BOOK REVIEW

CANCELLING CAPITALISM?

GROW THE PIE: HOW GREAT COMPANIES DELIVER BOTH PURPOSE AND PROFIT. By Alex Edmans. Cambridge & New York: Cambridge University Press. 2020. Pp. 357. $24.95.

*Reviewed by Christina Parajon Skinner**

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INTRODUCTION

In February 2019, Amazon announced a plan to build its new national headquarters in Queens, New York. The plan would create between 25,000 and 40,000 well-paid jobs and fill New York City's tax coffers with at least $27.5 billion. But Amazon cancelled its decision in the face of intense political opposition. Perhaps the most vocal opponent was New York congressional Representative Alexandria

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Ocasio-Cortez. She roundly celebrated Amazon's retreat, tweeting, "today was the day a group of dedicated, everyday New Yorkers & their neighbors defeated Amazon's corporate greed."[1]

But the congresswoman's maligning of Amazon's relocation was a sleight of hand. She told her followers that the "tax breaks" that would have gone to Amazon would instead now be available for public works, like subway repairs and teacher salaries.[2] But this was wrong. The tax breaks would not be a "donation" of dollars that would have taken funds away from other public uses; rather, Amazon would have had some reductions from future tax bills if and only if—the company had improved the community in financially concrete ways. Yet Amazon was bullied out of town on these false pretenses, and Queens lost out on jobs, urban development, and hefty corporate tax payments.[3] Here, both Amazon and Queens residents lost out—the citizens perhaps the most.

The tale of Amazon in retreat is one of many hard-hitting examples Alex Edmans gives in his book, *Grow the Pie*, all of which illustrate the growing popular antipathy against corporate profit. In the most charitable interpretation of Edmans's examples, people and politicians increasingly reject capitalism—the private harnessing of free-economic markets—because they appear to misunderstand the role that profits play in society. In other cases, however, it seems that politicians feint ignorance of the social benefits of capitalism in seeking to hum the most popular tune. *Grow the Pie* disabuses misperceptions by providing novel evidence and examples that bust the myriad myths now perpetuating the growing movement to "cancel capitalism," as I'll call it here.

To be sure, the movement to cancel capitalism is not merely a political gambit. In one form or another, the notion that corporations' orientation toward profits, and their embrace of free-market forces, is morally or legally objectionable has been penned by leading business and legal scholars over the past few years. Perhaps not surprisingly, this scholarly antipathy toward capitalism (and its instantiation in corporate profit-seeking) has become more fervent over the past eighteen months. Academic, policy, and boardroom conversations about the merits (and demerits) of capitalism have taken shape in the "corporate purpose" debate.[4]

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1 ALEX EDMANS, GROW THE PIE: HOW GREAT COMPANIES DELIVER BOTH PURPOSE AND PROFIT 29 (2020); *see* J. David Goodman, *Amazon Scraps New York Campus*, N.Y. TIMES, Feb. 15, 2019, at A1.

2 *Id.* at 29.

3 *Id.*

4 *See, e.g.*, Colin Mayer, *The Future of the Corporation and the Economics of Purpose*, 58 J. MGMT. STUD. 887, 887 (2021) (noting that "[t]he last few years have seen an intensified

But in many scholarly quarters at least, "purpose" has become synonymous with anti-profit—and some academics advocate for law or regulation to implement their view.[5] Such academic thinkers urge that corporations should abandon the pursuit of profit for shareholders (at least in the first instance) and should instead act first and foremost in the interests of other stakeholders—employees, customers, suppliers, or the environment.[6]

The ardency of "stakeholder capitalists" stems from a belief that profit-seeking corporations are responsible for most if not all of society's ills. As one prominent stakeholder theorist put it,

> [i]t is almost as if business executives somehow believe[] that "companies should produce addictive products, minimize their wage bills and costs of employment, pollute the environment, avoid paying taxes so long as this raises their share price and does not undermine their share price for reputational or other risk reasons" . . . .[7]

Such sentiment, however, elides profit-seeking in the ordinary course with legally reprehensible misconduct. It also obscures the reality that profits are—or at least can be—prosocial and that corporations are incentivized to create value for shareholders as well as society by "growing the pie"—in Alex Edmans's view.

Edmans fully agrees that companies should serve society, as stakeholders believe. However, unlike stakeholderists who have a distaste for profit-seeking—and seek to choke off capitalism at its roots—Edmans painstakingly proves that corporations can pursue profit while serving social goals. *Grow the Pie* is, in totality, a tome about how corporations can multi-task as such, and how they serve society

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debate around the future of the corporation. Underpinning this is a growing concern around three sets of issues—rising environmental degradation, inequality and mistrust in business"); *see also* Oliver Hart & Luigi Zingales, *Companies Should Maximize Shareholder Welfare Not Market Value*, 2 J. OF L., FIN., & ACCT. 247 (2017); Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. (forthcoming 2021) (explaining the "system" of corporate governance, as a matter of various legal and institutional force, all of which have a shareholder orientation). For a popular piece on this topic, see Sally Blount & Paul Leinwand, *Why Are We Here*, HARV. BUS. REV., Nov.–Dec. 2019, https://hbr.org/2019/11/why-are-we-here [https://perma.cc/QU2C-CUSB].

5 *See, e.g.*, COLIN MAYER, FIRM COMMITMENT: WHY THE CORPORATION IS FAILING US AND HOW TO RESTORE TRUST IN IT (2013); Rebecca Henderson & George Serafeim, *Tackling Climate Change Requires Organizational Purpose*, 110 AM. ECON. ASS'N PAPERS AND PROC. 177, 177–78 (2020) ("[W]e define corporate purpose as 'a concrete goal or objective for the firm that reaches beyond profit maximization' and define such a purpose as authentic if the firm routinely makes costly investments in it at the expense of immediate profitability.").

6 *See* Henderson & Serafeim, *supra* note 5, at 178.

7 Gerald F. Davis, *Corporate Purpose Needs Democracy*, 58 J. MGMT. STUDS. 902, 905 (2021).

most effectively and efficiently by pursuing profits. Society reaps maximum benefit from corporations when those corporations pursue profit—and do it extremely well. Edmans's careful analysis would thus leave capitalism intact in its current form, while pruning for externalities.

Grow the Pie's defense of capitalism is a tremendous contribution, albeit one which Edmans himself downplays. While the author largely bills his work as one aiming to correct the factual record about profit-maximization—while providing pointers for managers and policymakers—Edmans reaffirms the validity and viability of corporate capitalism as an ideology that, in practice, advances human welfare.

Injecting this viewpoint into the academic debate is critically important at a time when voices of stakeholderists seem the loudest. Sociological research long ago confirmed that societal expectations (as often shaped by academic discourse) have real impact on our social systems and institutions. Popularly, the phenomenon is recognizable as the "Oedipus effect." Renowned economist George Soros translated that concept into economics, giving us good reason to think that what people are told about capitalism from the so-called experts will, in turn, dictate the shape of our markets and economy for many years to come. These are not petty stakes.[8] Souring on capitalism prematurely, or based on factual inaccuracy, risks discarding decades of economic institution building.[9] Between the lines, one could read *Grow the Pie* to admonish its readers not to forget that capitalism has raised standards of living globally and fuels the innovation that enables human progress.[10]

The main goal of this Review is to highlight what I see as Edmans's most important contribution in writing *Grow the Pie*—to explain why profits are prosocial—and then to expand the connection between his analysis to law and macroeconomic policy. The Review thus urges that *Grow the Pie* provides a compelling foundation for considering why our existing legal frameworks should support the status quo, as enabling free-market capitalism, and proposals for radical reform should be abandoned.[11] Ultimately, and ideally, this Review will draw attention

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8 *See* KARL R. POPPER, THE POVERTY OF HISTORICISM (1957).

9 George Soros translated reflexivity to economics in this way. GEORGE SOROS, THE ALCHEMY OF FINANCE (1987).

10 The data show that people in a post-liberal market world order are, unequivocally, better off, despite popular perceptions. *See, e.g.*, Max Roser, *The Short History of Global Living Conditions and Why It Matters That We Know It*, OUR WORLD IN DATA, (2020), https://ourworldindata.org/a-history-of-global-living-conditions-in-5-charts [https://perma.cc/8KDK-HK3D].

11 Katharina Pistor, *A Legal Theory of Finance* (Colum. L. Sch. Pub. L. & Legal Theory Working Paper Grp., Paper No. 13-348, 2013) (arguing that markets are legally constructed and thus to understand market forces we must engage the space between public and

to the ways in which Edmans's data synthesis provides a compelling defensive of a free-market corporate law landscape, influencing the trajectory of U.S. corporate law and financial regulatory reform in the next few years.

I. THE CORPORATE PURPOSE DEBATE: SHAREHOLDERS, STAKEHOLDERS, PIE-GROWERS

In a 1970 opinion piece in the *New York Times*, Milton Friedman famously wrote that the "one and only social responsibility of business . . . [is] to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."[12] The 1970s and 1980s were, of course, the halcyon days of free markets, with the world still booming from post-war prosperity, deregulation in the wind, and markets seen as the moral superior to the communism of the Soviet Union.

That sentiment turned, though, after the financial crisis of 2008—where unbridled markets seemed at the core of markets melting down and the painful macroeconomic recovery that ensued. Around that time, capitalism detractors' voices became louder and stuck in people's ears.[13] In the 2010s, stakeholder views become increasingly prominent, reaching a fever pitch in 2020 in coincidence with the groundswell of social and political unrest. As discussed above, for stakeholderists, questioning a corporation's purpose just meant decrying its Friedmanesque pursuit of profit.

Edmans appears, in all aspects of the book, motivated to expose a false paradigm that had become embedded in that corporate purpose debate—that is, the assumption of a binary choice between shareholders and stakeholders. Edmans rejects the notion that corporations must choose "us" (i.e., "executives and shareholders") or

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private), https://scholarship.law.columbia.edu/cgi/viewcontent.cgi?article=3286&context=faculty_scholarship [https://perma.cc/ZSP5-HTKN].

12 Milton Friedman, *A Friedman Doctrine—The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at SM17. To mark the fiftieth anniversary of Friedman's work, University of Chicago economist Luigi Zingales commissioned a series of essays on the Friedman doctrine, published by the Stigler Center's *ProMarket*. To give a full sense of the current thinking around Friedman and corporate purpose, these essays are engaged in this Review as much as possible. *See, e.g.*, *infra* notes 13, 20, 35, 61, and accompanying text.

13 *See, e.g.*, Eugene F. Fama, *Market Forces Already Address ESG Issues and the Issues Raised by Stakeholder Capitalism*, PROMARKET (Sept. 25, 2020), https://promarket.org/2020/09/25/market-forces-esg-issues-stakeholder-capitalism-contracts/ [https://perma.cc/S9T7-GZ6G].

"them" (i.e., "workers and customers"), rejecting that shareholder primacy and stakeholderism are truly odds.[14]

He does this by offering up an alternative view of a corporation's ideal purpose, one that serves both of these (heretofore presumed to be opposing) groups. The eponymous theory in *Grow the Pie*, the crux of which Edmans sets up in Chapter 1, holds that business is not a zero-sum game, in which stakeholders lose when shareholders win and vice versa. The pie metaphor is really quite handy for grasping what should be an instinctively intuitive concept:

> The *pie-growing mentality* stresses that the pie is not fixed. When all members of an organisation work together, bound by a common purpose and focused on the long term, they create shared value in a way that enlarges the slices of everyone—shareholders, workers, customers, suppliers, the environment, communities and taxpayers.[15]

As one can see, the basic notion is that—with intent fixed on growing value (without creating additional externalities, which layer comes later,)[16]—everyone wins. For those seeped in law and economics, the implication for corporate law and macroeconomic policy is obvious almost immediately, though Edmans explicates it later. We should think of the pie as "social value" and "wealth," and thus a corporate leader's responsibility is to maximize that pie (and hence social welfare), giving one of those slices (profits) to shareholders.[17] There is a big asterisk next to wealth: for Edmans, wealth is not coterminous with profit; profit is only one slice of the pie in Edmans's conceptualization of value maximization.

Subsequent chapters explain why commonly villainized corporate characters—like CEOs and activist hedge funds—are in fact important, healthy parts of the welfare-enhancing ecosystem. In summary, Edmans explains, "[e]vidence suggests that visionary leaders can transform a company, growing the pie for the benefit of all. Engaged shareholders can intervene in a failing firm, growing the pie for the benefit of all."[18]

Stakeholders are also critical to the project, as they, too, must be committed to (and rewarded by) pie growth. As we will see in Part II, this is a very different story from the one offered up by stakeholder theory or stakeholder capitalism, which suggests that a company cannot adequately serve stakeholders' best interests if it is trying to maximize profit in its business strategy and operations.

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14 EDMANS, *supra* note 1, at 2.
15 *Id.* at 3.
16 *See id.* at 35, 49.
17 *See id.* at 3, 285.
18 *Id.* at 3.

But Edmans sees this "pie-splitting" mentality as unnecessarily rivalrous.[19] An important point in the book is that companies are naturally incentivized to serve the interests of stakeholders—that is, society—because doing so is a necessary precondition to being profitable. In Edmans words, "[t]o reach the land of profit, follow the road of [social] purpose."[20] Throughout the book, Edmans easily shifts between storytelling and evidence, often weaving the latter into the former so as to engage a broad audience. Edmans uses this rhetorical technique to illustrate this basic point that companies that wish to maximize profit will, naturally, need and want to be socially responsible in their pursuits.

On that score, Edmans turns to a pharmaceutical anecdote involving the major pharma company Merck and a terrible disease that causes blindness by age thirty, colloquially known as "river blindness" after the geographic communities it most afflicts.[21] Edmans explains that river blindness affected over eighteen million people in West Africa and Latin America but, because these populations were poor and unable to pay for drugs, a pure profit motive for pharmaceutical companies was never there. But Merck's then-CEO, Roy Vagelos, decided to divert company R&D resources to studying the disease. And when it found a cure, Vagelos decided to give the medicine away for free. While Vagelos did this for science and society, not only profit, he was so praised by the business and scientific community for his decision that the company's reputation and standing (and hence profit) also gained a boost.[22]

The idea that companies most often do well by doing good, again, has intuitive appeal. Unhappy or unwell employees will not be as productive as happy, healthy, balanced ones.[23] So just as a company should invest in resources to those ends, it should also think more broadly about the ramifications of its actions—for instance, dumping filthy water in a river will reduce the health of people in nearby

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19 *See id.* at 20–21.

20 *Id.* at 87. Former policymakers have echoed a similar sentiment in other forums. *See* Mary K. Bush, *Shareholder Value and Social Responsibility Are Not at Odds*, PROMARKET (Oct. 1, 2020), https://promarket.org/2020/10/01/profit-social-responsibility-not-at-odds-friedman/ [https://perma.cc/5SPH-BE4B] (noting that business leaders "are signaling to the executive teams that manage companies that social responsibility, integrated with the business strategy and practiced smartly, has the potential to create value").

21 *See* EDMANS, *supra* note 1, at 25.

22 *See id.* at 25–26.

23 *See also* Anjan Thakor & Robert E. Quinn, *Higher Purpose, Incentives and Economic Performance* 4, 37 (Eur. Corp. Governance Inst., Fin. Working Paper No. 706, 2020) (finding that "organizational higher purpose induces employees to work harder for the same wage or just as hard for a lower wage . . . firms pursuing higher purpose will elicit higher effort, and have a lower wage bill").

communities, including those who work for the company. To prosper, and satisfy shareholder expectations, management must assemble the most talented workforce possible. But that cannot happen if some of the labor pool is left out "because of gender or ethnicity—whether intentionally or in an *unconscious* manner."[24]

Edmans refers the reader to the example of high-profile companies like Apple and Costco. He asserts a causal relationship between investing in stakeholders and generating handsome returns. Apple, he writes, is "one of the most valuable companies in the world . . . [b]ecause it serves *customers* by offering the highest-quality products . . . nurtures its *colleague*s . . . invests in long-term *supplier* relationships," while also maintaining a "strong *environmental* record" and "contribut[ing] to local *communities*."[25] So Apple serves society and workers, which contributes to its profitability, thereby enriching shareholders. By the way, Edmans points out, profits do not only line the pockets of shareholders, they come right back to the public in the form of tax revenues: consider, "Apple is the largest taxpayer in the world, remitting over $35 billion to *governments* between 2015 and 2017. Its effective tax rate was 25% in 2017 and 26% in the previous four years."[26] Just think of the socially beneficial things the government can do with those resources, ranging from climate technology to vaccine development research. Without Apple maximizing profit, society is certainly worse off.

Costco gives Edmans another facile example to illustrate how profit maximization can be prosocial, in a slightly different way. Costco has prioritized its workers. It pays well above the national average for similar role, gives workers health care before its rivals, and provides all paid public holidays off (even though those are likely to be big shopping days).[27] Business commentators were quick to assume that Costco's management was "focused on . . . employees to the detriment of shareholders," buying into the "us" versus "them" mentality—pie-splitting as Edmans calls it multiple times throughout the book.[28] But Costco's CFO maintained that these investments in workers result in a more efficient workforce and would thus redouble to the company's revenues. Edmans then marshals a wide range of academic studies and his own empirical analysis to show that, yes, indeed, companies that

24 Bush, *supra* note 20.

25 *See* EDMANS, *supra* note 1, at 40.

26 *Id.* at 41.

27 *Id.* at 84.

28 *Id.* at 3, 84 (quoting Amy Tsao, *A Showdown at the Checkout for Costco*, BUSINESSWEEK ONLINE (Aug. 28, 2003), https://search-ebscohost-com.proxy.library.nd.edu/login.aspx?direct=true&db=bth&AN=10698447&site=ehost-live [https://perma.cc/2YM9-ZLF3]).

prioritize stakeholders—be they workers or the environment—appear to have stock prices that beat the market.[29]

Though this first part of the book (Chapters 1, 2, and 3), Edmans is not only building his alternative to the shareholder versus stakeholder paradigm—"grow the pie"—he's building to a novel approach to business, what he labels "[p]ieconomics" (stated: "pike-onomics").[30] To appeal to stakeholderists, pieconomics is framed as an approach to business that "creat[es] value" for society—but crucially, it holds tight to profit maximization and focuses on what managers can do to make their company more "excellent."[31] More specifically,

> [b]eing a responsible business isn't so much about sacrificing profits to reduce carbon emissions (splitting the pie differently), but innovating and being excellent at its core business (growing the pie) . . . the main way that enterprises fail to serve society is not by *errors of commission* (giving too large a slice to leaders or investors), but by *errors of omission* (failing to grow the pie by coasting and sticking to the status quo).[32]

The problem is never that shareholders and executives earn too much (in salaries or returns), but rather a company that does not create enough value to go around.

Now, to be clear, Edmans is not a lone voice in the wild in pushing back against cancel capitalism. There are a few other scholars that have also questioned the wisdom and workability of stakeholder capitalism as an alternative to its free-market original.[33] Yet even among this pro-shareholder, pro-capitalism camp there a spectrum. Some, like former George Bush-era policymaker Mary Bush, urge that "[t]he core of capitalism—the freedom to engage in entrepreneurial activities, to trade goods and services, and make profits for shareholders—in and of itself, is socially responsible."[34] Moving further toward a stakeholder view, there are others that subscribe to a theory of "enlightened shareholder value" (ESV), which proposes corporations should pursue shareholder wealth with a long-run view of

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29 *See id.* at 86–87.

30 *Id.* at 27.

31 *Id.* at 28.

32 *Id.*

33 *See, e.g.*, Fama, *supra* note 13; *see also* Edward Rock, *For Whom Is the Corporation Managed in 2020?: The Debate over Corporate Purpose* 1, 29 (Eur. Corp. Governance Inst., Law Working Paper No. 515, 2020) (noting that populist pressure on corporate law could have unintended consequences).

34 Bush, *supra* note 20.

making sure that they are responsibly attuned to relevant stakeholder interests.[35]

Edmans's pieconomics falls somewhere in the middle—unlike ESV, Edmans would not put profits before social service; but like Bush and her intellectual companions, he whole-heartedly agrees that profits are prosocial: "Profits are a key element of a well-functioning society. Without profits, citizens can't fund their retirement, insurance companies can't pay out claims, and endowments and pension funds can't provide for their beneficiaries."[36] Still, until Edmans's book, the shareholder camp (with all of its versions) remained at odds with the stakeholder camp.

Edmans goes a long way to reconciling the two. But in doing so, whether intentionally or not, *Grow the Pie* offers a robust defense of a free-market, capitalist orientation of the corporation. The next Part suggests that Edmans mounts this subtle defense by busting myths that have, to date, carried the stakeholder critique of capitalism.

II. Myth-Busting: Why Profit Is Prosocial and What This Means for Law

By now you should have a good sense of Edmans's central theory about pie-growing, how that philosophy can be operationalized with pieconomics, and how these ideas fit into the broader debate on corporate purpose. Part II of Edmans's book, like this Review, becomes more specific about common misunderstandings surrounding the relationship (and power) of profit in society.

In what follows, I will augment Edmans's evidence in Chapters 5, 6, and 7, by explaining how these misconceptions have led to legal frameworks or proposals that are socially suboptimal. More specifically, I argue that the analysis in *Grow the Pie* undermines (at least) three attempts in corporate law or regulation to orient firms away from profit—that is, by requiring or urging corporations to adopt or proclaim their purpose; by exerting negative pressure on executive compensation; and by stoking fears of activist investing. While legal

35 *See, e.g.*, David Millon, *Enlightened Shareholder Value, Social Responsibility, and the Redefinition of Corporate Purpose Without Law* 1 (Washington & Lee Pub. Legal Stud. Rsch. Paper Series, Working Paper No. 2010-11, 2010), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1625750; *see also* Steven Kaplan, *The Enduring Wisdom of Milton Friedman*, PROMARKET (Sept. 14, 2020), https://promarket.org/2020/09/14/the-enduring-wisdom-of-milton-friedman/ [https://perma.cc/3AZZ-MLH9] ("It may well be in the long-run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government. That may make it easier to attract desirable employees, it may reduce the wage bill or lessen losses from pilferage and sabotage or have other worthwhile effects.").

36 *See* EDMANS, *supra* note 1, at 58–59.

analysis is not the primary aim of Edmans's work, such conclusions seem inescapable from his evidence—and I'll unpack them here.

A. Positive Law on Purpose

The first of these legal or regulatory reforms bears the most discussion, as its impact on corporate capitalism stands to be most far-reaching. In this general category of legal and policy initiatives, we see efforts to press companies to publicly commit to stakeholder capitalism. Among the more significant of this genre of interventions are constituency statutes. These statutes are written to allow companies to consider a range of stakeholder interests in making their decisions. A Wisconsin statute provides a good example. It provides that, in discharging their duties, directors may consider the effect of their actions on "employees, suppliers and customers of the corporation," the "communities in which the corporation operates," and "[a]ny other factors that the director or officer considers pertinent."[37]

This kind of statutory language may seem trivial, but it has potential to be a powerful weapon for stakeholderists seeking to undo profit-seeking. Longstanding corporate law doctrine assumes—implicitly or explicitly—the Friedman doctrine by equating fiduciary duties of managers and boards with a responsibility to act in shareholders' best interests.[38] This, in turn, became the standard against which board members' duties of loyalty and care were measured.[39]

While constituency statutes merely grant permission for boards of directors and managers to consider stakeholder interests[40] (they do not require it), in effect, they open the door to popular pressure on boards and executives to cater to many different groups, even if to the detriment of shareholders. In essence, then, these statutes act as legislative overrides to judge-made corporate law that, for over one

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37 WIS. STAT. § 180.0827 (2021).

38 *See* Dodge v. Ford Motor Co., 170 N.W. 668, 684 (Mich. 1919); Kelly & Wyndham, Inc. v. Bell, 266 A.2d 878, 879 (Del. 1970).

39 *See* Leo E. Strine, Jr., *The Dangers of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, 50 WAKE FOREST L. REV. 761, 767–8 (2015); Leo E. Strine, Jr., *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV. 135, 155 (2012) ("[T]he corporate law requires directors, as a matter of their duty of loyalty, to pursue a good faith strategy to maximize profits for the stockholders."). But Honorable Leo Strine, no longer on the bench, has recently changed his outlook a bit. *See* Leo E. Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy*, 76 BUS. LAW. 397, 399–400 (2021).

40 *See* EDMANS, *supra* note 1, at 52.

hundred years, had specified the content of fiduciary duties with reference to the shareholders.

Still, such legislative endorsement of the stakeholder capitalist idea is not enough for some academics.[41] And while the British Academy has proposed reforms to the U.K. Companies Act that would require corporations to "state their purposes"[42]—going a long way to naming and shaming those that could not do so satisfactorily—former dean of Oxford's Saïd Business School, Professor Colin Mayer, has urged that firmer mandates are required.[43]

In some cases, regulatory moves have mimicked the legislative ones described above. The stock exchange NASDAQ—a quasi-regulatory body—has adopted a new requirement that companies disclose diversity statistics regarding their boards of directors.[44] These rules mandate companies have at least two diverse board members—one that is female and one that is a minority or LGBTQ—or explain why they do not.[45] NASDAQ is partaking in the purpose conversation on the side of stakeholders. In the main, NASDAQ's purpose is—literally—to facilitate market exchange. But this new rule is a self-described move to align NASDAQ's corporate members' "purpose" with its own: "to champion inclusive growth and prosperity to power stronger economies."[46] In similar fashion, the SEC is inching toward requiring greater ESG disclosures to generally address the "global"

41 *See, e.g.*, Edward S. Adams & John H. Matheson, *A Statutory Model for Corporate Constituency Concerns*, 49 EMORY L.J. 1085, 1119 (2000) ("Only a mandatory constituency statute ensures consideration of the interests of all stakeholders by directors. Opt-in statutes bind directors only if the shareholders invoke coverage of the statute. . . . [I]t is difficult to envision shareholders willingly subordinating the priority of their interests in corporate decisionmaking."). *But see* Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have a Purpose?*, 99 TEX. L. REV. 1309, 1328 (2021) (questioning whether constituency statutes really do much to enforce corporate purpose in any significant way).

42 THE BRITISH ACADEMY, PRINCIPLES FOR PURPOSEFUL BUSINESS 20–21 (2019), https://www.thebritishacademy.ac.uk/documents/224/future-of-the-corporation-principles-purposeful-business.pdf [https://perma.cc/6Z4G-YUU2].

43 Mayer, *supra* note 4; *see also* Davis, *supra* note 7, at 902 (urging reform beyond what the British Academy has suggested and in favor of "more effective state regulation from above").

44 Alexander Osipovich, *Nasdaq's Board-Diversity Proposal Wins SEC Approval*, WALL ST. J. (Aug. 6, 2021), https://www.wsj.com/articles/nasdaqs-board-diversity-proposal-faces-sec-decision-11628242202 [https://perma.cc/KCU9-PN7C].

45 Notice of Filing of Proposed Rule Change to Adopt Listing Rules Related to Board Diversity, 85 Fed. Reg. 80472, 80472 (proposed Dec. 11, 2020).

46 *Nasdaq to Advance Diversity Through New Proposed Listing Requirements*, NASDAQ (Dec. 1, 2020), https://www.nasdaq.com/press-release/nasdaq-to-advance-diversity-through-new-proposed-listing-requirements-2020-12-01 [https://perma.cc/7AYG-ZLMG] (statement of Nasdaq CEO).

nature of ESG issues.[47] Board diversity is an unalloyed good—but using disclosure to force the issue would be an unprecedented state intervention in the boardroom.

Overall, these experiments in using positive law to force purpose may implicitly drive companies to be ashamed of, or to abandon, their pursuit of profits. To the extent these laws and regulations question the morality of profit-seeking, and thus deter it, there are likely to be social costs and unintended consequences. Edmans's evidence makes this clear.

1. Stifled Innovation

For one, using law or regulation to create distance between companies and profit-seeking is likely to stymie welfare-enhancing innovations. A central theme throughout Edmans's book is that profit is not profligate; rather, it is the engine oil for the human wheel of progress. Edmans refers to the social benefits of corporate innovation no less than eighty-four times throughout the book, with numerous examples illustrating a virtuous chain: profit incentivizes experimentation, which leads to break-through technologies, medicines, or consumer services, ultimately enhancing human welfare.[48] Indeed, that capitalism and the corporation are at the heart of human progress seems difficult to deny—simply ask yourself to name a great civilization that was created by a stakeholder-oriented society (or, put differently, that did not look favorably on free markets, industry, and trade).

In some ways, I would go further than Edmans here. At times, he may be overly sanguine in presuming that companies are inspired to innovate for innovation's sake irrespective of profit potential.[49] It seems more like the exception than the rule: companies might be willing to subsidize research in the hopes of the rare breakthrough—but profit is always part of the equation. So, Edmans is correct that corporate innovation is socially beneficial, but may well underestimate (at least in certain parts) the extent to which profit is the motivational spark, in one way or another. But overall, Edmans's general point is

47 John Coates, *ESG Disclosure—Keeping Pace with Developments Affecting Investors, Public Companies and the Capital Markets*, SEC (Mar. 11, 2021), https://www.sec.gov/news/public-statement/coates-esg-disclosure-keeping-pace-031121?utm_medium=email&utm_source=govdelivery [https://perma.cc/9X9H-8BPW] (urging that, going forward, "SEC policy on ESG disclosures will need to be both adaptive and innovative"); *see also* Paul G. Mahoney & Julia D. Mahoney, *The New Separation of Ownership and Control: Institutional Investors and ESG*, 2 COLUM. BUS. L. REV. 840 (expressing concerns of the use of disclosure law to advance political or social issues).

48 See EDMANS, *supra* note 1, at 3, 16, 29, 36, 40, 46, 70, 101, 116, 130, 138, 144, 164, 189, 196, 201, 211, 217, 224, 238, 251, 253, 309.

49 *Id.* at 47–48.

quite well taken: the realization that we need successful companies that are focused on innovation should put the brakes on stakeholder capitalists' moves to hamstring corporate profit. After all, forcing companies to forgo profits is likely to translate directly and in the first instance to the R&D line item in the corporate budget.

2. Janus-Faced Corporations

Additionally, these efforts to cajole firms into adopting purpose in a public and showy way risks diluting corporate resources and diverting their attention, disserving shareholders and stakeholders alike. While Edmans consistently maintains that pie-growing is socially responsible, at no point does he endorse sacrifice or ambivalence toward profit. He is quite concrete about what purpose means. "[I]t doesn't imply unfettered pursuit of societal goals, [while] cheerfully ignoring profits."[50] After all, Edmans reasons, "[i]f a company delivers value to stakeholders entirely as a result of sacrificing profits, this splits the pie differently rather than growing it."[51] The pursuit of a social purpose cannot be, so Edmans urges, "undisciplined."[52]

To guide restraint, Edmans grounds his vision of corporate "purpose" in economic theory. Unlike other stakeholder theorists, Edmans offers up a concrete framework for deciding when a company should pursue a project that might have long-term social value but has a "net present value" that is difficult to calculate.[53] Edmans creates a three-prong test: first, he asks, is there a question of multiplication. That is an estimate of the benefit to all stakeholders from a particular investment. Apple might spend $500 on a gym membership for its employees, but if the best quality local gym costs $100, Apple would more effectively and efficiently use its resources to pay higher wages to employees.[54]

If the multiplication test is satisfied, Edmans would next ask whether comparative advantage is present. Surely, Apple has the ability to feed the homeless. But if a soup kitchen can make $1 go further than Apple can, because it has better skill, infrastructure, and food supplier relations, then Apple would more effectively and efficiently donate money to the soup kitchen rather than replicate its services.[55] The notion of comparative advantage and specialization was

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50 *Id.* at 31.

51 *Id.*

52 *Id.* at 293.

53 Net present value, or "NPV," is a standard financial model for deciding whether a company should pursue a particular project consistent with its costs and likely revenue stream. In its purest sense, it does not incorporate value that would accrue to stakeholders.

54 *See* EDMANS, *supra* note 1, at 66.

55 *Id.* at 68.

also central to Friedman's resistance to pressing corporations into all manners of social service. As he noted, corporate executives are ill prepared for solving social problems.[56] They were hired for the expertise on their given industry and management, not for solving social failures.[57] For example, a CEO has no expertise in making calculated decisions to solve inflation or unemployment.[58]

The third prong of the test considers materiality. Are stakeholders that would be benefited by any given corporate effort material to the company?[59] This might seem cool and calculating, but in a world of finite resources, Edmans must be right that there should be some ordering of priority and judgment in the allocation of how resources will be used. Investments that improve the welfare of employees will inure to the benefit of the company, and ultimately grow the pie for all. But investing in the working conditions of a foreign firm, for instance, will have an impact on the pie that is difficult to discern—if at all. Resources would be better concentrated on stakeholders who are material to the firm who are thus likely to be value-growers.

This framework, and its eminent sensibility, helps us see that a Janus-faced corporation is not good for society, as appealing as grand statements of corporate purpose might seem.[60] Companies should be responsible, yes of course, but within limits that conform with economic logic. When companies deliver profit alongside purpose, their social impact can be large. Not only will they benefit the direct targets of the project (i.e., material stakeholders) but, in growing value of shareholders in their course, they also increase the resources those shareholders have to reinvest in whatever social causes those shareholders consider most important.[61]

56 *See* Friedman, *supra* note 12.

57 See *id.*

58 *See id.*

59 *See* EDMANS, *supra* note 1, at 70–71.

60 With mixed reception, the Business Roundtable—a group of CEOs of America's leading corporations—adopted what appears to be a stakeholder philosophy in an August 2019 statement of corporate governance. *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy that Serves All Americans,'* BUS. ROUNDTABLE (Aug. 19, 2019), https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans [https://perma.cc/ML62-JS4Q]. *See* Lucian Bebchuk & Roberto Tallarita, Opinion, *'Stakeholder' Capitalism Seems Mostly for Show*, WALL ST. J., Aug. 7, 2020, at A15.

61 Indeed, precisely as Friedman pointed out, profit maximization ensures that individuals have "maximum flexibility to choose which social responsibilities they wish to fulfill." Alex Edmans, *What Stakeholder Capitalism Can Learn from Milton Friedman*, PROMARKET (Sept. 10, 2020), https://promarket.org/2020/09/10/what-stakeholder-capitalism-can-learn-from-milton-friedman/ [https://perma.cc/6KMQ-VJMH].

3. Statist Corporate Law

Finally, corporate leaders are not elected officials. Edmans reminds us that conflating a corporation's public role with a political one is undemocratic. Requiring that companies have some purpose throws up difficult questions that nettle rule of law. Who decides which purposes are legitimate; or more intrusive yet, what those purposes should be? When the State decides the answers to those questions, the foundations of the private markets become seriously under siege.

On the flip side, to the extent corporations are given power to decide and define which causes are socially meritorious—or which are not—other problems will emerge. For example, if companies raise prices to further mandatory social goals, they could well be seen to enter the dispiriting business of taxation without representation—as Friedman himself forewarned.

The social ills that follow state direction or control of productive assets may be easy for the current generation of scholars and policymakers to ignore. But for those that lived and enacted policy during an earlier era, it was clear to them "that economic growth and prosperity were stunted by government ownership of productive assets, restrictions on capital movement and business formation, and high business taxes."[62]

The world with capitalism, and companies that seek profit, is much brighter. As Nicholas Kristof pointed out in a *New York Times* op-ed, "the result of corporate shareholder value maximization mixed in with globalization"[63] is that, "[f]or humanity over all, life just keeps getting better."[64] In a world of free markets, "[p]eople living in extreme poverty fell from 42 percent of the world's population in 1981 to below 10 percent today. That is 2 billion people who are no longer suffering extreme poverty. Absolute poverty declined substantially in the US, from 13 percent in 1980 to 3 percent today."[65]

"And this is more or less what Friedman predicted."[66]

B. CEOs and Activists

The above section discussed how law has tried to force, directly or indirectly, companies away from profit maximization through purpose statements or disclosures. The law has also targeted the actors that

62 Bush, *supra* note 20.

63 Kaplan, *supra* note 35.

64 Nicholas Kristof, *This Has Been the Best Year Ever*, N.Y. TIMES (Dec. 28, 2019), https://www.nytimes.com/2019/12/28/opinion/sunday/2019-best-year-poverty.html [https://perma.cc/73FK-37DL].

65 Kaplan, *supra* note 35.

66 *Id.*

exert pressure on companies, internally and externally, to ensure they are maximizing value by maximizing profits—corporate CEOs and activist investors, respectively.

The CEO has become a much-maligned figure in society of late, the target of political and academic opprobrium. Edmans collects political statements to this effect, ranging from Hillary Clinton's campaign statement that "[t]here's something wrong when the average American CEO makes 300 times more than the typical American worker," to Donald Trump referring to CEO pay as "a total and complete joke."[67] Academics pile on with a view that "CEOs can be self-serving arbiters of social value and would, if given the opportunity, divert resources to their own enrichment under the guise of 'purpose.'"[68] This sentiment has taken legal form as efforts to reduce and constrain executive compensation. Europe has created firm limits on executive compensation in big banks, and the U.S. endlessly debates how to curb executive compensation.[69]

Edmans spends some length bringing the folly of this antipathy into sharp relief with the story of how Bart Becht was run out of his company, Reckitt, in 2010, by the public scorn that followed disclosure of his £92 million salary.[70] The media excoriated him for earning such a high figure—the absolute dollar amount seemed gross compared to the rest of U.K. citizens.

But like Amazon's forced retreat, both shareholders and society lost out from Becht's departure. He had been an excellent CEO. Becht had "lived and breathed" his cleaning product company, rubbed elbows with shoppers, tested out the products in his own home, and constantly sought to design new household products that would make everyday citizens' lives a bit easier. Becht was the quintessential pie-grower—he grew his company's shares from seven to thirty-six pounds since a 1999 merger and won *The Economist*'s innovation award in 2009 for creating power brands that could accomplish multiple cleaning feats at once. By all accounts, he encouraged creativity among his workers—giving them fulfillment and autonomy—tolerated failure as the cost of experimentation, and encouraged skill development by all ranks of workers.[71] In Edmans's ledger, Becht

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67 EDMANS, *supra* note 1, at 103.

68 Thomas Clarke, *The Contest on Corporate Purpose: Why Lynn Stout was Right and Milton Friedman was Wrong*, 10 ACCT. ECON. & L. 1, 24 (2020).

69 The Dodd-Frank Act required the SEC to adopt rules that limit incentive compensation in public companies, but those reforms have yet to be adopted. Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111-203, § 956, 124 Stat. 1376, 1842 (2010).

70 *See* EDMANS, *supra* note 1, at 102–03.

71 *Id.* at 100–01.

leaving Reckitt was a loss, a byproduct of a mistaken conflation between fairness and equity. (Later in the book, Edmans returns to this myth that equality always means fairness, using game theory to illustrate how obsession with equality can lead to preferences that "shrink[] the pie," all the way to zero, in dogmatic effort to stop some from getting more than others.)[72]

Activist investors—like hedge and private equity funds—are equally disliked by many corporate law reformers. Infamously labeled "Barbarians at the Gate,"[73] activist investors are seen as corporate raiders that invade companies to extract their value and leave skeletons in their wake. For years, academics have criticized activists in this way, decrying their short-termism as antithetical to the stakeholder cause célèbre.[74] And again, law and regulation follows popular expectations and beliefs. Recent SEC rules may have made it more difficult for activist investors to press for changes in corporate strategy,[75] while policymakers and regulators persistently eye private hedge and equity funds in an effort to hold them back from increasing their interventions.[76]

Like the villain CEO, Edmans casts this perception of activist investors off as myth. He argues that activists are good stewards because their singular goal is pie-growth. To put it very simply, Edmans's research "demonstrate[s] that large investors, also known as blockholders, have the incentive to look beyond earnings and invest the time and resources necessary to truly understand an enterprise."[77] Activists provide the ideal balance of patient capital—capital committed for the long-term that can tolerate a company's ups and downs and see it through distress[78]—and nimble capital—investors

72 *Id.* at 301.

73 BRYAN BURROUGH & JOHN HELYAR, BARBARIANS AT THE GATE: THE FALL OF RJR NABISCO (2008).

74 *See, e.g.*, Mark R. DesJardine & Rodolphe Durand, *Disentangling the Effects of Hedge Fund Activism on Firm Financial and Social Performance*, 41 STRATEGIC MGMT. J. 1054 (2020). *But see* Lucian A. Bebchuk, Alon Brav & Wei Jiang, *The Long-Term Effects of Hedge Fund Activism*, 115 COLUM. L. REV. 1085 (2015).

75 *See* Brokaw Act, S. 1744, 115th Cong. (2017); *see also* Press Release, SEC, SEC Adopts Rule Amendments to Provide Investors Using Proxy Voting Advice More Transparent, Accurate and Complete Information (July 22, 2020), https://www.sec.gov/news/press-release/2020-161 [https://perma.cc/XZ4P-KQHT].

76 *See, e.g.*, Stop Wall Street Looting Act, S. 2155, 116th Cong. (2019); James A. Keyte & Kenneth B. Schwartz, *Private Equity and Antitrust: A New Landscape*, ANTITRUST, Fall 2016, at 21.

77 *See* EDMANS, *supra* note 1, at 160.

78 *See* Christina Parajon Skinner, *Nonbank Credit*, 9 HARV. BUS. L. REV. 149 (2019) (discussing the economic benefits of credit supplied by private debt and credit funds).

that credibly threaten "exit" if the company's board and managers are resistant to get on the pie-growing train.[79]

Edmans's chapters on CEOs and activist investors, taken in context with the whole book, underscore that these players are crucial in the pie-growing ecosystem. CEOs and activists are key corporate norm-influencers; they have outsized influence on the company's direction with their ability to shape a corporate culture toward innovation and enthusiasm—which, as we have learned, is necessary to ultimately grow the pie.

Overall, even though Edmans's focus is not on law, his book is a powerful indictment of each of the legal frameworks and reforms discussed above, as economically distortionary. The implication is subtle but significant—policy is and would be wrongheaded to try to quash capitalism and profit-seeking. Though Edmans claims to play nice with stakeholders, in truth, *Grow the Pie* reads as more aligned with the Professor Eugene Fama's "preference to let competition produce adaptations, rather than impose top-down changes with catchy names like stakeholder capitalism that are likely rife with unintended consequences."[80]

But that does not mean law is irrelevant to financial markets and corporate action. The question of what role law and regulation can play to facilitate pie-growing, without distortions, is the subject of Part III.

III. WHAT ROLE FOR LAW IN PIE-GROWING?

In parts, *Grow the Pie* could be read to endorse, albeit implicitly, a view that markets will often reach a socially beneficial equilibrium without legal or regulatory interventions. One may well look at the proliferation of ESG funds and banks' efforts to press borrowers to reach net zero as evidence of prosocial market forces, in parallel to Edmans's book.[81] In the abstract, we can think of this free-market Nirvana as a perfect Coasian bargain:

> If environmental and social goals enter consumer utility functions, they provide incentives for firms to provide products that lean

79 EDMANS, *supra* note 1, at 141, 158; Eleonora Broccardo, Oliver Hart & Luigi Zingales, *Exit vs. Voice* 2 (Aug. 2020) (unpublished manuscript) (on file with Scholars at Harvard at https://scholar.harvard.edu/files/hart/files/exit_vs_voice_08-13-2020.pdf); *see also* George G. Triantis & Ronald J. Daniels, *The Role of Debt in Interactive Corporate Governance*, 83 CALIF. L. REV. 1073, 1079 (1995) (applying the concepts of exit and voice to lender actions to promote corporate governance). The concepts of exit, voice, and loyalty come from Albert Hirschman, ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY (1970).

80 Fama, *supra* note 13.

81 *See* Sarah E. Light & Christina P. Skinner, *Banks and Climate Governance*, 122 COLUM. L. REV. 1895 (2021).

> toward these goals. For example, if many consumers prefer the more expensive meat of free-range chickens and cows to the meat of their caged brethren, firms will provide free-range meat without Government incentives.[82]

But what Edmans more likely favors is law that facilitates pieconomics while providing guardrails against abuse. The balance of this Review will take each role for law in turn.

Much of the work done in the later chapters of *Grow the Pie* is focused on how pieconomics can work in practice; that is, how it can be operationalized on the ground. While these chapters focus almost entirely on what companies, citizens and investors can do, there is more to be said about law.[83] Consider a few examples, not fully exhausted here. First, the SEC might consider allowing a bit more experimentation with disclosure. There are serious consequences for material misstatements in reporting, leaving companies little room to try new methods of financial calculations and disclosures.

To the extent the limits of traditional corporate finance analyses inhibit firms from demonstrating to the public how they reap value from longer-term stakeholder investments, it may well be time to develop alternatives (or supplements) to traditional forms of financial accounting and valuation, and to make those experiments public. To the extent companies become more confident disclosing more data and financials about their social efforts, and their impact on firm profits, companies might come to compete along this new purposeful dimension. Accordingly, regulatory safe harbors from mistakes, where valuation experimentation is concerned, could be socially beneficial.[84]

It may also be the case that law can do more by doing less—getting out of the way of markets and backing down to allow the growth of pieconomics. But without its ability to provide guardrails, any form of capitalism—including pieconomics—is likely bound to fail for lack of social trust.

All too often, profit is confused with corruption, abuse, illegality, or poor ethics. And equating bad behavior with corporate action

82 Fama, *supra* note 13; *see also* Dorothy S. Lund, *Corporate Finance for Social Good*, 121 COLUM. L. REV. 1617, 1658 (2021) (noting that "whenever stakeholders value the effects of a corporate decision more than its cost, there exists a possible Coasian bargain between the corporation and the stakeholders that would maximize overall welfare").

83 Edmans also envisions quite a significant role for government. EDMANS, *supra* note 1, at 259–68. The most important is taxing externalities. Central to pieconomics is the idea that actions that a company takes to affect society (e.g., treating employees well, polluting the environment) ultimately are internalized and affect profits. However, this is only the case if externalities are internalized through taxes.

84 In similar spirit, tax and corporate scholars might work together to think of other creative ways to incentivize the kind of innovative pie-growing efforts that are the core of pieconomics.

makes capitalism an easy target. Indeed, one arguable weakness of the book is the extent to which it blurs (at times) this distinction. In early pages, for example, Edmans offers various stories of corporations "exploit[ing]" society, "price-gouging," "pushing products that customers don't need," manipulating the price of critical pharmaceuticals, or lying about emissions;[85] but this is not capitalism, it is misconduct—if not formally illegal behavior, it is certainly unethical.

Where conduct is objectively unlawful, there are a host of new additions to the regulatory landscape that make it easier to detect, deter, and punish corporate misdeeds. As just a few examples, the Dodd-Frank Act of 2010 created a whistleblower program housed within the SEC, that provides cash incentives for those with inside knowledge of securities violation to come forward with a tip.[86] That same Act also created the Consumer Financial Protection Bureau to ferret out abuse and misrepresentation of consumer financial products.[87] Just a decade old, these post-2008 crisis reforms are still in the fine-tuning stage but hold potential to curb corporate misdeeds.

Lastly, soft law frameworks often associated with legal theory and training can be imported into business settings to help guide corporate culture. Inasmuch as pieconomics requires managers to perform a new-age role—pursuing profits with a purpose—with agility and grace, they may require some intellectual support in thinking through corporate purpose. Legal ethics may have some role to play in answering a first-order question: how (and where) do corporate managers develop the intellectual foundations for grappling with these thorny questions of corporate purpose, and where do they get practice?

Business schools' partnerships with law and ethics research could be central to this project. Concretely, these are three areas where lawyers—and legal scholars—have a good deal to contribute to pieconomics.

Professionalism. Developing a sense of professionalism via business ethics classes seems central to the mission of training managers to reflect on corporate purpose. Professionalism, after all, implies a relationship defined by duty. In other fields, like law, graduate school training includes efforts to develop a professional ethos of integrity, which instills the legal professional with some commitment to a broader set of principles—including, for example, social justice, fairness, honestly, and equity. This sense of professionalism is instilled

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85 *See* EDMANS, *supra* note 1, at 3, 16–19, 22–23, 87.

86 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 922, 124 Stat. 1376, 1842 (2010).

87 *Id.* § 1011.

through codes (that establish principles of conduct),[88] conversation in the classroom, and consistent reaffirmation by professors that professionalism includes responsibility to clients and to society.

There are a few ways to develop professionalism in the classroom. The first step is likely something of an intellectual exercise, to facilitate student-led discussions about the meaning of "professionalism" in business—which is "not generally thought of as comprising a single or traditional profession."[89] To make such conversations more concrete, students should exchange ideas on desired outcomes of professionalism—often, professionalism "was seen as strengthening both the trustworthiness of the sector and the sense of pride and purpose among those working in it";[90] what does this mean for U.S. business and what impact on corporate purpose in the 2020s?

Legal scholars can helpfully discuss business professionalism in the literature as rooted around corporate culture.[91] A corporation's culture reflects the norms of doing business and interacting with stakeholders (including shareholders) both inside and outside of a firm. A firm's culture is now thought to be responsible for individual conduct and a byproduct of its professionalism.[92] "Culture" in Edmans's view, "is critical to ensure that a purpose permeates throughout the company."[93]

Practice. Can practice make purpose? I think so. Business schools are, of course, practice based; many use cases as the dominant (if not exclusive) pedagogical tool for training future corporate leaders. But there is no established method for practicing corporate ethics—at least not in the sense discussed here, where ethics is an entryway for

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88 Though beyond the scope of this paper, a related issue for students to explore is the disconnect between corporate codes and corporate practice. *See, e.g.*, Charles Michael, *Judge Wood: "Puffery" in Papa John's Code of Ethics Cannot Support Securities Fraud Claims*, SDNY BLOG (Feb. 4, 2021), https://www.sdnyblog.com/judge-wood-puffery-in-papa-johns-code-of-ethics-cannot-support-securities-fraud-claims/ [https://perma.cc/5BFJ-QAMX]; Eur. Corporate Governance Inst., *Are Corporate Purpose Statements "Verbiage"?*, YOUTUBE (Dec. 31, 2020), https://www.youtube.com/watch?v=SpobSTZmxV8 [https://perma.cc/Z2UL-C4S9].

89 BANKING STANDARDS BD., ANNUAL REVIEW 2017/2018 65 (2018), https://bankingstandardsboard.org.uk/annual-review-2017-2018/professionalism/.

90 *Id.*

91 There is a years-long conversation, started shortly after the global financial crisis of 2008, about ethics and culture in global banking. *See, e.g.*, Christina Parajon Skinner, *Misconduct Risk*, 84 FORDHAM L. REV. 1559 (2016).

92 "The best view finance as a profession with a purpose to serve their clients. They see themselves as custodians of their institutions, with a sense of responsibility for the system." Mark Carney, Governor, Bank of Eng., Remarks at the Bank Standards Board Panel "Worthy of Trust? Law, Ethics and Culture in Banking" (Mar. 21, 2017), https://www.bis.org/review/r170322d.pdf [https://perma.cc/H6YY-PRBB].

93 EDMANS, *supra* note 1, at 211.

developing a layered sense of corporate duty. Engaging students in simulated ethical dilemmas again seems central to the project of making corporate purpose seem concrete, precisely because purpose is not static. Just as Friedman noted,

> a corporate executive is an employe [sic] of the owners of the business. He has direct responsibility to his employers. That responsibility is to conduct the business in accordance with their desires, which generally will be to make as much money as possible while conforming to the *basic rules of the society, both those embodied in law and those embodied in ethical custom.*[94]

Recent work produced by the Federal Reserve Bank of New York (the "New York Fed") has taken up this challenge of providing practical ethical simulation to the MBA classroom, at least for banks.[95] As part of that work, the New York Fed has constituted the "Education and Industry Forum," a group with external members from business and academia charged with, among other things, developing case studies around ethics and culture for use in business school classrooms.[96] That group has published cases on a range of ethically grey areas ranging from (possible) sexual harassment and technology misuse, to market manipulation and implicit bias.

The impetus behind the development of these case studies was to allow students to experience an ethical dilemma before actually encountering such challenges in the workplace, at which point decisionmaking becomes stressed by pressures of time, hierarchy, and collegiality. Instead, by tackling ethical thickets in case studies at school, students can "practice" developing the skills required to recognize ethically grey areas in the first place, and start to build their toolkit for handling such challenges in ways that are beneficial for the firm's stated long-term values. The case study approach that has been adopted by the Education and Industry Forum on Financial Services Culture (EIF) is a model worth replicating more broadly, to explore issues of corporate responsibility and purpose in the classroom as part of the business school ethics education.

Polarization (less of it). Finally, educators would do well to remind themselves that the job of a professor is to facilitate the exchange of ideas and expose students to wide-ranging perspectives. Like all other areas of academic learning, where the purpose of the corporation is concerned, students will be best served by instructors who are intent on depolarizing the debate. Polarization of the debate—with share-

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94 Friedman, *supra* note 12 (emphasis added).

95 *See Governance & Cultural Reform*, FED. RSRV. BANK OF N.Y., https://www.newyorkfed.org/governance-and-culture-reform [https://perma.cc/5NAM-C62Z].

96 *Education and Industry Forum on Financial Services Culture*, FED. RSRV. BANK OF N.Y., https://www.newyorkfed.org/eif [https://perma.cc/SDV3-PB64].

holder interests on one end and stakeholder interests on the other—does a disservice to students who believe they must pledge their loyalty to one camp or another. In reality, shareholder and stakeholders are just two sides of one coin. These future corporate managers must be taught that neither extreme is workable.

If one reflects carefully on what Milton Friedman said, it would be plain that Friedman rejected an us versus them paradigm, too. Though committing the corporation to pursue profits, he provided:

> [I]t may well be in the long-run interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving its government. That may make it easier to attract desirable employes [sic], it may reduce the wage bill or lessen losses from pilferage and sabotage or have other worthwhile effects.[97]

In earnest, the two poles are perhaps not so far apart. Rather than focusing on the differences, business and legal education might do best for society by harnessing students' current passion for corporate purpose in order to transcend a binary conversation—in the interest of maximizing wealth, happiness, and utility for all. In Edmans's words, let us focus on teaching students how to grow the pie for everyone rather than how to split it up.

CONCLUSION

In *Grow the Pie*, Professor Alex Edmans takes his readers on a journey through corporate America, relishing us with anecdotes about the virtues and potential of corporate capitalism that are now all-too-often forgotten or ignored. Edmans reminds his readers that capitalism is the soil for innovation that increases human welfare, serving everyone involved (shareholders and stakeholder alike). While recognizing the need for outer limits to corporate action, Edmans offers a theory of pieconomics that is loyal to capitalism's core. He pushes companies to drive for better, not worse, to the benefit of all society. This Review has layered some legal analysis and implications on top of Edmans's finance and management account, with some hope of bridging these disciplines in the ongoing conversation about corporate purpose and capitalism of today.

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97 Friedman, *supra* note 12.