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REVIEWS

The Profit Motive: Defending Shareholder Value Maximization

Stephen M. Bainbridge

Cambridge: Cambridge University Press, 2023 (240 pages)

There are few questions more squarely at the intersection of markets and morality than the purpose of the corporation. From the earliest crown charters, corporations have existed in tension between the good of their investors and the good of other stakeholders.

A half century ago, Milton Friedman famously wrote that "the social responsibility of business is to increase profits." In *The Profit Motive: Defending Shareholder Value Maximization*, Stephen Bainbridge builds on his previous work on corporate law to provide a comprehensive understanding of why the law agrees with Friedman and why it is right to do so. He traces the legal basis of Friedman's claim through twentieth-century legal cases and examines why corporate leaders in 2019 put stakeholders ahead of shareholders. With government regulators and institutional investors increasingly pushing corporate directors to adopt environmental, social, and governance (ESG) standards, Bainbridge's comprehensive defense of shareholder maximization is sorely needed.

About the same time Friedman was making his argument for shareholder value, Peter Drucker made his own case for profitability as the first aim of corporations. "Profit is not the explanation, cause, or rationale of business behavior and business decisions," he wrote, "but rather the test of their validity." Drucker further noted, "A company can make a social contribution only if it is highly profitable." But he

lamented, "For something as central as profitability we have only a rubber yardstick; and we have no real tools at all to determine how much profitability is necessary."

Rather than add more elasticity to the measure, when managers and boards of directors aimed to increase shareholder returns, courts have not second-guessed their decisions. As Bainbridge explains, the business judgment rule marks the difference between the Dodge brothers' successful lawsuit against Henry Ford (*Dodge v. Ford Motor Company*) and William Shlensky's failed attempt to bring night baseball to Wrigley Field in 1968 (*Shlensky v. Wrigley*). Ford said he wanted to provide for his employees instead of his shareholders. Phillip Wrigley said taking care of the community was the best way to take care of the business.

Greg Glassman, founder of CrossFit, came to a similar conclusion as Wrigley. Glassman often said he missed the mark when he aimed to make money, but CrossFit earned a profit because it provided value to its customers. Ford could have argued that his decisions to spend on his employees ultimately lowered costs, increased productivity, and delivered greater profits. Instead, he honestly explained his reasoning was simply to care for others, regardless of what impact it had on the business and shareholders.

Bainbridge does not go so far as to claim that directors and shareholders are as vulnerable as widows and orphans to the vagaries of unscrupulous managers, but he does see why corporate law has long protected their rights as residual claimants. He even sees benefit corporations, or B Corps, as an alternative business form available for investors who are willing to accept lower returns to ensure a company acts on its ESG values. Such honest accounting, however, is increasingly rare among advocates of ESG goals.

ESG supporters often emphasize one or more of three arguments, and sometimes all three at once. First, that managers of all companies should have the legal right to enact their values through the company as Ford tried, regardless of the impact on shareholders. Second, that the law already allows them to do this. And third, that pursuing ESG goals increases shareholder value. To the extent that raising wages, switching to solar panels, or investing in local schools actually improve returns for shareholders, companies already have that freedom, as demonstrated in both *Dodge* and *Shlensky*. If so, then the ESG aspect is superfluous except as a marketing tactic or an exercise in monopoly power.

Business leaders, in Bainbridge's analysis, including those who signed the Business Roundtable statement in 2019, are not more "woke" than their predecessors, but circumstances have changed. Where Michael Jordan avoided politics in the 1990 because "Republicans buy sneakers, too," Nike now follows its stakeholders' embrace of progressive causes. To take one example, though, how does one weigh the good of solar power against the environmental abuses involved in producing solar panels?

Profit maximization and the price mechanism may only be rubber yardsticks, but they are objective and consistent. A firm cannot remain profitable for long without

providing a value to its customers. In turn, profitability allows the firm, its managers individually, and its shareholders to invest in the community.

In his review of precedent, corporate performance, and management incentives Bainbridge provides the legal, economic, and empirical justification for putting shareholders first. It is the law and should be the law. "Pursuit of shareholder value maximization," Bainbridge concludes, "leads to more efficient resource allocation, creates new social wealth, and promotes economic and political liberty."

—Joseph Coletti
Oversight Staff Director,
House Majority at North Carolina General Assembly

Protestant Social Teaching
O. A. Kamel, J. Meador, and J. Minic, eds.
Davenant Press, 2022 (271 pages)

This volume is a fine primer in what could be an unwieldy volume with disparate threads. The anthology is divided into three parts, roughly theorizing on the political, the familial, and the social.

Part 1's maiden chapter is an introduction to several strands of Protestantism, primarily Lutheranism, as that tradition articulates the role of law. Most helpful are the distillations from Chemnitz (especially his characteristics of the law) as well as summaries of other intellectual definitions in a short compendium. Calvin and the Puritans are not as prominent as some might expect. Melanchthon is correctly noted as affirming a proper third use of the law (the teaching role for believers) in early Lutheranism similar to Calvin's view. What might be helpful is a future exploration of the consensus between all Protestant traditions, beyond the Lutheran view (including Anglican, independent, Methodists, and others), on the uses of the law. Various expositions of the Decalogue—such a major part of Protestantism's ethical catechesis—would likely form an entire volume for an anticipated series.

The second chapter on the civil ruler recognizes that early Protestant reformers set forth a coherent political vision, albeit one that feels quite unmodern. If the opening chapter did not focus much on other aspects of the reformed tradition, this chapter is fraught with Calvin's thought in general on the role of the civil ruler. The governor's duty, according to this Protestant theorizing, is to assist the church's diaconal ministry, advance the common good through education, and ensure societal peace and protection of property. This, however, the author claims is more than "libertarian minimalism," such elaborated Protestant theorizing providing several impenetrable bulwarks against statism. Giving "the great Johannes Althusius" his due, the desacralizing of the ruler, the growth of the rule of law over the rule of person, and a