Washington University Law Review

Volume 98
Issue 6 *The Public Corporation at a Crossroads*

2021

Stop Blaming Milton Friedman!

Brian R. Cheffins
University of Cambridge

Recommended Citation

Brian R. Cheffins, *Stop Blaming Milton Friedman!*, 98 WASH. U. L. REV. 1607 (2021).
Available at: https://openscholarship.wustl.edu/law_lawreview/vol98/iss6/5

Washington University Law Review

VOLUME 98 NUMBER 6 2021

STOP BLAMING MILTON FRIEDMAN!

BRIAN R. CHEFFINS*

ABSTRACT

A 1970 New York Times *essay on corporate social responsibility by Milton Friedman is often said to have launched a shareholder-focused reorientation of managerial priorities in corporate America. The essay correspondingly is a primary target of a rapidly growing group of critics of the present shareholder-centric approach to corporate governance. This article argues that it is erroneous to blame (or credit) Milton Friedman for the rise of shareholder primacy in American corporations. In order for Friedman's views to be as influential as has been assumed, his essay should have constituted a fundamental break from prevailing thinking that changed minds with some alacrity. In fact, what Friedman said on corporate purpose was largely familiar to readers in 1970 and his essay did little to change managerial priorities at that point in time. The shareholder-first mentality that would come to dominate in corporate America would only take hold in the mid-1980s. This occurred due to an unprecedented wave of hostile takeovers rather than anything Friedman said and was sustained by a dramatic shift in favor of incentive-laden executive pay. Correspondingly, the time has come to stop blaming him for America's shareholder-oriented capitalism.*

* S.J. Berwin Professor of Corporate Law, Faculty of Law, University of Cambridge. I would like to thank participants in The Public Corporation at a Crossroads Symposium for valuable feedback.

TABLE OF CONTENTS

INTRODUCTION

John Maynard Keynes, a pre-eminent twentieth century economist, observed "[t]he ideas of economists and political philosophers, both when they are right and when they are wrong, are more powerful than is commonly understood. Indeed the world is ruled by little else."[1] A "spectacularly influential"[2] 1970 *New York Times* essay by Milton Friedman, another distinguished economist, seemingly provides convincing proof of Keynes' adage. In an article the *New York Times* entitled "The Social Responsibility of Business Is to Increase Its Profits," Friedman harshly criticized those in the business community who maintained that private enterprises had a mission to promote desirable social ends.[3] What the *Times* labelled a "Friedman doctrine"[4] reputedly would become "a seminal turning point in corporate legal theory."[5] In particular, Friedman's essay has been credited with—or blamed for—launching a still ongoing era

1. JOHN MAYNARD KEYNES, THE GENERAL THEORY OF EMPLOYMENT, INTEREST AND MONEY 383 (1936).
2. Glenn Feldman, *Putting Uncle Milton to Bed: Reexamining Milton Friedman's Essay on the Social Responsibility of Business*, 32 LAB. STUD. J. 125, 125 (2007).
3. Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 32.
4. *Id.*
5. Ronald Chen & Jon Hanson, *The Illusion of Law: The Legitimating Schemas of Modern Policy and Corporate Law*, 103 MICH. L. REV. 1, 42 (2004).

of "shareholder primacy" where corporate executives have assumed their job is to maximize shareholder value.[6]

A "Great Debate" about whether public companies exist to deliver returns for shareholders or in service of a broader constituency has been underway for decades.[7] The question "in whose interests should the corporation be run?" and its close corollary "what should [a corporation's] managers . . . strive to achieve?" have duly sparked debate in several academic disciplines, including law, economics, political science, and management.[8] The general consensus in corporate America since the late twentieth century has been that shareholders are top of the managerial priority list.[9] The shareholder-first orientation has generated serious misgivings, however.[10] Critics of the status quo maintain that managers should forsake their single-minded focus on stockholders so that the corporate sector can operate in accordance with a sustainable model that creates a bigger pie over time as business is conducted in a financially, environmentally, and socially responsible manner.[11]

Milton Friedman has been a star player in this "Great Debate" over corporate purpose. His 1970 essay has been described as "the classic statement" of the shareholder oriented view of the corporation[12] that set a standard destined to be widely followed.[13] Shareholder primacy nay-sayers have accordingly bemoaned the essay's malign impact and sought "to drag

6. For recent examples of sources advancing this proposition, see Sam Hill, Opinion, *The Nation's Most Powerful CEOs Declared the Shareholder-or-Bust Era of Capitalism Is Over. But Is It?*, NEWSWEEK (Aug. 23, 2019), https://www.newsweek.com/business-roundtable-corporation-purpose-friedman-doctrine-1455975 [https://perma.cc/AF73-KQHZ]; Karen Ho, *In the Name of Shareholder Value: Origin Myths of Corporations and Their Ongoing Implications*, 43 SEATTLE U. L. REV. 609, 621 (2020); Colin Mayer, Leo E. Strine Jr. & Jaap Winter, Commentary, *50 Years Later, Milton Friedman's Shareholder Doctrine Is Dead*, FORTUNE (Sept. 13, 2020), https://fortune.com/2020/09/13/milton-friedman-anniversary-business-purpose/ [https://perma.cc/U98D-77HL].

7. Lynn A. Stout, *New Thinking on "Shareholder Primacy,"* 2 ACCT. ECON. & L., no. 2, 2012, at 1, 2–4; *see also* Chen & Hanson, *supra* note 5, at 33–37; Antony Page, *Has Corporate Law Failed? Addressing Proposals for Reform*, 107 MICH. L. REV. 979, 979 (2009) ("longstanding question").

8. Thomas M. Jones & Will Felps, *Shareholder Wealth Maximization and Social Welfare: A Utilitarian Critique*, 23 BUS. ETHICS Q. 207, 213 (2013).

9. Judd F. Sneirson, *The History of Shareholder Primacy, from Adam Smith Through the Rise of Financialism*, *in* CAMBRIDGE HANDBOOK OF CORPORATE LAW, CORPORATE GOVERNANCE AND SUSTAINABILITY 73, 74–77, 83–84 (Beate Sjåfjell & Christopher M. Bruner eds., 2019); Tamara Belinfanti & Lynn Stout, *Contested Visions: The Value of Systems Theory for Corporate Law*, 166 U. PA. L. REV. 579, 589 (2018).

10. Diane Denis, *Corporate Governance and the Goal of the Firm: In Defense of Shareholder Wealth Maximization*, 51 FIN. REV. 467, 478–79 (2016).

11. Sneirson, *supra* note 9, at 84–85; Steven Pearlstein, *When Shareholder Capitalism Came to Town*, AM. PROSPECT, Mar./Apr. 2014, at 40, 46–47.

12. Stephen M. Bainbridge, *Director Primacy: The Means and Ends of Corporate Governance*, 97 NW. U. L. REV. 547, 564 (2003); Christopher M. Bruner, *The Enduring Ambivalence of Corporate Law*, 59 ALA. L. REV. 1385, 1405 (2008).

13. David Benoit, *Move Over, Shareholders: Top CEOs Say Companies Have Obligations to Society*, WALL ST. J., Aug. 19, 2019, at A1.

down and bury Friedman."[14] Critics have characterized Friedman's "infamous 1970 polemic"[15] as an "intellectually incoherent" piece that conjured up "a magical world" and advanced "the world's dumbest idea."[16] Regrettably, the reasoning goes, Friedman's "wild fantasy obtained widespread support as the new gospel of business."[17] "[O]ne of the most . . . economically destructive articles in history"[18] reputedly "has had a catastrophic impact upon US business,"[19] "and the consequences of the mistaken thesis have been mounting environmental and social problems around the world."[20] As Oxford management theorist Colin Mayer has said of "the Friedman doctrine," "[f]ew social science ideas are both so significant and misconceived as to threaten our existence."[21]

Opposition to the shareholder-centric vision of the corporation that has prevailed in corporate America has been growing recently.[22] This has meant, according to the *Wall Street Journal*, that "[t]he hottest debate in corporate America asks whether a public company exists for the enrichment of shareholders or in service of a broader constituency, including employees and customers."[23] Most notably, in 2019 the Business Roundtable, a trade association of chief executives of leading American corporations, issued a 300-word "Statement on the Purpose of a Corporation" that stressed "a fundamental commitment to all of our stakeholders" and did not specifically mention "shareholders" until the second-to-last paragraph.[24]

---

14. Terence Corcoran, *In Defence of Milton Friedman*, NAT'L POST, Jan. 19, 2019 (Financial Post), at 1.

15. David Ciepley, *How America's Corporations Lost Their Public Purpose, and How It Might Be (Partially) Restored*, 10 ACCT. ECON. & L., no. 3, 2020, at 1, 10.

16. Steve Denning, *The Origin Of "The World's Dumbest Idea": Milton Friedman*, FORBES (June 26, 2013), https://www.forbes.com/sites/stevedenning/2013/06/26/the-origin-of-the-worlds-dumbest-idea-milton-friedman/ ("magical world," "world's dumbest") [https://perma.cc/Z6ML-C2P4]; Yves Smith, *Why the "Maximize Shareholder Value" Theory Is Bogus*, NAKED CAPITALISM (Feb. 3, 2017), https://www.nakedcapitalism.com/2017/02/why-the-maximize-shareholder-value-theory-is-bogus.html [https://perma.cc/HSV7-HA6Z] ("intellectually incoherent").

17. Denning, *supra* note 16.

18. Michael Olenick, *Original Shareholder Value Article – Milton Friedman to GM: Build Clunky Cars*, NAKED CAPITALISM (Aug. 2, 2017), https://www.nakedcapitalism.com/2017/08/original-shareholder-value-article-milton-friedman-gm-build-clunky-cars.html [https://perma.cc/CGN4-HYFF].

19. Thomas Clarke, *The Contest on Corporate Purpose: Why Lynn Stout Was Right and Milton Friedman Was Wrong*, 10 ACCT. ECON. & L., no. 3, 2020, at 1, 3.

20. Colin Mayer, Leo E. Strine, Jr. & Jaap Winter, *The Purpose of Business Is to Solve Problems of Society, Not to Cause Them*, *in* MILTON FRIEDMAN 50 YEARS LATER 65, 65 (Luigi Zingales, Jana Kasperkevic & Asher Schechter eds., 2020) (ebook).

21. COLIN MAYER, PROSPERITY: BETTER BUSINESS MAKES THE GREATER GOOD 2 (2018).

22. BARNALI CHOUDHURY & MARTIN PETRIN, CORPORATE DUTIES TO THE PUBLIC 41 (2019).

23. John D. Stoll, *For CEOs, It's a Whole New Job*, WALL ST. J., Dec. 18, 2019, at R12.

24. BUSINESS ROUNDTABLE, STATEMENT ON THE PURPOSE OF A CORPORATION (2019), https://system.businessroundtable.org/app/uploads/sites/5/2021/02/BRT-Statement-on-the-Purpose-of-a-Corporation-Feburary-2021-compressed.pdf [https://perma.cc/CUL9-YNXB]; Editorial, *The 'Stakeholder' CEOs*, WALL ST. J., Aug. 20, 2019, A14.

The Business Roundtable's statement has been "interpreted as a schism between business and the Friedman Doctrine."[25] Similarly, it has been said that as unease with shareholder oriented capitalism has grown over the past decade "the challenges to Friedman's model have been gathering momentum."[26] Indeed, finance professor Alex Edmans suggests that "[t]o declare that you reject the Friedman doctrine has become almost a requirement for acceptance into polite society."[27] The *New York Times* joined the chorus when the fiftieth anniversary of the publication of Friedman's essay rolled around in September 2020. As a *Wall Street Journal* columnist said shortly thereafter, "[a]lmost as penance for publishing the original, the *Times* recently printed an eight-page supplement nitpicking Friedman's article."[28]

This all presumes that Milton Friedman deserves substantial blame (or credit) for the ascendance of shareholder value in public companies. He does not. While it is generally believed that intellectuals substantially affect legal and economic change, their influence tends to be taken for granted rather than being explained theoretically or proven empirically.[29] Certainly in the case of Milton Friedman's 1970 essay, its actual impact does not match up to the hype.

Part of the reason the reality does not match up with the Friedman doctrine/shareholder primacy hype is that rhetorical flourishes deployed to describe his 1970 essay have set the bar very high. Economists Oliver Hart and Luigi Zingales have argued Friedman's article can "be seen as providing the intellectual foundation for the 'shareholder value' revolution."[30] A *Newsweek* columnist suggested in 2019 that "for almost 50 years, American CEOs have loosely followed what is known as the Friedman Doctrine."[31] Harvard Business School professor emeritus

25. Colin Mayer, *Ownership, Agency and Trusteeship* 1 (Eur. Corp. Governance Inst., Working Paper No. 488, 2020).

26. Andrew Edgecliffe-Johnson, *Beyond the Bottom Line*, FIN. TIMES, Jan. 5, 2019, Life & Arts, 1; *see also* Luigi Zingales, *Friedman's Principle, 50 Years Later*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 1 ("Since the Great Financial Crisis, Friedman's view has become increasingly unpopular.").

27. Alex Edmans, *What Stakeholder Capitalism Can Learn from Milton Friedman*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 11, 12.

28. Andy Kessler, Opinion, *To Serve the Public, Seek Profits*, WALL ST. J., Oct. 12, 2020, at A15.

29. Fred S. McChesney, *Intellectual Attitudes and Regulatory Change: An Empirical Investigation of Legal Scholarship in the Depression*, 38 J. LEGAL EDUC. 211, 211 (1988); *see also* Rick Perlstein, *Prophets of Instability*, NATION, Mar. 30, 2020, at 27, 31 (saying about the author of a book dealing with mid-twentieth century American capitalism, "[i]n the manner of too many intellectuals, he privileges the role of intellectuals"). For an example of an attempt to assess empirically the impact of ideas on a sub-set of real world outcomes, see Camden Hutchison, *Law and Economics Scholarship and Supreme Court Antitrust Jurisprudence, 1950–2010*, 21 LEWIS & CLARK L. REV. 145 (2017).

30. Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J.L. FIN. & ACCT. 247, 248 (2017).

31. Hill, *supra* note 6.

Malcolm Salter likewise maintains that with Friedman's 1970 essay his "voice rang loud and clear throughout the business community and continues to resonate today in many classrooms and boardrooms."[32] Similarly, law professor Margaret Blair has suggested that "leaders of corporations" have been told for decades "that they should focus their attention solely on 'maximizing shareholder value,' as instructed by University of Chicago economist Milton Friedman."[33] It strains credulity that an entire school of academic thought could have this sort of impact, let alone a single newspaper essay that was not even 3,000 words in length.

More prosaically, as this Article will show, the historical evidence does not tally with the hype. In particular, those who ascribe to Milton Friedman substantial responsibility for American companies prioritizing shareholder interests make a series of implicit erroneous assumptions about his essay and subsequent developments. For instance, while Friedman's essay has been characterized as a standard-setter, whatever emphasis he placed on the bottom line was hardly novel. Instead, it was widely accepted at the time he wrote that generating profits was a core corporate mission. Moreover, for more than a dozen years after Friedman's essay was published his reasoning did little to change managerial priorities. Present-day shareholder primacy only began to take hold in the mid-1980s when corporate America was in the grip of a wave of hostile takeovers. In addition, while Friedman did tell executives they should try "to make as much money as possible,"[34] he failed to make any sort of plea that managers should obsess over earnings or share prices in the way they would subsequently.

Friedman's essay has been described as "one of the most influential op-eds of the 20th century"[35] and it may have been the most cited piece ever published in the *New York Times*.[36] Friedman's 1970 article no doubt was consequential.[37] As this Article will show, however, the essay was not

32. Malcom S. Salter, *Rehabilitating Corporate Purpose: How the Evolution of Corporate Purpose Has Contributed to a Widening Breach Between Capitalism and Justice . . . and What to Do About It* 22 (Harvard Bus. Sch., Working Paper No. 104, 2019).

33. Margaret Blair, *Corporations Are Governance Mechanisms, Not Shareholder Toys*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 38–39; *see also* Gillian Tett, *Capitalism – A New Dawn?*, FIN. TIMES, Sept. 7, 2019, Life & Arts, 1 (arguing that Friedman's 1970 essay "sparked a wider revolution," including a political swing to the right that led to Ronald Reagan being elected president and Margaret Thatcher becoming Britain's Prime Minister).

34. Friedman, *supra* note 3, at 33.

35. Luigi Zingales, *Friedman's Legacy: From Doctrine to Theorem*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 128, 129.

36. John Kay, *The Concept of the Corporation*, 61 BUS. HIST. 1129, 1132 (2019).

37. This was certainly the case in the field of business ethics. *See* Colin Grant, *Friedman Fallacies*, 10 J. BUS. ETHICS 907, 907 (1991) (placing the essay at the pinnacle "in the canon of business ethics classics"); Sean McAleer, *Friedman's Stockholder Theory of Corporate Moral Responsibility*, 7 TEACHING BUS. ETHICS 437, 437 (2003) ("a staple in most introductory business ethics courses").

nearly as pivotal as those assigning blame for the supposed corruption of the priorities of corporate America have suggested.

The Article is organized as follows. Part I canvasses the assumptions underpinning the contention that Milton Friedman's 1970 essay was "a seminal turning point." Part II places the 1970 essay in the context of the time that Friedman wrote it and in so doing casts doubt on the notion that his essay was a fundamental break from the past. Part III draws attention to the essay's failure to change minds with any alacrity. Part IV explains why a shareholder primacy ethos ultimately took hold in America's public companies, emphasizing in so doing a wave of hostile takeovers occurring in the 1980s and the deployment of a corporate governance agenda in the 1990s that provided corporate executives with heretofore unprecedented financial incentives to prioritize share prices. Part V draws attention to the fact that the message that Friedman was seeking to convey in 1970 differed materially from an earnings focused "shareholder first" mentality that moved to the forefront as the twentieth century drew to a close. The Conclusion emphasizes that it is well past time for those debating corporate purposes to stop blaming Milton Friedman for the current fixation on shareholder value.

I. FRIEDMAN'S ESSAY AS "SPECTACULARLY INFLUENTIAL": KEY ASSUMPTIONS

Milton Friedman's 1970 *New York Times* essay reputedly was an important turning point in American corporate life, serving as the catalyst for the maximization of shareholder returns to emerge as the core value of public company executives. The chronology underlying the shift in priorities has been characterized by Harvard Business School professor Gautam Mukunda as follows: "Executives often explain their deference to Wall Street by saying they have a 'fiduciary duty' to maximize shareholder returns. That's been an article of faith since 1970, when Milton Friedman wrote in the *New York Times* that executives' only responsibility was maximizing profits." [38] The *Financial Times* has suggested similarly "[s]hareholder primacy took off in the 1970s, starting with a Milton Friedman essay in *The New York Times* in which the economist argued that it was inappropriate for boards to focus on anything other than maximising shareholder value."[39] It would seem to follow that, as law professor Antony

38. Gautam Mukunda, *The Price of Wall Street's Power*, HARV. BUS. REV., June 2014, 70, 72.

39. Sujeet Indap, *"Shareholder Primacy" and Workers' Rights Are Back on the US Agenda*, FIN. TIMES, Sept. 25, 2018, at 12; *see also* Allen Ferrell, Hao Liang & Luc Renneboog, *Socially Responsible Firms*, 122 J. FIN. ECON. 585, 586 (2016) (maintaining "[t]he opposite view" to corporate social

Page has said, "Nobel Laureate Milton Friedman was perhaps the leading proponent of the shareholder-primacy model of corporate governance."[40]

Three key assumptions implicitly underpin the thesis Milton Friedman's 1970 essay had a decisive impact on corporate priorities. The first is that Friedman was advocating a stance at odds with the prevailing wisdom. His essay could only be a corporate purpose game-changer if the views he advanced amounted to a substantial break with the past. If, in contrast, Friedman's take on the social responsibility of corporations was familiar to readers in 1970, he could hardly qualify as the pioneering shareholder value advocate he is said to have been. This indeed was the situation. The proposition that companies should focus on the bottom line rather than catering to constituencies such as labor, consumers, and the public at large was well known at the time Friedman wrote.

The second assumption is that Friedman's 1970 essay put the consensus view he was reputedly challenging under immediate threat.[41] In order for Friedman's stance to have constituted an "article of faith since 1970,"[42] his views should have begun changing minds immediately. If in fact a strong shareholder orientation only gained momentum ten or twenty years after Friedman's essay was published the essay could not have been decisive. It would instead be nothing more than an intellectual appetizer for a change in philosophy that would subsequently sweep America's boardrooms. This in fact is what happened.

The third key assumption is that Milton Friedman pressed for companies to seek to maximize shareholder returns in the manner that ultimately would become the prevailing ethos in corporate America. If his 1970 *New York Times* essay truly acted as the catalyst for a revolutionary change in managerial priorities, executives ultimately should have conducted themselves in a manner Friedman explicitly encouraged. On the other hand, if Friedman had something different in mind, it would follow that his 1970 essay was at best an indirect forerunner of the shareholder-first mentality that come to prevail.

---

responsibility began with Friedman's 1970 essay); David J. Berger, *In Search of Lost Time: What If Delaware Had Not Adopted Shareholder Primacy*, *in* THE CORPORATE CONTRACT IN CHANGING TIMES: IS THE LAW KEEPING UP? 48, 49 (Steven Davidoff Solomon & Randall Thomas eds., 2019) (saying shareholder primacy's "lineage is perhaps best traced in popular culture to Milton Friedman's famous 1970 article").

40. Page, *supra* note 7, at 979.

41. *See, e.g.*, Eduardo Porter, *Motivating Corporations to Do Good*, N.Y. TIMES, July 15, 2014, at B1 ("Friedman's maxim arrived just in time for the era of the hostile takeover and the leveraged buyout, when corporate raiders sold themselves as saviors liberating shareholders from misguided managers who paid too little attention to the stock price."). In fact hostile takeovers only began to move share prices to the top of the managerial agenda fifteen or so years after Friedman's essay was published. *See infra* Part IV.B.

42. *See supra* note 38 and related discussion.

Some have indeed identified substantial continuity between what Friedman advocated and the subsequent prioritization of shareholder returns. According to Malcom Salter, "Friedman argued that a manager's primary duty is to maximize the value of shareholders' capital."[43] Management theorists Joan Mileski and Carter Franklin have said of maximizing shareholder wealth, Friedman made "a clear and forceful case for this single purpose."[44] *The New York Times* argued similarly in 2019 that with respect to "the notion that the role of the corporation is to maximize profits at all costs" it "had held sway on Wall Street and in the boardroom for 50 years," with Friedman being "the doctrine's most revered figure."[45] Venerable corporate lawyer Martin Lipton suggested likewise in 2020 the terms "'[s]hareholder primacy' and 'Friedman doctrine' became interchangeable."[46] Continuity in this context, however, is illusory. Friedman said very little about managers being under an onus to boost profits and less about shareholder returns. Moreover, an obsession with earnings targets that became familiar as the twentieth century drew to a close was nowhere to be found in Friedman's essay.

With respect to the first two assumptions that underpin the notion that Friedman's 1970 essay was a "seminal turning point," the next two parts of the article consider these. Part II casts doubt on the idea that Friedman was offering a novel assault on prevailing wisdom in his essay. Part III questions the extent to which Friedman's essay redirected debate by making the point that in the 1970s and early 1980s executives evinced little enthusiasm for shareholders. It was only in the mid-1980s that the prioritization of shareholder returns began to take hold in American boardrooms in the manner that is familiar today. Parts IV and V speak to the third assumption, indicating in so doing there was a substantial disconnect between Friedman's 1970 essay and the ethos that came to prevail in American public companies as the twentieth century drew to a close.

---

43. Salter, *supra* note 32, at 22.
44. Joan P. Mileski & Carter L. Franklin, *The Humanization of Corporations*, 17 AM. J. MGMT., no. 3, 2017, at 29, 30.
45. David Gelles & David Yaffe-Bellany, *Feeling Heat, C.E.O.s Pledge New Priorities*, N.Y. TIMES, Aug. 19, 2019, at A1.
46. Martin Lipton, *Beyond Friedman's Doctrine: The True Purpose of the Business Corporation*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 22; *see also* Ho, *supra* note 6, at 622 ("[T]he Friedman article . . . made shareholder value seem natural and self-evident."); Indap, *supra* note 39 ("Shareholder primacy took off in the 1970s, starting with a Milton Friedman essay in *The New York Times* . . . ."); George Cheney, Juliet Roper & Steve May, *Overview*, *in* THE DEBATE OVER CORPORATE SOCIAL RESPONSIBILITY 3, at 6 (Steve May, George Cheney & Juliet Roper eds., 2007) ("His essay has been widely used to support the common business adage that one's first duty is to increase shareholder value.").

II. A BREAK WITH THE PAST?

Milton Friedman's 1970 *New York Times* essay typically is portrayed as a seminal turning point in debates about corporate purpose. But a turning point from what? To contextualize his essay properly, it is necessary to have a sense of contemporary thought regarding managerial priorities. Doing so reveals that Friedman was not saying anything particularly radical when he suggested directors should focus on profits. Why, then, did Friedman write his essay? In the 1950s and 1960s executives were quite often thought of as corporate statesmen with a mission extending beyond profit creation. The true catalyst for the essay, however, was a fraught context in which business was operating as the 1970s got underway. To set the scene, it is instructive to consider what managerial priorities were in the immediately preceding decades.

A. *Managerial Priorities* c. *1970*

Law professors Ronald Chen and Jon Hanson have suggested that when Milton Friedman turned his attention to "the extent to which corporate directors and corporate law should be concerned with anything beyond profit . . . his was a lone [public] voice."[47] Financial journalist Justin Fox maintains similarly that Friedman's "shocking arguments . . . scandalized liberal readers of the *New York Times*."[48] It is true that during the 1950s and 1960s, a prevailing image of public company leadership was that executives were exercising corporate power in a self-restrained and socially responsible manner.[49] Nevertheless, the notion that corporations were, and should be, profit-seeking was a thoroughly familiar one. Friedman thus was covering ground well-known to his readers.[50]

For America's leading companies, the 1950s and 1960s constituted the heyday of what is known as "managerial capitalism."[51] With share ownership in most large firms having become widely dispersed during the first half of the century, responsibility for running America's biggest firms had devolved to full-time salaried executives who had substantial managerial discretion due to neither boards nor shareholders providing

47. Chen & Hanson, *supra* note 5, at 90.

48. JUSTIN FOX, THE MYTH OF THE RATIONAL MARKET: A HISTORY OF RISK, REWARD, AND DELUSION ON WALL STREET 160, 273 (2011).

49. BRIAN R. CHEFFINS, THE PUBLIC COMPANY TRANSFORMED 64 (2018).

50. *Cf.* Tibor R. Machan, *Stakeholder vs. Shareholder Debate: Some Skeptical Reflections*, 9 CONTEMP. READINGS L. & SOC. JUST. 7, 10–11 (2017) (saying that Friedman's argument that managers should try to make their companies profitable was "[h]ardly a revelation" but suggesting that a strong moralizing tone Friedman adopted was novel).

51. CHEFFINS, *supra* note 49, at 3.

close oversight.[52] Those public company executives, it seems, were not seeking ruthlessly to maximize profits. Instead, business leaders were akin to stewards for the enterprises they ran, operating their firms not only to deliver returns to shareholders but also to benefit constituencies such as labor, consumers, and the public at large.[53]

Various observers have characterized the heyday of managerial capitalism in a manner that suggests Friedman's take on corporate social responsibility was a radical departure from the prevailing view when he wrote. Law professors William Bratton and Michael Wachter maintain that the managerial capitalism era corporate executive functioned as "a 'non statist civil servant'. . . subject to the consent of the governed. Social responsibilities followed."[54] Management professor Gerald Davis has suggested that by the 1950s "[s]hareholders had completed the descent into irrelevance."[55] Historian Steve Fraser has said stockholders "took a backseat to the corporation's livelier, more demanding constituencies and clients: employees (often unionized), customers, civic groups and government."[56] Jeffrey Pfeffer, another management professor, makes the same point more pithily, saying "[i]n the 1950s and 1960s, the stakeholder was king."[57] (The term "stakeholder" itself was not used with any regularity in the corporate context until the 1980s).[58]

Friedman's 1970 essay indeed would have been substantially out-of-step with the mainstream if shareholders and corporate profit-seeking were as inconsequential as the foregoing suggests. In fact, neither had been written out of the mid-twentieth century corporate executive playbook. Law professor Harwell Wells, despite acknowledging with respect to corporate social responsibility that "[f]ew businessmen failed to at least give a nod to the concept during the 1950s," maintains there is "little evidence to support a claim that managers of large public corporations in the 1950s actually

---

52. *Id.* at 2, 40, 50–51, 73.

53. R. Joseph Monsen, *The American Business View,* 98 DAEDALUS 159, 163–64 (1969); Mark S. Mizruchi & Daniel Hirschman, The Modern Corporation *as Social Construction*, 33 SEATTLE U. L. REV. 1065, 1094–96 (2010); Lynn Stout, *The Economic Nature of the Corporation*, *in* 2 THE OXFORD HANDBOOK OF LAW AND ECONOMICS: PRIVATE AND COMMERCIAL LAW 337, 350 (Francesco Parisi ed., 2017).

54. William W. Bratton & Michael L. Wachter, *Shareholders and Social Welfare*, 36 SEATTLE U. L. REV. 489, 494 (2013).

55. GERALD F. DAVIS, MANAGED BY THE MARKETS: HOW FINANCE RE-SHAPED AMERICA 74 (2009).

56. STEVE FRASER, EVERY MAN A SPECULATOR: A HISTORY OF WALL STREET IN AMERICAN LIFE 491 (2005).

57. Jeffrey Pfeffer, *Shareholders First? Not So Fast…*, HARV. BUS. REV., July–Aug. 2009, at 90, 90.

58. Based on a search of academic journals available on the JSTOR database using the terms "shareholder" and "stakeholder," the first article to use the term "stakeholder" to refer generally to constituencies other than shareholders was George A. Luffman, Stephen F. Witt & Steven Lister, *A Quantitative Approach to Stakeholder Interests*, 3 MANAGERIAL & DECISIONS ECON. 70 (1982).

governed their firms for the benefit of multiple constituencies or cared less about profits than their predecessors or successors."[59] This echoes what noted management theorist Peter Drucker said in 1954 regarding "The Responsibilities of Management," namely that "[m]anagements in America are nothing if not 'profit-conscious.'"[60]

Assessments of corporate priorities advanced in the 1960s suggest neither profits nor shareholders were written off by public company executives during the remainder of managerial capitalism's heyday. Instead, as law professor David Ruder wrote in 1965, it likely was "[t]he normal expectation that the corporation is operated for the purpose of making profit."[61] Political scientist Michael Reagan, having acknowledged "the emerging concept of the corporation as a social institution," indicated in 1963 "[p]rofit still remains the life-blood for the corporate institution's survival and welfare."[62] Economist Shorey Peterson pointed out in 1965 "managers live, move, and achieve their reputations in a business culture . . . of income statements and balance sheets, of stress on per-share earnings and earnings growth, of securities analysts scrutinizing company performance."[63] Joseph McGuire, a professor of business studies, similarly suggested "businessmen strive for the highest profits they can obtain within a societal framework," meaning "constraints placed on their behavior by the environment."[64] This formulation closely resembles an invocation by Friedman in his 1970 essay to executives "to make as much money as possible" because he offered the qualification this should be done "while conforming to their basic rules of the society, both those embodied in law and those embodied in ethical custom."[65] Friedman's essay thus was not a radical break from mainstream thinking at the time he wrote it.

To the extent that managerial capitalism era executives prioritized shareholders and profits, perceptions of the nature of corporate law nudged them in that direction. Peterson, in making his case that it was a "pronounced distortion" to equate shareholders "as coordinate with employees, customers, suppliers, and the public, and, even more, as a poor cousin among them" made the point partly by arguing "[m]en do not act generally in plain defiance of a well-established conception of what is

59. Harwell Wells, *"Corporation Law is Dead": Heroic Managerialism, Legal Change, and the Puzzle of Corporation Law at the Height of the American Century*, 15 U. PA. J. BUS. L. 305, 330 (2013).

60. Peter F. Drucker, *The Responsibilities of Management*, HARPER'S, Nov. 1954, at 67, 68.

61. David S. Ruder, *Public Obligations of Private Corporations*, 114 U. PA. L. REV. 209, 214 (1965).

62. MICHAEL D. REAGAN, THE MANAGED ECONOMY 134, 136 (1963).

63. Shorey Peterson, *Corporate Control and Capitalism*, 79 Q.J. ECON. 1, 12 (1965).

64. JOSEPH W. MCGUIRE, BUSINESS AND SOCIETY 273, 274 (1963).

65. Friedman, *supra* note 3, at 33.

expected of them."[66] He said in this regard that "[m]anagement is obligated fundamentally to promote the welfare of the firm and its owners," with the term "owners" meaning shareholders in this context.[67] Similarly, Reagan, in explaining why "[t]he concept of social trusteeship" belied "the actual behavior of corporations," noted that "[i]n law, the structure remains one of accountability to stockholders."[68]

Peterson and Reagan's interpretation of the shareholder-oriented steer corporate law provided to corporate managers was widely shared. Business law professor Fredrick Kempin said of directors in 1959 that "they are guided by an underlying responsibility to serve the shareholders, presumably by maximizing profits."[69] Lawyer Mortimer Feuer, in his 1965 *Handbook for Corporate Directors*, maintained "[p]rofit making is the primary objective of a corporate enterprise."[70] J.A.C. Hetherington, a leading corporate law academic, wrote in 1969 "[t]he formal legal statement of the management's role is that it is obligated to run the enterprise for the benefit of the shareholders."[71]

Reagan, in seeking to explain the "accountability to stockholders" orientation, focused primarily on voting rights with which shareholders were vested, noting that "no mechanisms exist to give equivalent voice to other 'clientele' groups."[72] Peterson, for his part, said "[f]inal assertion by stockholders of their legal position is through the proxy contest or the derivative suit."[73] The former occurs when an insurgent seeks to gain control of a company by putting before the shareholders a rival slate of directors to that the incumbent management team has proposed and the latter is a mechanism available to a corporation's shareholders to bring a suit on behalf of the corporation.[74] As for Kempin, he focused on the analysis of directors' duties in *Dodge v. Ford Motor Co.*, an oft-cited 1919 decision of the Michigan Supreme Court where Judge Ostrander said "[a] business corporation is organized and carried on primarily for the benefit of

66. Peterson, *supra* note 63, at 21.
67. *Id.* at 21.
68. REAGAN, *supra* note 62, at 145.
69. Frederick G. Kempin, Jr., *The Public Interest in the Corporation*, 64 DICK. L. REV. 357, 358–59 (1959).
70. MORTIMER FEUER, HANDBOOK FOR CORPORATE DIRECTORS 116 (1965).
71. J. A. C. Hetherington, *Fact and Legal Theory: Shareholders, Managers, and Corporate Social Responsibility*, 21 STAN. L. REV. 248, 255 (1969).
72. REAGAN, *supra* note 62, at 145.
73. Peterson, *supra* note 63, at 21; *see also* William L. Baldwin, *The Motives of Managers, Environmental Restraints, and the Theory of Managerial Enterprise*, 78 Q.J. ECON. 238, 252 (1964).
74. CHEFFINS, *supra* note 49, at 80; STEPHEN M. BAINBRIDGE, CORPORATE LAW 187 (2d ed., 2009).

the stockholders. The powers of the directors are to be employed for that end."[75]

While Kempin was writing forty years after *Dodge v. Ford Motor Co.* had been decided, he indicated that the statement of Judge Ostrander remained correct and maintained "the law is sufficiently clear to negate the necessity for citations."[76] This assertion might well be a surprise to those familiar with a famous debate between law professors Adolf Berle and E. Merrick Dodd regarding the purpose of the corporation.[77] Dodd, mindful that the view that "those who manage our business corporations should concern themselves with the interests of employees, consumers, and the general public, as well as of the stockholders" was growing in popularity in business circles, suggested in a 1932 law review article responding to a 1931 piece by Berle that with respect to the corporation the time had come to adjust laws regarding "considerations which may properly influence the conduct of those who direct its activities."[78] In 1954, Berle conceded Dodd's point. Berle acknowledged then that "[t]he greatest leaders in the corporate field . . . forcefully argue that corporations are always citizens of the community in which they operate."[79] He also noted that a majority of states had passed laws authorizing corporations to make contributions to philanthropy and education, a trend of which he would have been acutely aware because he had just lost an appeal to the U.S. Supreme Court in a case brought challenging the constitutional validity of New Jersey's law on point.[80] Berle correspondingly accepted that "[t]he argument has been settled . . . squarely in favor of Professor Dodd's contention."[81]

Chen and Hanson, referencing Berle's 1954 concession to Dodd's argument in favor of extending by law the considerations corporate leaders should take into account, contend "Friedman . . . was writing when Dodd's view of the corporation was at its apex and corporate managers and judges believed that social responsibility was an important corporate constraint, if not the sole end of corporations."[82] Kempin, however, could also rely on Dodd to corroborate a shareholder-centric characterization of directors'

75. Kempin, *supra* note 69, at 357–59; Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919).

76. Kempin, *supra* note 69, at 358.

77. On the debate being "famous," see Dalia Tsuk, *From Pluralism to Individualism: Berle and Means and 20th-Century American Legal Thought*, 30 LAW & SOC. INQUIRY 179, 205 (2005).

78. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1156, 1163 (1932); A. A. Berle, Jr., *Corporate Powers as Powers in Trust,* 44 HARV. L. REV. 1049 (1931).

79. ADOLF A. BERLE, JR., THE 20TH CENTURY CAPITALIST REVOLUTION 167 (1954).

80. *Id.* at 168; Tsuk, *supra* note 77, at 206, 208; Barlow v. A. P. Smith Mfg. Co., 346 U.S. 861 (1953).

81. BERLE, *supra* note 79, at 169.

82. Chen & Hanson, *supra* note 5, at 43 (discussing Berle's concession).

duties. Dodd acknowledged in a 1935 article that "[h]owever much some modern corporate executives may like to think of themselves as trustees of an institution rather than attorneys for the stockholders," "[p]rofit-making for absentee owners must be the legal standard by which we measure their conduct until some other legal standard has been evolved."[83] Kempin cited this piece as authority for the proposition that "the trusteeship of directors . . . is not a duty towards outside groups such as labor, consumers, or the public at large."[84]

B. Why Did Friedman Revisit Corporate Purpose?

For present purposes it does not matter whether during the 1960s the shareholder-oriented characterization of directors' duties set down in *Dodge v. Ford Motor Co.* accurately stated the law. The key point instead is that in 1970 Friedman was anything but "a lone [public] voice"[85] in contending that corporate executives should focus their attention on increasing corporate profits. What motivated Friedman, then, to use a *New York Times* op-ed to chide executives who claimed "that business is not concerned 'merely' with profit but also with promoting desirable 'social' ends"?[86] One consideration was that Friedman was very open to publicizing his views via popular media outlets—he wrote a regular column for *Newsweek* between 1966 and 1984 and was interviewed by *Playboy* in 1973.[87] However, with corporations and profits he had already set out his views in 1962 in his book *Capitalism and Freedom*,[88] which had "created a firestorm of conversation on many subjects."[89] He thus was already known by 1970 as a vocal proponent of the "traditional" view that the primary societal responsibility of corporate executives was to endeavor to make money for their firms.[90]

Circumstances affecting American business as the 1970s began do much to explain why Friedman wrote his essay. Various commentators seeking to

83. E. Merrick Dodd, Jr., *Is Effective Enforcement of the Fiduciary Duties of Corporate Managers Practicable?*, 2 U. CHI. L. REV. 194, 206 (1935); *see also* E. Merrick Dodd, Book Review, 9 U. CHI. L. REV. 538, 547 (1942) (reviewing MARSHALL E. DIMOCK & HAROLD K. HYDE, BUREAUCRACY AND TRUSTEESHIP IN LARGE CORPORATIONS (1940)).

84. Kempin, *supra* note 69, at 361.

85. *Supra* note 47 and related discussion.

86. Friedman, *supra* note 3, at 33.

87. Robert L. Formaini, *Milton Friedman: Economist as Public Intellectual*, 7 ECON. INSIGHTS, no. 2, 2002, at 1, 3; Richard W. Wilcke, *An Appropriate Ethical Model for Business and a Critique of Milton Friedman's Thesis*, 9 INDEP. REV. 187, 199 (2004).

88. MILTON FRIEDMAN, CAPITALISM AND FREEDOM 133–36 (1962).

89. Mikelle A. Calhoun, *Profits Before People: Perversion of the Friedman Doctrine*, 2015 ACAD. MGMT. PROCEEDINGS 1 (2017).

90. Alvar O. Elbing, Jr., *The Value Issue of Business: The Responsibility of the Businessman*, 13 ACAD. MGMT. J. 79, 80 (1970). This article was published in March 1970, a number of months before Friedman's *New York Times* essay appeared.

address this point have misfired badly. Finance professor Raghuram Rajan has mysteriously argued "Friedman was reacting to the Johnson administration exhorting corporations to stop raising prices in an attempt to combat inflation."[91] Richard Nixon had in fact been president for nearly two years when Friedman penned his essay. Karthik Ramanna, an expert on management, has suggested that Friedman wrote the *New York Times* essay to implore corporate America to focus on the bottom line because Friedman believed complacency was leaving "American business vulnerable to international competition—Japan was resurgent and rapidly re-industrializing."[92] Friedman, in fact, said nothing about Japan or any other foreign country in his essay and used the word "competition" only once, as part of a quote from his 1962 *Capitalism and Freedom* book.[93] This is hardly surprising, given that in the 1960s "[m]ost Americans hardly seemed to notice" that Japanese and European exports were making significant inroads into global markets.[94]

In fact, a charged political atmosphere characterized by growing antipathy toward American business likely prompted Friedman to write his essay. In the immediate aftermath of World War II, American labor productivity and living standards both improved substantially and the S&P 500 stock market index rose more than 650% between January 1950 and December 1968.[95] Sustained prosperity in turn bolstered the popularity of business.[96] A 1966 Louis Harris poll found that 55% of respondents had "a great deal of confidence" in those running major companies.[97] In a 1968 survey conducted by Yankelovich, Skelly & White Inc. 70% of respondents indicated they believed that business tried to strike a fair balance between profits and the public interest.[98]

Corporate executives abruptly had the rug pulled out from underneath them as the 1960s drew to a close and the 1970s began. The proportion of Americans with "a great deal of confidence" in major companies fell from 55% in 1966 to 27% in 1971.[99] Those who believed that business tried to

91. Raghuram Rajan, *"50 Years Later, It's Time to Reassess," in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 19.

92. Karthik Ramanna, *Friedman at 50: Is It Still the Social Responsibility of Business to Increase Profits?*, 62 CALIF. MGMT. REV., no. 3, 2020, at 28, 33.

93. Friedman, *supra* note 3, at 125.

94. ROBERT SOBEL, THE LAST BULL MARKET: WALL STREET IN THE 1960S 125 (1980).

95. CHEFFINS, *supra* note 49, at 64.

96. LOUIS GALAMBOS & JOSEPH PRATT, THE RISE OF THE CORPORATE COMMONWEALTH: UNITED STATES BUSINESS AND PUBLIC POLICY IN THE 20TH CENTURY 128 (1988).

97. SEYMOUR MARTIN LIPSET & WILLIAM SCHNEIDER, THE CONFIDENCE GAP: BUSINESS, LABOR, AND GOVERNMENT IN THE PUBLIC MIND 48–49 (1983).

98. *Id.* at 183.

99. *Id.* at 48–49.

strike a fair balance between profits and the public interest declined from 70% in 1968 to 33% in 1970.[100]

A swooning stock market was one reason the popularity of business collapsed. The S&P 500 fell 31% between mid-December 1968 and mid-June 1970.[101] The fact large corporations found themselves in the cross-hairs of considerable social ferment also put corporate executives on the back foot.[102] Law professor Donald Schwartz said in a 1971 article about "Campaign GM," which involved a public interest lobby group founded by consumer activist Ralph Nader demanding that General Motors put to a shareholder vote resolutions dealing with environmental, consumer, and race issues:

> The problems of the 1960's produced bitter dissent; while the problems grew more serious, our national temper grew hotter. Anger and frustration over the prolonged war in Indochina and a gnawing malaise over our inability to solve increasingly complex problems at home characterized the national mood. Presidential commissions gave discouraging reports on racism and domestic violence. There were confrontations at the Pentagon, seizures and shutdowns of universities, and riots in the streets of Chicago as the backdrop for a national political convention. Corporations, along with our other institutions, were targets of dissenters.[103]

Companies in turn were politically vulnerable. According to a 1973 study of corporate power, "[D]uring the 1960's . . . [e]nvironmentalists, civil rights leaders, and consumer advocates—all criticized corporate behaviour and sought new constraints upon it. As the 1970's began, the *relative* political influence of corporate business was probably less than it had been since the dark years of the Great Depression . . . ."[104] The challenging atmosphere in which business suddenly found itself operating does much to explain why Friedman returned to the topic of corporate purpose in 1970—corporate social responsibility had clearly taken on much greater urgency as compared with 1962.[105] For instance, while none of the shareholder

---

100. *Id.* at 183.

101. The S&P 500 opened the week of December 16, 1968 at $107.58 and opened the week of June 14, 1970 at $73.88. *S&P 500: Historical Data*, YAHOO FIN., https://finance.yahoo.com/quote/%5EGSPC/history/ [https://perma.cc/8JVJ-GP3D].

102. BENJAMIN C. WATERHOUSE, LOBBYING AMERICA: THE POLITICS OF BUSINESS FROM NIXON TO NAFTA 17 (2014).

103. Donald E. Schwartz, *The Public-Interest Proxy Contest: Reflections on Campaign GM*, 69 MICH. L. REV. 419, 421 (1971).

104. NEIL H. JACOBY, CORPORATE POWER AND SOCIAL RESPONSIBILITY 154 (1973).

105. Oliver Weinstein, *Understanding the Roots of Shareholder Primacy: The Meaning of Agency Theory, and the Conditions of Its Contagion*, *in* THE OXFORD HANDBOOK OF THE CORPORATION 139, 146 (Thomas Clarke, Justin O'Brien & Charles R.T. O'Kelley eds., 2019).

resolutions ultimately voted on at General Motors' 1970 annual meeting came close to passing, Campaign GM was characterized at the time as "the decisive event in the politicalization of the corporation."[106] Correspondingly an essay on corporate purpose could not have been timelier.

Given the context, it is tempting to surmise that Friedman wrote his essay specifically as a rejoinder to Campaign GM.[107] The point has to be left open because he did not refer to shareholder meetings or General Motors in his 1970 essay. Still, Friedman was clearly aware of the context. *The New York Times* drove home to readers the topicality of his essay by featuring together with it a brief synopsis of Campaign GM and photos of its key protagonists.[108] Friedman himself referred in his essay to "the present climate of opinion, with its widespread aversion to 'capitalism,' 'profits,' the 'soulless corporation' and so on."[109] He wanted to emphasize to the current generation of executives in this newly fraught context that invoking a rationale of "social responsibility" to characterize and defend decisions taken would "strengthen the already too prevalent view that the pursuit of profits is wicked and immoral and must be curbed and controlled by external forces."[110]

III. A TURNING POINT?

In order for Milton Friedman's 1970 *New York Times* article to be the game-changer many have claimed, the piece not only should have been challenging the received wisdom of the time but also should have influenced corporate priorities promptly. If shareholder primacy did not move to the forefront with some alacrity his essay could not be the game-changer that everyone assumes. Friedman's essay instead could not have done more than sow an intellectual seed.[111] Other factors instead would have driven shareholder value to the top of the managerial priority list. Circling back to the 1970s, Friedman's essay did not have the immediate impact often hypothesized. Far from it. His essay did capture attention. But few were won over. It was not until well into the 1980s that shareholders moved to the top of the corporate priority list.

106. Phillip I. Blumberg, *The Politicalization of the Corporation*, 51 B.U. L. REV. 425, 435 (1971).

107. David Chan Smith, *How Milton Friedman Read His Adam Smith: The Neoliberal Suspicion of Business and the Critique of Corporate Social Responsibility* 29 (Aug. 15, 2020) (unpublished manuscript), https://ssrn.com/abstract=3674604.

108. *Taming G.M.*, N.Y. TIMES MAG., Sept. 13, 1970, at 32.

109. Friedman, *supra* note 3, at 123.

110. *Id.* at 124. On the fact that "businessmen" were "the immediate audience" for the essay, see James Arnt Aune, *How to Read Milton Friedman: Corporate Social Responsibilities and Today's Capitalisms*, *in* THE DEBATE OVER CORPORATE SOCIAL RESPONSIBILITY, *supra* note 46, at 207, 209.

111. Philip Augar, *A Call for Boards to Overturn the Status Quo*, FIN. TIMES, Jan. 4, 2018, at 13.

Friedman's *New York Times* essay supposedly "unleashed a flurry of discussion both in academic circles as well as in the business community."[112] Certainly, Friedman, by publishing his essay in the *Times*, would have reached many more readers than he did with his 1962 analysis of corporate social responsibility in *Capitalism and Freedom*.[113] It has been suggested further that the "[e]vangelical Friedman preached to an appreciative choir."[114] Thornton Bradshaw, chief executive of oil company ARCO, was a member of that ostensible choir. He opened a 1971 essay on corporate social responsibility by saying "I cannot conceive of discussing this subject without bringing up the name of Milton Friedman" and concluded "I have one last rule and that is to obey Friedman's injunction to make a profit."[115]

While Friedman's essay had its fans in the 1970s, enthusiasm was the exception to the rule. His argument that directors of companies should focus on corporate profitability was by no means unfamiliar at that point in time.[116] Nevertheless, a consensus that executives should focus on a broader set of goals had begun to take shape.[117] Such thinking was a good fit with the 1970s, an era when "the social and legal climate encouraged management to adopt a pluralistic view of their responsibility to the various corporate constituencies."[118] In this milieu, Freidman's essay seemed "off-the-wall"[119] and "far out of the mainstream."[120]

Friedman's 1970 essay, as well as being out-of-step with a growing consensus regarding corporate purpose, apparently did little to swing opinion amongst contemporaries. A 1971 *Wall Street Journal* article on corporate social responsibility noted that "[f]ive or 10 years ago any businessman worth his salt would have" said "a corporation's job" was "to make money for its owners (a.k.a. stockholders)" and acknowledged that Milton Friedman "still argues that the corporation's responsibility is to

---

112. Jacob Bagha & Eugene R. Laczniak, *Seeking the Real Adam Smith and Milton Friedman*, 14 PHIL. MGMT. 179, 181 (2015).

113. FOX, *supra* note 48, at 160; FRIEDMAN, *supra* note 88; Sanjai Bhagat & R. Glenn Hubbard, *Which Problems Should Companies Try to Solve?*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 83 ("[S]eeking to re-center the debate over the corporation's objectives, Milton Friedman fired a broadside not from an esoteric academic outlet but from the Sunday Magazine of *The New York Times*.").

114. Becky L. Jacobs, *Milton Friedman Has a Lot to Answer for: A Response to Joshua Fershee's "Long Live Director Primacy: Social Benefit Entities and the Downfall of Social Responsibility*,*"* 19 TRANSACTIONS: TENN. J. BUS. L. 391, 391 (2017).

115. Thornton F. Bradshaw, *The Corporation Executive's View of Social Responsibility*, FIN. ANALYSTS J., Sept.–Oct. 1971, at 30, 30, 72.

116. *See supra* notes 60–65 and related discussion.

117. *See supra* notes 53–57, 79–82 and accompanying text.

118. Gordon Donaldson, *The Corporate Restructuring of the 1980s—and Its Import for the 1990s*, 6 J. APPLIED CORP. FIN., no. 4, 1994, at 55, 56.

119. Perlstein, *supra* note 29, at 28.

120. Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950–2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1520 (2007).

produce profits" but indicated "that answer is rapidly becoming an anachronism." [121] In 1974 the *New York Times* remarked upon "the heightened sense of social responsibility that now characterizes many corporate managements."[122] In a 1975 study of "the megacorporation," law professor Philip Blumberg argued "[m]aking money for shareholders . . . no longer receives respect as an adequate statement of business objectives" and referred to Friedman as part of an intellectual "rear guard."[123]

The pluralistic orientation that prevailed in corporate America in the 1970s despite Friedman's *New York Times* essay was sustained as the 1980s got underway. In 1981, the Business Roundtable issued a "Statement on Corporate Responsibility" that struck a stakeholder-friendly tone akin to its 2019 statement on the same topic, saying "[m]ore than ever, managers are expected to serve the public interest as well as private profit" and indicating that while "[t]he shareholder must receive a good return other constituencies also must have the appropriate attention."[124] The chair of the Business Roundtable said in support of this stance in the *New York Times* "[t]he simple theory that management can get along by considering only the shareholder has been left behind in old economic dissertations."[125] Milton Friedman's 1970 essay thus seems not to have offered any sort of turning point for America's leading corporate executives.

The Business Roundtable's 1981 stance was in step with the times, at least for the moment. While Peter Drucker said in 1954 that corporate executives were profit-conscious, his take in 1980 was that "most businesses look upon shareholders as a constituency that has to be satisficed" with a minimum acceptable return.[126] Based on interviews with numerous outside directors of public companies University of Chicago management professor Thomas Whisler endeavored in 1983 to set out for *Wall Street Journal* readers these directors' views on boardroom responsibilities. He said that while the directors knew that "officially, we are here to act in the shareholders' interests," this rule was "a rhetorical convenience" and that "[a] more accurate statement is that we act to maximize the economic value of the firm."[127]

121. Charles N. Stabler, *Changing Times: For Many Corporations, Social Responsibility Is Now a Major Concern*, WALL ST. J., Oct. 26, 1971, at 1.

122. Milton Moskowitz, *Emergence of the Corporate Conscience*, N.Y. TIMES, Jan. 6, 1974, at B73.

123. PHILLIP I. BLUMBERG, THE MEGACORPORATION IN AMERICAN SOCIETY: THE SCOPE OF CORPORATE POWER 4 (1975).

124. BUSINESS ROUNDTABLE, STATEMENT ON CORPORATE RESPONSIBILITY 5, 9 (1981).

125. Andrew C. Sigler, *Roundtable Reply*, N.Y. TIMES, Dec. 27, 1981, at F2.

126. Drucker, *supra* note 60 and related discussion; PETER F. DRUCKER, MANAGING IN TURBULENT TIMES 210 (1980).

127. Thomas L. Whisler, *Some Do's and Don'ts for Directors: Manager's Journal*, WALL ST. J., March 21, 1983, at 20.

An interview-based study of top executives at a dozen leading corporations by Harvard Business School professors Jay Lorsch and Gordon Donaldson, also published in 1983, indicated senior management thought the same way as directors. Lorsch and Donaldson acknowledged "[i]t is commonly believed that the primary goal of these corporate managers is the maximization of shareholder wealth."[128] In fact, their respondents' top priority was "the survival of the corporation in which they invested themselves psychologically and professionally."[129] The authors also reported that "none of the executives was very concerned about the current market value of his company's stock. . . . [W]hat really mattered was the long-term health of the company."[130]

For at least a decade following the publication of Friedman's *New York Times* essay, his take on corporate social responsibility not only failed to provide a turning point, it seemed destined to remain a marginalized point of view. William Dill, Dean of New York University's business school, suggested in a 1978 volume on *Running the American Corporation* "that troubled times lie ahead" and indicated that a manager seeking "to keep his business autonomous . . . must recognize he is a public man, serving public needs."[131] Edward Epstein, a professor at U.C. Berkeley's business school, acknowledged the following year "that the legitimacy of corporate behavior in the United States has been increasingly evaluated by performance criteria that consider the total societal impact of the firm and not simply its ability to maximize profits" and added that "[t]here is little likelihood that public concern regarding the social responsibilities of the megacorporation will fade away in the forthcoming decade."[132] As *Forbes* noted in 1986, however, "in business as in life, nothing stays the same."[133] Before the twentieth century drew to a close, managerial priorities would be strongly reoriented in favor of shareholders. The next two parts of the Article consider this transition, indicating in so doing that it had little to do with Milton Friedman's 1970 prescription regarding corporate and managerial priorities.

128. GORDON DONALDSON & JAY W. LORSCH, DECISION MAKING AT THE TOP: THE SHAPING OF STRATEGIC DIRECTION 7 (1983).

129. *Id.*

130. *Id.* at 21.

131. William R. Dill, *Introduction* to RUNNING THE AMERICAN CORPORATION 1, 2 (William R. Dill ed., 1978).

132. Edwin M. Epstein, *Societal, Managerial, and Legal Perspectives on Corporate Social Responsibility—Product and Process*, 30 HASTINGS L. J. 1287, 1298, 1318 (1979).

133. M.S. Forbes, *Milken Helps Swing the Pendulum*, FORBES, Aug. 25, 1986, at 23.

IV. SHAREHOLDERS RISE TO THE TOP OF THE PRIORITY LIST: WHEN AND WHY

The Business Roundtable, having declared in 1981 that managers were "expected to serve the public interest as well as private profit,"[134] adopted a similarly neutral corporate purpose tone in 1990. According to a Business Roundtable statement on corporate governance, it was "the directors' responsibility to carefully weigh the interests of all stakeholders as part of their responsibility to the corporation or to the long-term interests of its shareholders."[135] This balancing act was shelved in 1997. The Business Roundtable declared "the paramount duty of management and of boards of directors is to the corporation's stockholders" and indicated "the interests of other stakeholders" were merely "relevant as a derivative of the duty to stockholders."[136]

As journalist Steve Pearlstein has observed, when the change of heart occurred in 1997 "the Business Roundtable was striking a tone that sounded a whole lot more like Professor Friedman."[137] Given, however, that the Business Roundtable's conversion to shareholder primacy only took place nearly three decades after Friedman published his essay, his views self-evidently had little direct influence on that conversion. The change also did not occur because of anything further that Friedman had to say on point. He elaborated on his views on corporate social responsibility in a 1972 interview published in *Business and Society Review*.[138] Otherwise, despite the frosty reception his 1970 essay elicited, he was "not rushed into print with rebuttals," perhaps because he believed his vision "however imperfect . . . bristle[d] with potential."[139] Moreover, as the "shareholder first" mentality took hold in corporate America, its tone would differ materially from Friedman's. Part V canvasses this point. Here we consider when managerial priorities pivoted decisively in favor of shareholders and why.

A. When?

While the 1970s emphasis on balancing the interests of corporate constituencies continued to prevail in the early 1980s, prioritization of shareholders then began to gain momentum. Alfred Rappaport, a

134. *Supra* note 124 and related discussion.

135. Business Roundtable, *Corporate Governance and American Competitiveness*, 46 BUS. LAW. 241, 244 (1990).

136. BUSINESS ROUNDTABLE, STATEMENT ON CORPORATE GOVERNANCE 3 (1997).

137. Pearlstein, *supra* note 11, at 41.

138. *Milton Friedman Responds*, BUS. & SOC. REV., Spring 1972, at 5.

139. Bill Shaw, *A Reply to Thomas Mulligan's "Critique of Milton Friedman's Essay 'The Social Responsibility of Business to Increase Its Profits,'"* 7 J. BUS. ETHICS 537, 538 (1988). On the initial reception to Friedman's article, see *supra* notes 119–21, 123 and accompanying text.

"shareholder value" pioneer amongst academics who helped to popularize the phrase,[140] noted in his 1986 book *Creating Shareholder Value* that "[e]ndorsements of the shareholder value approach can be found in an increasing number of annual reports and other corporate publications."[141] 1983 would be the first year that more than two American public corporations used the term "shareholder value" in their annual reports to shareholders.[142] Within two years over fifty companies were doing so and by 1989 30% of publicly traded companies were deploying the phrase.[143]

Business publications and the academic literature also reflected the growing attention shareholders were attracting. While the term "shareholder value" rarely appeared in the daily *Wall Street Journal* prior to 1980 and was only mentioned in 10 articles between 1980 and 1982, usage increased to 13 articles in 1983, 26 in 1984, 76 in 1985, and 113 in 1986.[144] The pattern was replicated with the bi-monthly *Harvard Business Review*. The term "shareholder value" first appeared in 1955, was referred to again in 1981, and then was mentioned nine times between 1986 and 1989.[145] The momentum was similar for academic publications generally (Figure 1).[146]

---

140. Bill Barnhart, *Takeover Inc.*, CHI. TRIB., Sept. 20, 1987, at F1; James Kristie, *Timeline: The Evolution of 20th Century Corporate Governance*, DIRECTORS & BOARDS, Fall 1997, at 37, 43.

141. ALFRED RAPPAPORT, CREATING SHAREHOLDER VALUE: THE NEW STANDARD FOR BUSINESS PERFORMANCE 3 (1986).

142. Blake Edward Taylor, *Reconsidering the Rise of 'Shareholder Value' in the United States, 1960-2000* 18 (London Sch. of Econ. and Poli. Sci. Working Paper No. 214, 2015).

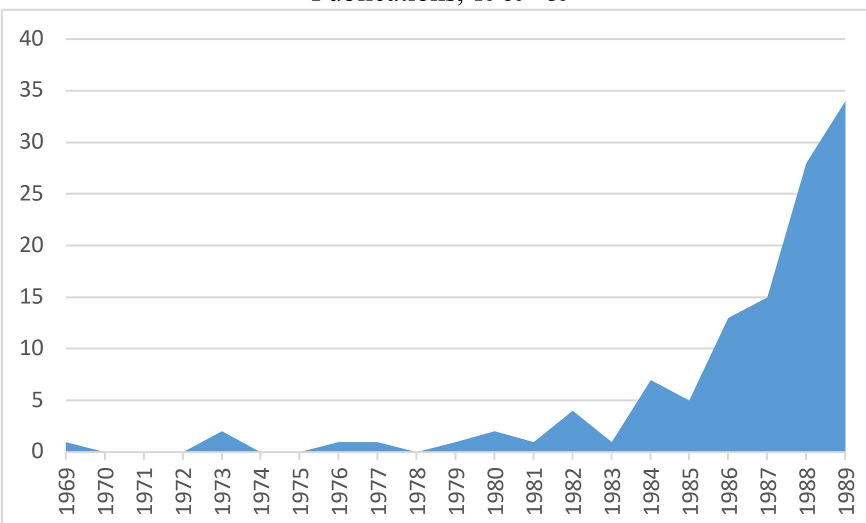
143. *Id.* at 12–13.

144. Johan Heilbron, Jochem Verheul & Sander Quak, *The Origins and Early Diffusion of "Shareholder Value" in the United States*, 43 THEORY & SOC'Y 1, 10–12 (2014).

145. *Id.* at 16.

146. *See also* Marion Fourcade & Rakesh Khurana, *The Social Trajectory of a Finance Professor and the Common Sense of Capital*, 49 HIST. POL. ECON. 347, 372 fig.5 (2017) (chart indicating mentions of the term "shareholder value" in economics, management, and finance journals 1970–2010, drawn from JSTOR).

Figure 1: Usage of the Term "Shareholder Value" in Academic Publications, 1969–89



Source: JSTOR (all sources, search restricted to articles, reviews, and research papers)

A managerial reorientation in favor of shareholders accompanied the change in nomenclature. In 1984 the *New York Times* drew attention to "a renewed emphasis on the most visible sign of corporate well-being—stock price."[147] A 1986 report by a congressional subcommittee on takeovers suggested that "[w]hile the corporate reformers of the 1970s urged that 'accountability' meant being a good corporate citizen answerable to society as a whole, observers might now suggest that 'accountability' in the 1980s means keeping stock prices high for stockholders."[148] Winthrop Knowlton, a former CEO of publishers Harper & Row, and Ira Millstein, a prominent Wall Street lawyer and corporate governance expert, argued in 1988 that the American corporation was undergoing "a vast and necessary transition" at the core of which was "a heightened awareness of the need to serve shareholders better."[149] The *Chicago Tribune*'s financial editor said the same year the shareholder was "king now."[150]

147. Leslie Wayne, *A Look at New Corporate Tactics*, N.Y. TIMES, Feb. 26, 1984, at F6.

148. CHAIRMAN OF H.R. SUBCOMM. ON TELECOMM., CONSUMER PROT. & FIN., 99TH CONG., CORPORATE TAKEOVERS: PUBLIC POLICY IMPLICATIONS FOR THE ECONOMY AND CORPORATE GOVERNANCE 77 (Comm. Print 1987).

149. Winthrop Knowlton & Ira Millstein, *Can the Board of Directors Help the American Corporation Earn the Immortality It Holds So Dear?*, *in* THE U.S. BUSINESS CORPORATION: AN INSTITUTION IN TRANSITION 169, 169 (John R. Meyer & James M. Gustafson eds., 1988).

150. William Neikirk, *Too Much Mania and Too Little Fear*, CHI. TRIB., Oct. 26, 1988, at A3.

B. Why?

Explanations proffered for the 1980s managerial reorientation in favor of shareholders have included growth in the percentage of shares owned by institutional shareholders that provided an improved foundation for shareholder activism and the emergence of agency cost theory as an influential shareholder-friendly school of thought in the corporate realm.[151] The real game-changer for public companies, however, was an unprecedented surge in hostile takeover bids.[152] When the *New York Times* sought to explain in 1984 the "renewed emphasis" on share prices, it acknowledged that executives liked a high stock price because this "ma[de] it easier to issue new shares."[153] The *Times* stressed particularly, though, the "unsavory prospect" of an unwelcome takeover bid, noting that companies "among America's mightiest" had lost or were in danger of losing their independence because of their "sin" of failing "to keep their stock price high enough to fend off attack."[154]

As far back as the 1950s there was awareness that the threat of an unwelcome takeover was a potentially significant disciplinary mechanism for public company executives.[155] However, in the 1980s—known as the Deal Decade[156]—the aggregate market value of targets increased dramatically, both because more bids were being made and because the largest targets were bigger than they ever had been.[157] Size had formerly functioned as a potent obstacle to uninvited bids for control because of challenges associated with financing takeovers.[158] As *Newsweek* told readers in 1988, however, "on today's Wall Street few companies, no matter how big or venerable, are off limits."[159]

The new, widespread vulnerability to unwelcome hostile takeovers dramatically reoriented priorities in America's boardrooms. *Business Week*

---

151. Jiwook Jung & Frank Dobbin, *Finance and Institutional Investors*, *in* THE OXFORD HANDBOOK OF THE SOCIOLOGY OF FINANCE 52, 56–57, 69 (Karin Knorr Cetina & Alex Preda eds., 2012).

152. *See* Pearlstein, *supra* note 11, at 42; CHEFFINS, *supra* note 49, at 194; ROGER LOWENSTEIN, ORIGINS OF THE CRASH: THE GREAT BUBBLE AND ITS UNDOING 6–7 (2004); Ronald J. Gilson, *Catalyzing Corporate Governance: The Evolution of the United States System in the 1980s and 1990s*, 24 CO. & SEC. L.J. 143, 150 (2006).

153. Wayne, *supra* note 147.

154. *Id.*

155. CHEFFINS, *supra* note 49, at 79.

156. THE DEAL DECADE: WHAT TAKEOVERS AND LEVERAGED BUYOUTS MEAN FOR CORPORATE GOVERNANCE (Margaret M. Blair ed., 1993).

157. CHEFFINS, *supra* note 49, at 163.

158. *Id.* at 80, 151.

159. Larry Reibstein & Carolyn Friday, *Time Inc. Feels the Heat*, NEWSWEEK, Oct. 3, 1988, at 40; *see also* William C. Norris, *Enough Greenmail*, N.Y. TIMES, Mar. 3, 1985, at E21; ARTHUR FLEISCHER, JR., GEOFFREY C. HAZARD, JR., & MIRIAM Z. KLIPPER, BOARD GAMES: THE CHANGING SHAPE OF CORPORATE POWER 6 (1988).

said in 1985 "[u]ltimately, only a company that sells for something close to its full value is safe from a raid."[160] That meant "[c]ompanies are paying more attention to shareholders . . . reorganizing their balance sheets, repurchasing their shares, and doing all they can to make stock prices reflect asset values and cash flows."[161] The *Chicago Tribune* indicated in 1987 "[c]ompany managers and directors know that if they don't boost their stock price quickly, someone else armed with debt financing probably will."[162] Murray Weidenbaum, a business school professor, concurred, saying "[i]f the board will not make the difficult choices to enhance the value of the corporation, the takeover artists will."[163] The upshot as of 1987, according to the CEO and chair of the board of consumer products giant Procter & Gamble, was that "[w]idespread hostile takeover activity has made maximizing immediate shareholder value appear to be the basic purpose of a business enterprise."[164]

Takeover activity declined substantially as soon as the 1980s ended, particularly of the hostile variety.[165] The temporary collapse of a market for "junk bonds" bidders had been relying upon to raise finance, judicial endorsements of managerial deployment of takeover defenses, and the promulgation of anti-takeover legislation by a substantial majority of states all helped to throw the brakes on hostile takeover offers.[166] Alfred Rappaport had told *Wall Street Journal* readers in 1987 "[r]estructuring to create shareholder value is not a transitory fad; it will become a permanent part of management's strategic response to shifting economic forces."[167] However, when the Deal Decade ended abruptly, doubts arose as to what would motivate public company executives to focus on generating healthy returns for shareholders if they had no reason to fear a hostile takeover. The fact that in 1990 the Business Roundtable referred to the responsibility that directors had to all stakeholders rather than emphasizing stockholders' interests indicated that shareholder primacy was not yet a fully-entrenched norm amongst the managerial elite.[168] Nell Minow, a well-known shareholder activist, referred to the Business Roundtable's stance as "a wiring diagram for CEO monarchy" that assumed "American business is doing just fine and does not need interference from anyone, especially

160. *Getting Rough With the Raiders*, BUS. WK., May 27, 1985, at 34.
161. *Id.*
162. Barnhart, *supra* note 140.
163. Murray L. Weidenbaum, *Responding to Corporate Takeovers*, 24 SOCIETY, no. 6, 1987, at 26, 29.
164. John G. Smale, *What About Shareowners' Responsibility?*, WALL ST. J., Oct. 16, 1987, at 28.
165. CHEFFINS, *supra* note 49, at 173.
166. *Id.* at 173–80.
167. Alfred Rappaport, *Taking Stock of Your Company's Real Worth*, WALL ST. J., Mar. 2, 1987, at 18.
168. *Supra* note 135 and related discussion.

shareholders."[169] There would only be, however, a brief post-Deal Decade pause in the shareholder-friendly momentum. During the 1990s governance changes would lock in the generation of shareholder value as the top managerial priority.

Contemporaries were well aware a post-Deal Decade change of heart in public companies could displace the recent prioritizing of shareholder welfare. In February 1990 the *New York Times*, having noted that "[m]any of the raiders who once struck terror in the hearts of chief executives are on the sidelines" and having indicated that the decline in takeover activity was allowing "corporate executives to breathe easier," suggested that "unless other catalysts for change emerge . . . corporate America could slack off again."[170] The *Financial Times* said later the same year, "it is generally agreed that in the US, fear of takeover is an important (although highly capricious) discipline on the self-interested behaviour of managements. Who or what can take the place of the takeover market?"[171]

The *New York Times* identified in its 1990 article two examples of "other catalysts for change" that could ensure that corporate America would not get "fat and lazy," namely "more aggressive outside directors" and "more active institutional shareholders."[172] There was an additional shareholder-friendly corporate governance mechanism to which the *New York Times* did not draw attention that others were flagging up, namely reconfiguring executive pay to strengthen links between managerial compensation and shareholder returns. The *Los Angeles Times* told readers in May 1990 an "executive's pay should be maximized when shareholder value is maximized."[173] A *Wall Street Journal* columnist said the same month that if advice academics Michael Jensen and Kevin Murphy were offering in a forthcoming *Harvard Business Review* article that the pay of executives should be tied more closely to the fate of their companies' stock was put into practice "[t]he individual companies and the economy would be better served." [174] Amongst these "other catalysts for change" a 1990s reconfiguration of executive pay would prove to be the most influential, but boards and shareholders both helped to bring that reconfiguration about.

---

169. Nell Minow, *Shareholders, Stakeholders, and Boards of Directors*, 21 STETSON L. REV. 197, 223 (1991).

170. Sarah Bartlett, *Life in the Executive Suite After Drexel*, N.Y. TIMES, Feb. 18, 1990, at F1.

171. Leo Herzel, *New Discipline to Fill the Takeover Void*, FIN. TIMES, Nov. 1, 1990, at 20.

172. Bartlett, *supra* note 170.

173. Vince Taormina & Fred E. Whittlesey, *Fixing the Executive Pay Problem*, L.A. TIMES, May 27, 1990, at D9.

174. Lindley H. Clark, Jr., *It's Not How Much You Pay CEOs—but How*, WALL ST. J., May 17, 1990, at A18 (discussing Michael C. Jensen & Kevin J. Murphy, *CEO Incentives—It's Not How Much You Pay, but How*, HARV. BUS. REV., May–June 1990, at 138).

With boards, *Business Week* observed in 1994 that "shareholder wealth creation" had "become the mantra of modern management" and explained this in part on the basis that in public companies "directors have placed more focus than ever on market value."[175] At the same time, boards were becoming "energized," at least as compared to previous decades.[176] Board-driven executive turnover in the early 1990s at leading companies such as Goodyear, Westinghouse, American Express, General Motors, IBM, and Kodak seemed to prove directors were putting "the interests of shareholders first in their thinking."[177]

As for institutional shareholders, sociologist Charles Derber said in his 1998 book *Corporation Nation* that the fact that they had "clearly gained some real ground" during the 1990s had brought "shareholder value to the lips of every corporate executive."[178] Between the 1950s and the 1980s institutional share ownership grew markedly but institutional investors largely refrained from intervening in the affairs of public companies in which they held shares.[179] As the 1990s got underway it was widely assumed the situation was changing, with institutional shareholders ostensibly emerging as active monitors of public company executives.[180] The fact that institutional investor lobbying helped to prompt the high-profile board-driven executive turnover occurring in the early 1990s lent credence to this line of thinking and seemed to imply that management needed to "[p]roduce consistent shareholder gains on a regular basis or something will be done."[181]

There was not as much substance to the 1990s change in approach by boards and institutional shareholders as seemed to be the case at the time. Various highly publicized-corporate scandals occurring in the early 2000s where directors had been unaware of the impending calamity implied that 1990s boardroom reform may have been largely illusory.[182] Indeed, a 2003 *New York Times* article published to coincide with the ten-year anniversary

175. *Executive Pay: Who Gets Shortchanged?*, BUS. WK., May 30, 1994, at 150.

176. Ronald J. Gilson, Unocal *Fifteen Years Later (And What We Can Do About It)*, 26 DEL. J. CORP. L. 491, 513 (2001); Brian R. Cheffins, *Delaware and the Transformation of Corporate Governance*, 40 DEL. J. CORP. L. 1, 10, 58 (2015).

177. A.A. Sommer, Jr., *It All Comes Down to Money. Face It: A Board's Main Goal Is Corporate Profits*, BUS. L. TODAY, Jan./Feb. 1999, at 36, 40. On the CEO turnover in high-profile companies in the early 1990s, see Cheffins, *supra* note 176, at 59.

178. CHARLES DERBER, CORPORATION NATION: HOW CORPORATIONS ARE TAKING OVER OUR LIVES AND WHAT WE CAN DO ABOUT IT 146 (1998).

179. CHEFFINS, *supra* note 49, at 242.

180. John C. Coffee, Jr., *Liquidity Versus Control: The Institutional Investor as Corporate Monitor*, 91 COLUM. L. REV. 1277, 1281 (1991).

181. William Beaver, *Is the Stakeholder Model Dead?*, BUS. HORIZONS, Mar./Apr. 1999, at 8, 10; *see also* George de Lama, *Corporations Feeling Shove From Shareholders*, CHI. TRIB., Feb. 14, 1993, at D1.

182. CHEFFINS, *supra* note 49, at 239, 281–89, 307.

of the dismissal of IBM's CEO entitled "The Revolution That Wasn't" said "10 years later, it looks very much as if the corporate governance revolution of 1993 is back at Square 1."[183]

As for institutional shareholders, doubts about their contribution to corporate governance were evident well before the end of the 1990s. Law professor Jill Fisch cautioned in 1994 "reports of shareholder monitoring may be overstated."[184] A 1999 study of the activities of a large sample of institutional owners found "[c]ontrary to what prior reports . . . may intimate . . . most institutions follow a passive policy."[185] In 2001 law professor Douglas Branson said there was "no doubt . . . that that the promise of institutional investor activism was *the* oversold idea of the early 1990s."[186]

While neither boards of directors nor institutional shareholders may have pushed shareholder value up the managerial priority list to the degree that seemed possible as the 1990s got underway, both did play a significant role in transforming executive pay in a manner that contributed to a "shareholder first" mentality amongst corporate executives. Alfred Rappaport, the shareholder value pioneer, said of directors in the *Harvard Business Review* in 1999:

> In the early 1990s, corporate boards began to highlight shareholder value. They became convinced that the surest way to align the interests of managers with those of shareholders was to make stock options a large component of executive compensation. By the mid-1990s, CEOs and other senior managers found themselves with significant stock and options holdings.[187]

Institutional shareholders in their turn did much to prompt the executive pay rethink in which 1990s boards engaged. In 1992 *Fortune* drew attention to the fact "[i]nstitutional investors, the wakening 900-pound gorillas of corporate life, are turning their attention to CEO pay" and said of a shareholder campaign the previous year to force the conglomerate ITT to link the pay of its chief executive to the company's performance "the ugly publicity (ITT) endured has probably frightened many others into changing their ways."[188] Management professor Michael Useem noted in 1996 that

183. Claudia H. Deutsch, *The Revolution That Wasn't*, N.Y. TIMES, Jan. 26, 2003 (Business), at 1.

184. Jill E. Fisch, *Relationship Investing: Will It Happen? Will it Work?*, 55 OHIO ST. L.J. 1009, 1029 (1994).

185. MICHAEL J. RUBACH, INSTITUTIONAL SHAREHOLDER ACTIVISM: THE CHANGING FACE OF CORPORATE OWNERSHIP 3 (1999).

186. Douglas M. Branson, *Corporate Governance "Reform" and the New Corporate Social Responsibility*, 62 U. PITT. L. REV. 605, 635 (2001).

187. Alfred Rappaport, *New Thinking on How to Link Executive Pay With Performance*, HARV. BUS. REV., Mar.–Apr. 1999, at 91.

188. Geoffrey Colvin, *How to Pay the CEO Right*, FORTUNE, Apr. 6, 1992, at 60.

institutional shareholders despised "high compensation levels displaying little relationship to company performance" and said for companies that "the marching orders from the investment community have been to tighten the linkage with shareholder wealth."[189]

The emphasis placed on linking pay with performance had a marked impact on the configuration of executive compensation. The proportion of CEO pay in large public companies that was equity based (primarily in the form of stock options) was 60% in 1999 as compared with 20% in 1990.[190] The shift in turn influenced managerial priorities. The *Wall Street Journal* told readers in 1998 "investors aren't the only people on the trail of shareholder value these days. As companies across the U.S. increasingly tie executive compensation to performance through stock options and other means, more and more corporate managers are seeking this Holy Grail."[191] By the 2000s it was widely accepted that changes to executive pay in the 1990s had "truly focused management's attention on the stock market's evaluation of their companies."[192] In 2001, economist Robert Shiller said that because "[f]irms have tilted their compensation packages for management away from fixed salaries toward participation, as investors . . . management has an incentive to do everything they can to boost share prices."[193] Management professor Gerald Davis concurred, maintaining in 2009 that "the massive shift in compensation practices" occurring in the 1990s was "[p]erhaps the most compelling reason for executives' new-found religious devotion to shareholder value."[194]

The chronology set out thus far strongly suggests that in relation to the prioritization of shareholder value in American public companies Milton Friedman's 1970 *New York Times* essay played at best a modest supporting role. For nearly fifteen years after the essay was published, the shareholder primacy norm that would subsequently prevail was conspicuous by its

189. MICHAEL USEEM, INVESTOR CAPITALISM: HOW MONEY MANAGERS ARE CHANGING THE FACE OF CORPORATE AMERICA 243, 247 (1996).

190. Brian J. Hall, *Six Challenges in Designing Equity-Based Pay*, 15 J. APPLIED CORP. FIN., no. 3, at 21, 23.

191. C. Frederic Wiegold, *The Quest for Shareholder Value*, WALL ST. J., Feb. 26, 1998, at R1.

192. LEONARD R. SAYLES & CYNTHIA J. SMITH, THE RISE OF THE ROGUE EXECUTIVE: HOW GOOD COMPANIES GO BAD AND HOW TO STOP THE DESTRUCTION 37 (2006).

193. ROBERT SHILLER, IRRATIONAL EXUBERANCE 23 (2000).

194. DAVIS, *supra* note 55, at 86; *see also* Bainbridge, *supra* note 12, at 576 ("[C]hanges in director compensation have created additional hostages ensuring director fidelity to shareholder interests."); FOX, *supra* note 48, at 280 ("Giving CEOs a shot at options billionairedom also had the effect of making many of them intensely, obsessively interested in their company's stock price."); David Millon, *Why Is Corporate Management Obsessed with Quarterly Earnings and What Should be Done About It?*, 70 GEO. WASH. L. REV. 890, 906 (2002) ("A more likely explanation for SPM [stock price maximization] looks not to pressure imposed on management by shareholders but rather to management's own self-interest. Equity-based executive compensation, including compensation in the form of stock and of options to buy stock, has increased exponentially in recent years.").

absence.[195] When the shift occurred, as we have just seen, it was primarily attributable to the shock treatment of hostile takeover bids in the 1980s and the reconfiguration of executive pay in the 1990s, supported by boards and shareholders aware there needed to be governance substitutes once the threat takeovers had posed for underperforming executives faded into the background. While the relevant chronology does much to put Friedman's 1970 essay into proper context, one additional step is required to round out the process. This is contrasting what Friedman said public company managers should prioritize with the shareholder-first ethos that would in fact dominate as the twentieth century drew to a close. We consider this point next.

V. FRIEDMAN AND SHAREHOLDER VALUE

A presumption that underlies the notoriety of Milton Friedman's *New York Times* essay a half-century after publication is that Friedman's essay was the catalyst for the present-day prioritization of shareholder value in corporate America.[196] In fact, Friedman's 1970 essay did relatively little to presage the nature of the shareholder-first ethos that would subsequently take hold. The essay was "only a commonsense and conservative think piece on the proper roles of corporations and their managers,"[197] not some form of blueprint for the form of shareholder primacy that would take hold in American boardrooms. There were themes the essay explored that remained salient as shareholder value moved to the forefront. Nevertheless, the connection was partial at best.

Supporters of shareholder-centric governance maintain that managerial discipline is fortified if profits are the top priority because executive performance can be assessed in accordance with a single, comprehensible metric.[198] Friedman was alive to this logic. He warned that a corporate executive who was inclined to use corporate resources to address social objectives would be "guided only by general exhortations from on high to restrain inflation, improve the environment, fight poverty and so on and on."[199]

195. *See supra* notes 117–32 and accompanying text.

196. *See supra* notes 6, 12–13, 30–33, 38–39, 43–46 and related discussion.

197. Feldman, *supra* note 2, at 125.

198. Kelli A. Alces, *Balance and Team Production*, 38 SEATTLE U. L. REV. 187, 212 (2015); *see also* Reuven S. Avi-Yonah, *The Cyclical Transformations of the Corporate Form: A Historical Perspective on Corporate Social Responsibility*, 30 DEL. J. CORP. L. 767, 769 (2005) (summarizing the literature where this point is made).

199. Friedman, *supra* note 3, at 122; *see also* Rajan, *supra* note 91, at 20 ("Another pro of Milton Friedman's statement is that . . . it may be relatively easy to monitor management when it has a well-defined goal such as shareholder value maximization.").

Proponents of a shareholder-oriented corporate sector also defend their stance by pointing out that executives under an onus to maximize shareholder returns will find it difficult to justify self-serving policies by citing the need to protect interests of a non-shareholder corporate constituency.[200] Again, Friedman was on board. He said: "The difficulty of exercising 'social responsibility' illustrates, of course, the great virtue of private competitive enterprise—it forces people to be responsible for their own actions and makes it difficult for them to 'exploit' other people for either selfish or unselfish purposes."[201]

A further point advocates of shareholder primacy have made to justify a strong managerial focus on shareholder returns is that everyone associated with a corporation should be doing well if the shareholders are. The reasoning follows on from the proposition that shareholders are residual claimants in a company, in the sense that they are only entitled to receive what is left over after accounting for other claims their company is obliged to meet.[202] With shareholders being residual claimants and with shareholder returns being determined by the net cash flow companies generate over time, it follows that with regard to corporate constituencies a "rising tide of corporate profits will raise all ships."[203] As Jack Welch, who gained a reputation for delivering for shareholders while serving as chief executive officer of General Electric from 1981 to 2001,[204] told *Business Week* readers in 2006, "sustained profitability leads to . . . satisfied customers, engaged employees, thriving communities, and healthy societies."[205]

Friedman did not use the term "residual claimant" to refer to shareholders in his 1970 essay. Indeed, only a decade later would academic commentators begin to deploy this terminology to characterize shareholders.[206] Nevertheless, Friedman believed that what was good for a

200. Bainbridge, *supra* note 12, at 581.

201. Friedman, *supra* note 3, at 123.

202. Michael Bradley, Cindy A. Schipani, Anant K. Sundaram & James P. Walsh, *The Purposes and Accountability of the Corporation in Contemporary Society: Corporate Governance at a Crossroads*, 62 LAW & CONTEMP. PROBS. 9, 37–38 (1999); David J. Denis, *Is Managerial Myopia a Persistent Governance Problem?*, 31 J. APPLIED CORP. FIN., no. 3, 2019, at 74, 82.

203. Alces, *supra* note 198, at 194; *see also* BRIAN R. CHEFFINS, COMPANY LAW: THEORY, STRUCTURE AND OPERATION 54 (1997).

204. CHEFFINS, *supra* note 49, at 31–34, 368.

205. Jack Welch & Suzy Welch, *Whose Company Is It Anyway?*, BUS. WK., Oct. 9, 2006, at 122.

206. The first law review or economics paper to suggest shareholders had a residual claim was Nicholas Wolfson, *A Critique of Corporate Law*, 34 U. MIAMI L. REV. 959, 973 (1980) ("the shareholders, agree to pay 'X' dollars in return for a residual claim on the firm's earnings"). The residual claimant characterization of shareholders was first explored in the manner that would become standard in Eugene F. Fama & Michael C. Jensen, *Separation of Ownership and Control*, 26 J.L. & ECON. 301, 303, 312 (1983); Eugene F. Fama & Michael C. Jensen, *Agency Problems and Residual Claims*, 26 J.L. & ECON. 327, 328–32 (1983). *Cf.* Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 782–83, 786 (1972) (saying that ideally a firm's

corporation's stockholders should be good for other corporate constituencies too. When Friedman assailed corporate expenditures designed to achieve "social" objectives he did not focus solely on the implications for shareholders. Instead, he was disdainful of "spending the stockholders' or customers' or employees' money."[207] Friedman elaborated in relation to a corporate executive who was "spending someone else's money for a general social interest," saying "[i]nsofar as his actions in accord with his 'social responsibility' reduce returns to stockholders, he is spending their money. Insofar as his actions raise the price to customers, he is spending the customers' money. Insofar as his actions lower the wages of some employees, he is spending their money."[208] To Friedman, then, all key corporate constituencies were in the same boat, at least in the corporate social responsibility context.

While Friedman's essay no doubt had strong shareholder-friendly overtones, key elements of the shareholder-first mentality that would come to prevail as the twentieth century drew to a close were missing. Consider the nomenclature. While Friedman has been identified as a pioneering proponent of shareholder value and shareholder primacy,[209] he did not refer to either concept. This is hardly surprising, given that these terms were not part of the corporate or stock market lexicon at the time. Prior to 1970 the term "shareholder value" had only appeared three times in the *Wall Street Journal*, had only been referred to on three occasions in annual reports public corporations issued to shareholders, and had only been used once in academic publications searchable through the JSTOR digital library.[210] As for "shareholder primacy," the term was first deployed in academic journals at the end of the 1980s and did not appear in the *Wall Street Journal* until 2003.[211]

---

manager would be the residual claimant on the firm's cash flows but acknowledging that in public companies "the residual claim is not held entirely by the central monitor").

207. Friedman, *supra* note 3, at 122.

208. *Id.* at 33.

209. *See supra* notes 6, 30–33, 38–39, 43–46 and accompanying text.

210. Taylor, *supra* note 142, at 12–13; Heilbron, Verheul & Quak, *supra* note 144, at 8. With JSTOR, based on a search carried out in March 2021, the earliest "hit" where the term "shareholder value" appears in the text is John B. Fery, N. Paul Loomba, Leonard Marks, Jr., I. Gordon Odell & Stanley Vance, *The Impact of Mergers on Management Theory*, 12 ACAD. MGMT. J. 153, 158 (1969).

211. With the *Wall Street Journal*, see Lynn A. Stout, *Power to PeopleSoft*, WALL ST. J., July 15, 2003, at B2. As for academic journals, with JSTOR the first article cited searching with the term "shareholder primacy" is Lyman Johnson & David Millon, *Missing the Point About State Takeover Statutes*, 87 MICH. L. REV. 846, 848 (1989). Johnson used the term prior to this in Lyman Johnson, *The Eventual Clash Between Judicial and Legislative Notions of Target Management Conduct*, 14 J. CORP. L. 35, 50 (1988), and Millon did likewise in David Millon, *State Takeover Laws: A Rebirth of Corporation Law?*, 45 WASH. & LEE L. REV. 903, 904 (1988). *See* David Millon, *Radical Shareholder Primacy*, 10 U. ST. THOMAS L.J. 1013, 1015 (2013). Law professor Philip Blumberg mentioned "shareholder primacy" in passing in his 1975 study of "the megacorporation." *See* BLUMBERG, *supra* note 123, at 8.

What Friedman did say in his 1970 essay reinforces the point that his article was merely an indirect forerunner of late twentieth century shareholder primacy. The essay discussed at length what corporate executives should not be doing—spending their corporations' money in accordance with supposed social responsibilities. In contrast, very little was said about what management should affirmatively seek to achieve, whether with respect to shareholders or otherwise. Friedman, for instance, never used the word "maximize" in his essay. While Friedman did suggest a corporate executive's responsibility was "to make as much money as possible," he qualified this by saying managers should act in accordance with society's basic rules as embodied in law and ethical custom.[212] Also, while the title of Friedman's essay indicated a business should "increase its profits," the point was only taken up once in the main body of the article, namely when Friedman quoted a passage from the discussion of corporate social responsibility in his 1962 book *Capitalism and Freedom*.[213] Friedman did assert in that book that corporate executives had no "responsibility other than to make as much money for their stockholders as possible,"[214] which is a sentiment akin to maximizing shareholder returns. There is no such invocation in his *New York Times* essay.[215]

Another indication that Friedman's essay was substantially removed from the shareholder-friendly mentality that emerged during the 1980s and prevailed thereafter was that the essay failed to foreshadow in any way a crucial element of that ethos. What the *New York Times* referred to in 2002 as an "earnings cult" would become a hallmark of the shareholder orientation that emerged in public companies as the twentieth century drew to a close.[216] Friedman said nothing about this.

In 2005 John Bogle, founder of the Vanguard mutual fund group, said of corporate America that its "[e]xecutives don't need to be told what to do: achieve strong, steady earnings growth and tell Wall Street about it."[217] As fascination with earnings results companies divulged quarterly grew in the 1980s, executives played ball due to apprehension about a possible hostile takeover.[218] Harold Williams, former chair of the SEC, explained why in 1985: "Corporations become vulnerable if their stock prices flag, and

212. *Supra* notes 34, 65 and accompanying text.

213. Friedman, *supra* note 3, at 125; FRIEDMAN, *supra* note 88, at 133.

214. FRIEDMAN *supra* note 88, at 133.

215. J.S. Nelson, *Bringing Ethics Back to Friedman's Call to Purpose for the Next 50 Years*, *in* MILTON FRIEDMAN 50 YEARS LATER, *supra* note 20, at 43, 44 ("In his 1970 *New York Times* essay, Milton Friedman asserted that the purpose of the corporation was to make profits. It has been understood that he meant profits primarily for shareholders, but that interpretation is less clear from his text.").

216. CHEFFINS, *supra* note 49, at 248; Harris Collingwood, *The Earnings Cult*, N.Y. TIMES MAG., June 9, 2002, at 68.

217. JOHN C. BOGLE, THE BATTLE FOR THE SOUL OF CAPITALISM 15 (2005).

218. CHEFFINS, *supra* note 49, 248–49.

managers believe that stock prices flag if quarterly earnings dip or just stay flat. Managers therefore struggle to keep earnings on an uptrend lest they be remembered as the ones who 'lost' General Widget."[219]

While hostile takeovers receded into the corporate governance background in the 1990s,[220] quarterly financial results were on their way to becoming an "obsession."[221] A powerful norm was taking hold—public companies should meet or exceed estimates of forthcoming quarterly earnings.[222] If a company came up short, this could "kill a stock."[223] Public company executives in turn had strong incentives to respond to the investment community's fixation on quarterly earnings data. With high profile instances of board-driven managerial turnover occurring in the early 1990s remaining fresh in the memory, executives knew a sharp stock price decline might compel their board to put managerial turnover on the agenda.[224] Moreover, the compensation bonanza liberal granting of stock options potentially foretold for management became considerably less likely as a company's share price fell. As *Business Week* said in 1998 of public company executives whose companies failed to meet earnings projections, "the resulting pain is intensely personal, since more than half of CEO pay comes from stock options."[225]

If Friedman's 1970 essay truly was a direct forerunner of the shareholder first mentality that took hold as the twentieth century drew to a close, it might have been expected that he would have urged corporate executives to set and hit earnings targets. In fact, he was silent on this point. History reveals why. It was only during the 1970s that stock market followers began to collate investor analysts' estimates of forthcoming quarterly earnings data for particular companies and only during the 1980s that investors began using quarterly earnings projections with regularity to assess corporate prospects and managerial competence.[226]

Similarly, given the supposedly influential status of Friedman's essay and given corporate America's subsequent stock market obsession it might have been anticipated that Friedman would have had a lot to say about

---

219. Harold M. Williams, *It's Time for a Takeover Moratorium*, FORTUNE, July 22, 1985, at 133.

220. *Supra* note 165 and accompanying text.

221. D.N. Ghosh, *Wall Street Capitalism and the World of Professional Managers*, 37 ECON. & POL. WKLY. 3803, 3806, 3809 (2002).

222. CHEFFINS, *supra* note 49, at 250.

223. Gretchen Morgenson, *Forecasts Made Rosy for Investors, but Results Are Sometimes Paler*, N.Y. TIMES, Dec. 21, 1999, at A1.

224. *Supra* note 177 and related discussion; CHEFFINS, *supra* note 49, at 251.

225. Nanette Byrnes, Richard A. Melcher & Debra Sparks, *Earnings Hocus-Pocus*, BUS. WK., Oct. 5, 1998, at 134.

226. Robert D. Hershey, *A Flourishing Industry, Predicting What Is and Isn't Flourishing*, N.Y. TIMES, May 17, 1998 (Business), at 7; James J. Park, *Do the Securities Laws Promote Short-Termism?*, 10 U.C. IRVINE L. REV. 991, 997 (2020).

shareholder returns. Again, no. The only time that Friedman mentioned share prices in his essay was to make the point that actions an executive took in the name of social responsibility that depressed a corporation's profits would reduce the price of its stock.[227] Hence, while the shareholder value ethos that ultimately flourished in public companies "offered little by way of nuance," as the *Economist* suggested in a 2019 essay on corporate purpose, "Friedman's position had a fair amount of give in it" even if it was "subsequently traduced as extreme." [228] Friedman's 1970 essay thus belonged "to a simpler time" [229] and had little directly to say about the shareholder-first mentality that would subsequently take hold in America's public companies.

CONCLUSION

Bill Shaw, an expert on business ethics, wrote in 1988 in a reply to an article criticizing Milton Friedman's 1970 *New York Times* essay on corporate social responsibility, "[L]et go of Milton Friedman. He has made an important contribution and that is more than most have done. Beyond that, he has set the tone for the Corporate Social Responsibility debate for too long."[230] This invocation fell on deaf ears. More than three decades after Shaw made his "let go" plea, Friedman's 1970 essay is thought of as the classic statement of shareholder-oriented capitalism and as such is a primary target for critics of this approach. Now, however, it truly is time to let go and stop blaming Friedman for the shareholder orientation of American public companies.

The attention Milton Friedman's 1970 essay continues to attract would be justified if his essay had been a plea for maximization of shareholder returns that constituted a sharp break from the past that put prevailing wisdom under immediate threat. None of those conditions are fulfilled. The essay was not a fundamental departure from conventional wisdom; it had often been said prior to 1970 that companies should focus on the bottom line. It is true that when Friedman wrote that public company executives were under unprecedented pressure to think of the corporate mission broadly. Friedman's essay did little, however, to reverse this trend. Instead, the need for a balanced multi-constituency approach was widely accepted in American boardrooms for at least a dozen years after his *New York Times* essay was published. Finally, the obsessive focus on earnings trends and

227. Friedman, *supra* note 3, at 122.
228. *I'm from a Company and I Am Here to Help*, ECONOMIST, Aug. 24, 2019, at 14.
229. *Id.*
230. Shaw, *Reply, supra* note 139, at 542.

share prices that would emerge as the twentieth century drew to a close was nowhere to be found in Friedman's essay.

Many of Friedman's present-day critics likely are not particularly interested in what he actually said in 1970.[231] What troubles them is what has been described as "the extraordinary power of shareholder-centrism as a dominant norm in corporate governance."[232] Sights are set on Friedman's *New York Times* essay because it is assumed to have been the well-spring for the invidious shareholder-oriented mentality that would ultimately prevail in public companies. That reductionist assumption, as this Article has shown, is erroneous. Friedman was covering familiar ground when he indicated profits were important, his essay failed to displace the stakeholder-friendly norms that would prevail in corporate America through the mid-1980s, and the essay said little about what executives should be seeking to achieve with respect to share prices or otherwise.

As the Business Roundtable's promulgation of its stakeholder-friendly 2019 "Statement on the Purpose of a Corporation" indicates, those uneasy with the shareholder orientation that has prevailed in corporate America since the 1980s have recently been gaining ground in the "Great Debate" about what companies are for.[233] Indeed, a *Wall Street Journal* columnist has suggested stakeholder capitalism "has steadily become the dominant philosophy among Western business elites."[234] It is far from clear, however, that a major shift in priorities beckons in the American public company.[235] As a *New York Times* columnist said in 2019, "because a public corporation's most direct incentives — including the CEO's pay — remain tied to stock performance, there's no reason to believe that corporations will voluntarily move away from pleasing shareholders alone, despite the new, high-minded ideals."[236] To succeed in upending the dominant narrative in corporate America shareholder primacy's critics would be better served trying to change minds about the incentives of present-day corporate

231. Edmans, *supra* note 27, at 12 ("Friedman's article is widely misquoted and misunderstood. Indeed, thousands of people may have cited it without reading past the title.").

232. Christopher M. Bruner, *The Fiduciary Enterprise of Corporate Law*, 74 WASH. & LEE L. REV. 791, 804 (2017).

233. *See supra* notes 7, 22, 26–28 and related discussion; BUSINESS ROUNDTABLE, *supra* note 24.

234. Vivek Ramaswamy, *The Global, Olympian "We,"* WALL ST. J., Jan. 26, 2021, A15.

235. CHEFFINS, *supra* note 49, at 368; Jacob M. Schlesinger, *DuPont's Travails Shaped President-Elect's Business Views*, WALL ST. J., Nov. 24, 2020, at A1 ("Yet for all the talk of change, most companies still give priority to shareholder returns, an emphasis most analysts consider inevitable.").

236. Farhad Manjoo, Opinion, *C.E.O.s Should Fear a Recession*, N.Y. TIMES, Aug. 22, 2019, at A27; *see also* Holman W. Jenkins, Jr., Opinion, *CEOs for President Warren*, WALL ST. J., Aug. 21, 2019, at A13 ("After all, CEOs will still be hired by boards who are elected by shareholders; they will still be rewarded under contracts that pay them for producing sustainable increases in the stock price (that's what those vesting requirements are for).").

executives than assailing a half-century old essay substantially removed from today's concerns.