The Beginning of the End: An Expanded Agenda for the Future

In my talk today, I presented a three-part ownership “agenda for the future” in the broadest possible terms. Below are expanded — though far from complete — explanations of how capitalism might be made a more positive element in society.

- *A corporation must have a legal domicile importantly connected with its operations. “Domicile shopping” for the least effective governance regime must stop.*

A corporation is the creature of the state. The earliest ones were created by specific statutes and governed by an explicit social contract — what business, what term, what invested capital — that grounded them in time and place. Until the modern era, corporations were also associated with physical assets whose location made sense of the venue chosen for incorporation — the legal domicile — and juxtaposed the physical impact of corporate functioning with the law-making power of the state where it was domiciled. Thus, questions of legitimacy concerning corporate power could be debated by individuals directly affected by their impact and with the power to make legal changes to alter existing conditions.

No more. The evolution of corporate "assets" from the physical to the intellectual — patents, know-how, brands, good will, etc. — has sundered the old physical connection between business and location. Simultaneously, a four-decade "race to the bottom" has left corporations free to domicile in whatever place offers the most imaginative solutions as to how their earnings are to be taxed and under what rules of governance they will function, an unregulated “discretion” that all but compels abuse.

Bottom line: Corporations must be perceived as functioning according to rules compatible with human welfare. There must be a reasonable — and just as important, a perceived-to-be reasonable — code underlying corporate domicile, but don’t look for management to lead the way on this. Only ownership can make it happen.

• *All constituencies need co-operate on developing a system of integrated accounting so that corporations stop having incentive to pursue societally destructive practices, and shareholders and customers stop being enablers of conduct that they personally deplore.*

Had Generally Accepted Accounting Principles been applied by Moses to the Ten Commandments handed him on Mount Sinai, it seems unlikely a single one of them would have survived, yet GAAP remains the guiding "ethic" of corporate functioning, a conceptual grotesquerie with profound social costs.

Because the GAAP model prevails, we have made no meaningful effort to describe a corporation's "intangible assets" even when they comprise more than 100% of its value. Because of GAAP, we have also ducked the question of appropriate "costing" of corporate externalities. Instead, each purchaser of goods and stocks “ratifies" the social costs as they are recorded under conventional accounting practice. To pick one ready example, purchasers of coal company stocks and users of electricity generated in part or primarily by coal “enable” the humongous health consequences of coal mining. Coal would no longer be the "cheap" fuel for generating electric power if we added to the resource costs the further expense of black lung, orthopedic horrors, and death.

The solution: Integrated accounting standards that factor in both intangible assets and externalized costs *and* that are applied universally. No corporate executive would be affronted by a fair and comprehensive economic accounting system so long as his competitors domestic and foreign had to comply with the same rules. That, indeed, is the great virtue of using accounting as the organizing language for legitimate business: The culture and institutions exist for a global system. But again, only ownership can make this happen.

- *All publicly traded companies must have “real owners.” Obviously, defining the requisite characteristics will require much flexibility as there is no shoe that fits every foot. What is critical is that there exist within the corporate framework an energy capable of acting as “steward” or even “fiduciary” for the stakeholders – capable of dealing with such issues as the permissible level of environmental impact and involvement in politics.*

Ultimately, corporate power can be "legitimate" in a free society only if managers must answer in a meaningful way to some person, entity, or force. This person or persons must be motivated, empowered both economically and with information, and capable of requiring accountability.

This would appear to be a self-evident truth of governance: Power without accountability is totalitarianism. But in reality, shareholders — in the sense of individuals volitionally buying, owning, and voting shares — have all but ceased to exist. Not only are today’s market holdings driven almost entirely by indexes and algorithms; the huge money managers behind this automatic trading are themselves ensnared by conflicts involving their own interest, the interest of their investors, and the interests of the entities they invest in.

The suggested solutions here are many: time-weighted voting power, segregated voting shares, and the like. What is certain, though, is that change will come only through owners willing to exercise their “skin in the game” to create standards that can be tested against all public companies. One such measure might well be the ability of shareholders to nominate a director, an Orwellian task today that only the brave or foolish outsider undertakes.

Twenty-five years ago, I managed to push through the SEC a resolution for consideration at Exxon’s annual meeting in which I outlined a simple proposal to assure the existence of a competent owner. On re-reading it, I'm not sure my thinking on the matter has changed in the quarter century since. Those who want to pursue the matter further can read the 1992 resolution and my cover letter to Exxon shareholders.