.

Well, I failed. So instead of going back to NYU to be a corporate law professor, I ended up practicing law. But every time I see Jack Coffee, I promise to send him a bundle of the articles I've written since then, and I expect him to send me my degree. I have sent him the articles, but he hasn't sent me the degree.

Questions from the Audience:

Judge: As much as I would love to take moderator's privilege, I think it's important we have a little time for questions from the audience.

Michael Graetz: There are at least three important changes that have happened since Milton Friedman announced what you've described as his rule; and none of the speakers has emphasized any of them. I think each of them has made the problem harder and the solutions more elusive.

One is that the markets have become ever more global under circumstances where the rules remain largely national. The second is that the shareholder ownership of public companies has actually become global, and is becoming ever more global over time. The third, which I think is really most important in raising the concerns that are leading to these proposals, is that business—at least in the U.S.—has become politically dominant in a way it was not when Friedman made his rule, or when the ALI was really studying the first time.

Management has been effective in seeking benefits for its shareholders not only in the marketplace, but in the political realm. And this success has exacerbated the maldistribution of income and wealth, since the shareholders are mostly in the top part of the income distribution. This creates a particular frustration that can be expressed in only electoral, but not legislative politics; it's in the legislative arena where the businesses are dominant, not in the electoral arena. And this risk associated with electoral politics adds to all the risks that Colin and others have described.

And I'm not sure that Colin's notion of corporate purpose would really transform the role of business in the political realm. Maybe it would, depending on what the purpose was. For that reason, it seems to me that limiting business influence in the legislative arena should be somehow worked into the statement of purpose for that to happen.

Lipton: The problem I see with your proposal is the beginning of state corporatism. It's the problem we really want to avoid. As you get companies into government, you encourage government to get into companies. I think one of our mutual objectives is to avoid state corporatism, because it does lead ultimately to totalitarian government.

Josephine Nelson: Colin, you mentioned the value of closer relationships between investors and companies, providers of capital and users of capital, and how that's likely to encourage long-term investment.

For example, you hold up the relationship banking of Handelsbanken as a model. But, in the book, you also mention Bosch, one of the largest private corporations in the world, as a particular example of where a trust owns a corporation and therefore it's a private entity. In theory, private entities are supposed to be more interested in long-term profits, and so should act more ethically. But the reality is that Bosch has clearly been implicated in the Volkswagen emissions scandals, and it's now pled in the Fiat Chrysler scandals. In fact, Bosch seems to have been the entity that spread the emissions fraud all across the auto industry. And this leads me to think that even if companies are privately held and therefore more closely bound to long-term interests—at least in theory—such entities may not be particularly interested in acting ethically if it gets in the way of profit.

So this tees up this issue: How do we exert and maintain pressure for corporate purpose in the absence of shareholder primacy, or at least shareholder pressure, which we're talking about as being a source rather than potential solution to the problem? It doesn't make sense to go back to something that's totally private unless we can figure out how to maintain pressure for purpose and ethical action in that sphere.

So, Colin what would be the structural mechanisms that could bring the ideas of "companies" back into the corporation and not allow the kind of abuses that we are still seeing in private companies?

Mayer: Before I respond to that question, let me thank everyone here for a tremendous set of comments and observations throughout.

And to start with the panel, let me respond to Ron's really very well articulated retort to precisely what the book doesn't say. If you look at the index, it doesn't mention the word "short-termism" or "myopia" or any equivalent; and that is because the book doesn't talk about short-termism. And that's because I'm not sure I believe that short-termism is a problem; at the very least, I don't think we know how to identify and measure short-termism.

Sixty years of research on the subject has produced absolutely no conclusion on the subject. So I couldn't possibly argue that that is the central underpinning of the book. Short-termism is not what it's talking about. It's talking about contractual failure, regulatory failure, governance failure.

The book also does not say that family ownership is the solution, or even desirable. Indeed, I say that I don't expect that family ownership will be revived in Britain, which I cite as a country that has very effectively extinguished family ownership.

On the other hand, I do think the first question about the increasingly global nature of markets and shareholders becoming more global is extremely important. That development is giving rise to the phenomenon of the "universal owner"—the idea that we all collectively, by virtue of our holdings in investment firms like Vanguard and BlackRock, hold the entire global portfolio. As universal owners and global indexers, we're not influenced, or even much interested, in the performance of individual stocks. We're interested in managing the systemic risks—that is, the political risks, the environmental risks, the trade protection and regulatory risks. Those risks are the things that move the stock markets and the indices.

What that basically says is that different kinds of ownership perform different functions. The role of index funds is extremely important in allowing you and me to incur very low transaction costs when investing in equities around the world, and by so doing, allow companies to raise capital on economic terms. At the same time, the shareholder activists play a very important role in terms of providing precisely the interest in individual corporate performance that the universal owners don't.

But because that interest is short-term by its nature, it is extremely important that we have anchor blockholders that provide the third form of ownership, which has interest in individual companies that is long term in nature. That may take the form of families, but is increasingly taking other forms. Particularly promising are engaged institutional investors, such as the Canadian pension funds and some sovereign wealth funds that hold large blocks in individual companies.

The book talks about the benefits of diversity of ownership, and the need for that diversity to correspond with the purposes of companies. In the U.K., partly through misguided regulation, we've extinguished blockholders by making it basically impossible for them to continue their control of companies. The notion that my book is in any way aligned with what Jeremy Corbyn is proposing is wrong; it's exactly what Jeremy Corbyn is *not* proposing. The current Labour Party is probably the least likely political body to adopt the suggestions in this book.

I thought that Mats' comments really got to the central issues around what I would view as matters of "legitimacy"—legitimacy about what companies should be doing and what ownership should be about. Our current views on ownership are that legitimacy derives essentially from a property rights view of the firm—that owners are owners of the assets of the firm in the same way as they own any other property. And that confers those strong rights as well as serious responsibilities on owners in the way in which I describe them.

But, again, as the first questioner observed, there have been very substantial developments in three dimensions. The first is that, because companies have become much larger, and much more global, their impacts on society are not just national in nature. They too are global, not simply because they are multinationals, but because their products are now global. Think Google. Think Facebook. The implication here is that traditional government mechanisms are not well positioned to deal with the challenges to privacy and anti-competitive concerns that such companies present.

The second feature of change has been that the assets of companies have altered completely from being predominantly tangible assets to essentially intangible assets today. That means that those assets are not predominantly material. They are embodied in forms of human, social, and natural capital. The implication of this is to turn the traditional view about legitimacy on its head; that is, the legitimacy that was derived from the property rights over the assets of the firm is becoming irrelevant as companies are increasingly dependent on human, social, and natural capital; and instead corporate responsibilities to such forms of capital—not their rights—have grown.

And that brings us to the role of government in performing these public functions and, as Mats put it, promoting freedom. The trouble with the conventional view of freedom is that, while competitive markets are important, it also requires another element, which Marty very correctly referred to in terms of the capabilities of people to exercise choice effectively.

The ability to exercise choice derives from people's ability to maintain not just their purchasing power over commodities but also the relationships that are involved in terms of their delivery and people's fulfillment of what they see as their own purposes. Defined as such, the freedom that is conventionally associated with a separation of business and government, requires a close relationship between government and business in the provision of so-called "public" goods such as education and health, and large-scale, long-term infrastructure.

I'd just like to end by addressing the question that Professor Nelson raised about how one reconciles trustworthy business with corporate scandals and whether private ownership is the appropriate solution. The evidence that comes from surveys of trust in family business suggests that they are more trusted than other types of firms. In particular, employee satisfaction appears to be greater in family than other businesses. Employees feel more cared for, better treated and valued; and, as a consequence, they are more committed, devoted, and motivated—a further example of reciprocal benefits, of give and be given.

Nevertheless, there is one respect in which family firms appear to underperform and that is in regard to their wider contribution to society. They seem to view their employees and local communities as part of their wider families, but that does not extend to society and the environment more generally.

So I do not see family firms or private firms in general as a panacea, and I do not believe that we will see a return to large-scale family ownership in Britain. Instead, we should look to reform in public equity markets through more long-term, engaged institutional investors as a way of addressing their deficiencies. And there are some encouraging signs that this is beginning to happen.

Bresnahan: Thank you to our panelists for their open discussion of this critical topic. We'll look forward to hearing from all of them as we continue to explore these themes at the Millstein Center.

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