4711 - Session I Colin Mayer

[Start of recorded material at 00:00:00]

Kristin: – if you could take your seats. I am very, very excited to welcome you to Columbia Law School and to the Millstein Center for Global Markets and Corporate Ownership's conference, Counternarratives to Shareholder Primacy on Corporate Purpose and Shareholder Values.

My name is Kristin Bresnahan. I am the executive director of the Millstein Center, so I'm especially pleased to welcome you. Today is going to be a fascinating day of great conversation, so we're very glad you all are here.

When I started at the Millstein Center last summer, one of the very first things Ira Millstein said to me was that he wanted the center to be focused on issues around a corporation's role in society and on what we came to call a counternarrative to shareholder primacy. We both believe that doing so is a critical step in righting the course of capitalism; which, over several decades, and for a whole host of reasons, has gone off track and, as a result, created great inequality in society.

Over the past eight months, a sense of urgency around these issues and the future of democratic capitalism has only been heightened. It has risen to the top of the heap of things a collective consciousness is worried about, and it has become the focus of presidential candidates, much debated proposed legislation, countless books, articles and op-eds, many of which have been authored by people in this room. We've all seen the headlines. The millennials and the younger generations are souring on capitalism.

What does that mean for the future of American business? There have been many recent and very public examples that are emblematic to me of the most crucial issue, which is that trust between corporations and the public has been broken. In order for capitalism to survive and thrive going forward, we need to repair that trust. It is a multifaceted problem that will require multifaceted solutions.

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

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

A few initial thank yous before I turn over the microphone: First of all a huge thank you to the Richard Paul Richman Center for Business, Law and Public Policy for its support of today's event. The Richman Center, which spans both the law and business schools, is focused on bringing together academics and practitioners from law and business on critical issues like this one; and we are thrilled to partner with them as we aim to carry out that vision here. We are so happy to have our colleagues from Columbia Business School with us today.

I also want to thank Jeff Gordon, codirector of the Millstein Center and one of our esteemed faculty members here at Columbia Law School, for his efforts in putting together this great program; also a special thanks to Brea Hinricks, the assistant director, and J. C. White, its program coordinator, who have done an incredible amount of work to make today happen. I also want to thank the members of the Millstein Center's advisory board that are here with us today; our chair, David Nierenberg who you'll hear from in just a minute; Mats Isaksson who will be on our first panel, Jim Millstein, Kurt Schacht, Mila Brogan, Cindy Fornelli, and Bob McCormick, as well as to all of our advisory board members that weren't able to be here.

Finally, an extra big thank you to Deloitte, a longtime friend and supporter of the center, that makes everything we do possible.

A few quick housekeeping announcements: We're going to try to keep the trains running on schedule, so please be mindful of getting back to your seats after each break and lunch. We are going to try ringing bells during lunch and breaks to get people to come back in, so we'll see. If you hear the bell, come back inside. Also, all of today's sessions are being live webcast and recorded; and there's going to be a lot of time for Q&A.

If you're going to ask a question, please use the microphones at your seat. You press the button with the person with the little soundwaves coming out of its mouth to turn the microphone on. It's also very easy to accidentally turn it on. If you accidentally turn it on and start talking to your neighbor, everyone will hear you on the webcast; so be careful about that.

So with that I'm going to turn the microphone over to David Nierenberg, chair of the Millstein Center's advisory board, to read welcome remarks from the center's founder, Ira Millstein. Thank you.

David: Thank you, Kristin. Good morning, everyone. Thank you all for joining us and coming out for this worthy and important discussion. Ira regrets that he cannot be with us today, but he has prepared some comments, which he asked us to share with you. I think they're great comments; and I hope, when I'm 92 years old, I can write as well as he is. You have the comments, by the way, at the back of your package.

While I wish I could personally be with all of you today, I am pleased that so many of you are here to discuss this very important topic. Today we live and work in a very complex and constantly evolving capital market system, filled with uncertainty; political uncertainty and economic uncertainty. This means that corporations need to be able to evolve with the changing times. Corporation has three legs: management, board of directors, and shareholders.

Management's role has been vital from the beginning as the engine of corporate performance, at one time in control. Boards, once passive, are now embracing a more active role in oversight and planning. Over the past decade a coalescence of economic power has reinvigorated shareholders to become actively involved. Once faceless, groupings of shareholders of different varieties now have more significant concentrated power; particularly the ability and inclination to wield considerable influence over the corporation through its directors.

Today's reality is that shareholders play a critical role in the longevity of a company. They are the capital on which the corporation thrives. Corporations cannot turn a blind eye to shareholders or their demands for faster and visible so-called shareholder value. Shareholder value, over decades, became the shareholder primacy standard which permeated corporate America. The corporation's purpose was to generate profit for shareholders. It has increasingly been argued that this mindset inhibited growth and innovation to boost shareholder returns in the short term.

This mindset is now being challenged. The challenge is coming from a variety of forces and in unexpected ways by what we will call stakeholders. There is currently growing momentum by a diverse group of stakeholders to think beyond quicker profits. Stakeholders include not only the shareholders but also employees, suppliers, customers, and the community from which the corporation draws its resources or that may otherwise be affected by its actions.

The most recent proxy season illustrates my point. Proxy demands for governance changes, including the #metoo movement, gun safety, climate and environmental change, human rights, and the opioid crisis are on the rise. Corporations are being asked to take the lead. The calls won't go away. These shareholder [sic] demands cannot be ignored. Rather, they now must be balanced with shareholder demands for short-term profits and price swings. It's a balancing act. The question for all of us is: How do directors strike the right balance? Also, does the current institutional structures; including existing laws, regulations, and incentive structures; encourage this balance?

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

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

I believe these will be difficult judgment calls based, hopefully, on some form of empirics. I have no answer yet for myself, only questions. First off, management, boards, and shareholders will have to be aligned; and this requires deft handling. We can't afford internecine warfare. This implicates governance. The end result should be good governance. Are we convinced that good governance, without empirics, will improve corporate performance? Do we need this, or is it obvious? Is it necessary?

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

With those words from our founder, it's my pleasure to bring up Professor Jeff Gordon.

Jeff: Is this working? Hello? All right. It's a pleasure to say hello to everyone, particularly on a March day when it's snowing, of course. I've known Ira almost the whole time I've been a legal academic. He and Mark Rowe and I have been going at these issues for a very long time. The fascinating thing is that they are perennials, but the answers are not the same. That's because the owners change. The markets change. The world will change.

So the way I look at the ambition of today is, yes, we had a narrative, the Friedman-esque approach; really the ALI approach, in which the shareholders are first. Is that a sustainable story? What's the alternative story, if not? We had the good fortune in thinking about today that Colin Mayer, an Oxford Don – distinguished one – has written an exciting new book – "Prosperity," he calls it – which, in a sense, is a radical take on some of these questions.

So he was the anchor tenet for today, and we so much appreciate his trekking across the Atlantic for this. Maybe with Brexit he'll even stay, but you never know. Then His Honor Leo Strine was also willing to engage in this debate, this day. Of course everyone knows him as a judge who puts all the academics to shame, because he has a day job and manages to produce more in the law journals than most of the rest of us who don't have the excuse of having to be a judge. Also, Bruce Greenwald will be here later in the day, who is a business school professor, Columbia professor, who packs in students in the courses he teaches. I'm sure you'll see why when he discussions his perspective on these issues.

So it's day of narratives and alternatives to the narratives, and while the Millstein advisor board, I think, was the instigator of this day; there are many on that board, and there are many who are associated with the center who have different perspectives on these questions: What's the issue to be solved, and how do we solve it? I think it's the right time to be addressing these things in a fresh way. So I hope that is the goal for the day, and we'll check in later to see if that goal has been achieved.

So with that, our first panel: Professor Mayer, why don't we – oh, sorry, Kate –

[talkover]

Okay, so Colin, you're going to speak. Are we going to introduce him or just depend on the vibe?

Colin: Don't worry.

Jeff: All right. Anyway, so the podium is yours.

Colin: Well Jeff, thanks for that fabulous introduction. Thank you very much to you and to Kristin and David for having invited me to participate in this wonderful conference. It's a great pleasure and privilege to be here, so thank you very much indeed.

I'm talking about one of the most important institutions in our lives. It's not the state, religion, or Columbia Law School. It's an institution that clothes, feeds, and houses us, that employs us and invests our savings, the source of economic prosperity and the growth of nations around the world. At the same time it's been the source of growing inequality, environmental degradation, and inequality. [sic] In response to that, the British Academy, the National Academy of the Humanities and Social Sciences, last January launched a major program of research on the future of the corporation.

It brought together more than 30 academics from across the humanities and the social sciences from across the world, including many academics in this country, including one very prominent one sitting in front of me. The objective behind the future of the corporation program was to consider how business needs to change over the coming decades to address the economic, social, and political challenges it faces, as well as the normal commercial and financial ones; and how it should best take advantage of the tremendous technological advances that are in progress.

In November it published 13 papers based on that research and a report that summarized the output. What emerged was a remarkable degree of consensus; despite the fact that people came from very different academic backgrounds, despite the fact that they came from very different institutions and different parts of the world and worked independently; a high degree of consensus around three themes.

The first was the need and urgency for change, the reconceptualization of business, and thirdly the instruments and the key policy drivers that were required to bring about change. Underpinning this is one key factor. Every year for the past 35 years, Ipsos MORI, the market research company, has been undertaking a survey of which professions in Britain people trust to tell the truth. At the top, alongside doctors, nurses, and teachers, I'm pleased to say, come university professors. We might not have much power, pay, or prestige; but at least people trust us to do nothing, earn nothing, and take no credit for it.

At the other end come business leaders, just ahead of state agents, professional footballers, journalists; and rock bottom come politicians. They come below trade union leaders and the man and woman in the street. This is not just a bankers' phenomenon, because bankers are actually separately reported; and if anything, business leaders come below bankers. It's not just a post financial crisis phenomenon, because it's been true for nearly all of the 35 years of the survey.

Mistrust in business is profound, pervasive, and persistent. Why is that the case? I suggest the answer is this: The Friedman doctrine that there is one and only one social purpose of business, to increase profits so long as it stays within the rules of the game. That principle has been the basis of business practice, business policy, and business teaching around the world ever since, but it wasn't always so.

Indeed the corporation was established under Roman law to undertake public functions of collecting taxes, minting coins, building infrastructure, and looking after public buildings. For nearly all of its 2000-year history, the corporation has combined its commercial activities with a public purpose. It's only over the last 60 years that this notion that there is only one purpose of business – to make money – has emerged. It is that which is the source of great inequality, environmental degradation, and that mistrust.

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

But things are changing. Two months ago Larry Fink, the CEO and president of Black Rock, wrote a letter in which he said that every company needs a purpose; not a strap line or a marketing campaign, but a statement of its fundamental reason for being, what it does on a daily basis. Purpose is not the sole pursuit of profits but the animating force for achieving them. He's not the only leader of a multitrillion asset management firm to have said that. So, too, have the leaders of Vanguard and State Street.

It's not just the leaders of investment management firms that are saying this. Britain, in some respects, led the world in terms of the setting of corporate governance standards. When the Cadbury Committee, in 1992, set out what became known as the Cadbury Code, it's been the basis of corporate governance codes, of companies around the world, ever since; including in the OECD principles on corporate governance.

But last July the Financial Reporting Council issued a new corporate governance code in which it set out that the objective behind corporate governance was not merely to do what it had been assumed to be there for - namely to solve the agency problem of aligning managerial interests with those of shareholders – but to ensure that companies state and uphold their corporate purposes. It was the role of the board of directors to ensure that the companies had the resources and the ability to do that.

Two months ago the Financial Reporting Council and the Financial Conduct Authority put out a statement about the stewardship of investment management businesses in which they, too, say that investment management firms should have a purpose that is not simply about maximizing the returns of their beneficiaries but also about their role in stewarding the companies in which they invest. It's not just in terms of public policy that there has been a marked shift in attitude. There's also, as you'll be aware, been a significant change in political attitudes.

Elizabeth Warren, of course, has come out with her Accountable Capitalism Act in which she suggests that corporations with revenues in excess of a billion dollars need to have a public charter with a stated public purpose. In France

Present Macron has put forth the notion of raison d'etre, and intrinsic notion of purpose, at the core of the French commercial code. In Britain the Labour Party opposition has reintroduced the idea of renationalizing the companies that Britain led the way in privatizing. That would have been inconceivable only three years ago.

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

The purpose of business is not to produce profits. The purpose of business is to produce profitable solutions to the problems of people and planet. In the process it produces profits; but profits are not, per se, the purpose of business. Everyone who runs successful businesses knows that to be the case. They don't profit from producing problems for people and planet. Instead what they do is, they commit to the common purpose of the corporation; and they commit to those who help to create that common purpose. Those parties in turn commit to the creation of that common purpose.

That gives rise to reciprocal relations of trust, which is the basis of the mutual benefits that both the parties to the firm and the firm itself derive. It gives rise to more loyal customers, more engaged employees, more reliable suppliers, more supportive shareholders and societies. That gives rise to greater revenues, lower costs, and therefore more profits for businesses.

Now underpinning this is the trustworthiness of companies to uphold those corporate purposes. That trustworthiness is dependent on the values of the business, values of honesty and integrity, and cultures of committing to those corporate purposes. Now those three notions of purpose, trustworthiness, and enabling values is what underpins a reconceptualization of business in the 21st century. To achieve it there are four sets of policies that are required.

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

Regulation we view in a Friedman context of being about the rules of the game and the enforcing of the rules of the game, but that is not what it should predominantly be about. It should be about aligning corporate purposes with public purposes in those companies where it's appropriate to do so, in particular in relation to utilities, infrastructure companies, private/public sector providers, and banks and auditing companies. In those institutions it's appropriate to think about how one can align the private interests and purposes of companies with those of the public interest.

A second set of policies relate to ownership and governance. Ownership at the moment is associated with that of shareholders and, in particular, institutional shareholders; but ownership should be viewed just as the rights of shareholders but also an obligation and responsibility to uphold corporate purposes. There are many types of owners that are best suited to performing that function in particular circumstances. It can come in the form of families or foundations, employees of the state, as well as in the form of institutional investors.

Government, as I just describe, is associated with the solving of the agency problem in aligning managerial interests with that shareholders, but as has been recognized in the recent corporate governance codes, that is not what it should be primarily about, but instead aligning the interests of management with the corporate purposes.

The third set of policies relate to measurement and performance. At the moment what we do is, we measure the financial performance of firms, and we recognize financial capital and material capital; but increasingly we're recognizing that actually what is more important in the 21st century company are other forms of capital; including human capital, natural capital, and social capital. We should be measuring those and recognizing expenditures on those as being essentially forms of investment, and that the profits of the company should be [stated 00:31:32], not just met at the cost of maintaining physical capital but also the cost of maintaining human, social, and natural capital.

The final set of policies relate to finance and investment. At the moment we associate finance predominantly with contractual arrangements between suppliers and users of finance. That's partly because the tax system favors that over equity; but even where it comes in the form of equity, it's from predominantly dispersed shareholders with whom it's impossible for companies to have relationships. We need to recognize that relationships between investors and firms are important both in the provision of debt finance, in particular in relation to banks, relations with companies; but also in terms of the relations of shareholders with companies.

In so doing, we need to recognize the importance of block holders as well as dispersed shareholders; but it's not just in terms of relationships with the private capital market that corporate investment is dependent. It's also in terms of its relationship with the public sector, because there are many areas – in particular in relation to large, long-term infrastructure investment – where private capital markets on their own are simply unable to provide the types of financing that companies need.

In those areas it is particularly important that there are strong relations of trust between government and business. In particular it is there where the aligning of the interests of companies with the public interest is particularly important; through, for example, the adoption of their licenses in their charters or their articles.

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

In terms of the adoption of licenses within that public purpose is something that is seriously being contemplated as a way of addressing the problems associated with privatization, in particular in the U.K.; to avoid, for example, the risk of nationalization. The forms of ownership that are required to produce relations between companies and investors are commonplace around the world in the form of block holders and, in particular, family holdings. The corporate governance reforms that I've just been talking about have already been introduced in the U.K.

Lots of organizations are involved in measuring forms of capital beyond financial capital in the form of human, social, and natural capital; and there are various forms of adjusting profits in terms of, for example, impact investing that have been suggested; and the relationships between providers of finance and users of finance is very much a feature of the way in which some banking systems operate, including the close relationships between private capital markets and public sources of finance. Now this is important not just in terms of promoting the interests of society and future generations but also in terms of the performance of companies and the performance of investors.

I want to illustrate this in relation to one example. It's going to be an example of the most trouble industry that we've had over the last few years, namely the banking sector. It's going to be an example of one of the most successful banks around the world over the past 20 or so years. It's a bank that's enjoyed increasing returns for its shareholders from before the financial crisis, during the financial crisis, and after the financial crisis. It's one of the most highly rated banks in the world. It has one of the best credit ratings. It has one of the best liquidity and solvency ratios of any banks in the world.

It's a bank with a clearly defined purpose, a purpose that puts its customers first alongside the interests of its employees and also has as its objective to be the lowest cost provider of any of its competitors. It's succeeded in doing that for the past 44 years on a regular basis. It's one of the fastest growing banks in Britain, but it's not a British bank. It's a Swedish bank. It's called

Handelsbanken. One of the features of this bank is that indeed it does have one of the highest degrees of customer satisfaction, certainly of any bank in Britain; and that's largely true in Europe as well.

Associated with that is also a much greater degree of loyalty amongst its customers. That's a reflection of what I was describing just now as the reciprocal relations. Give, and you will be given. What underpins this is the governance and the values of the organization. The underlying principle behind the bank is to devolve decision taking down to the individual branches and to avoid centralized control of the bank. Indeed the mantra of the bank is, the branch is the bank.

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

But what underpins it as well is the notion of trust, of people working in the organization, that allows that devolution of decision taking. What underpins that trust is a very strong set of values. Those values are firmly embedded in those who run those branches. The consequences: Because of the more loyal customers, it has a more stable financial source. It therefore has better financial performance and ratios than other banks, but there's a second interesting feature associated with that element of trust in the employees. It doesn't pay its employees any bonuses.

Just think of how we're told all the time that you've got to pay your employees a bonus. It pays no bonus until they retire at the age of 60 – a truly long-term investment incentive – at which stage they get a share in the profit sharing scheme of the bank called Oktogenen. The third interesting feature of the bank is its ownership structure. It's listed on the Swedish stock market. It's actively traded, but it has two dominant shareholders, one of which is that profit sharing scheme, Oktogenen, the bank's own profit sharing scheme; and its Swedish industrial holding company called Industrivarden.

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

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

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

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

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

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

[Katherine]: I could not imagine a better start to the day. Just in case you haven't seen it, this is the latest book. Of course it is not his first book, but it does do a remarkable job of laying out in even greater detail, from what you already heard, a vision and, I think, a nice, coherent vision of an alternative paradigm that is possible. So to discuss that vision and to discuss the broader question of how we go about – and should we go about – building a counternarrative, we have a remarkable panel to round out what has been already a great start to the day.

You have detailed biographies just behind the agenda. I will not take 20 minutes going through the various accomplishments of the panelists in front of me. Instead I'm going to go ahead and give each of them about 12 to 15 minutes to provide their own perspective before opening this up to Q&A. We're going to go right along in the order of the agenda, so please – we're going to start with Professor Ron Gilson from Columbia.

Ron: Thank you. Following Colin is not ever the best thing to do, because the combination of a spectacular presentation style and equally compelling ideas – it's a sense of sweeping up after elephants.

Male Voice: [Unintelligible 00:48:39]

Ron: For those of you who didn't hear me, I said something very nice about Colin with a great deal of conviction. I very much appreciate, just selfishly, the opportunity to participate in this panel. As I expect will be repeated throughout the day, this is a very unusual moment in corporate governance. The two people who will be – Colin's presentation and Marty's will present a perspective that I can't recall in the 40 some years that I've been doing this, a set of issues that are more important and more difficult.

We have two leading participants in this debate over the years, a world-class academic and a world-class lawyer, announcing the need for a radical change in the way we do business in order to avoid the apocalypse. I really can't remember a similar conversation, and we're going to have it with just the right people this morning. For that reason alone, our discussion this morning will be fascinating.

I'm going to address, in my Warhol moment, both Colin's presentation and the compatibility of that in turn with the work that Marty has done on the new paradigm. I'm going to focus most generally on two things: whether in fact we have the issues framed right, and then secondly whether the step remains of how to get there from a broad statement of principles.

So the first thing to note is that Colin, and immensely talented financial economist, the founding dean of the Said School at Oxford; and Marty Lipton, the leading and most effective spokesman over the last 40 years for a managerialist view of governance – two radically different backgrounds – find themselves essentially in the same uncomfortable place. So I want to talk somewhere about both the unlikelihood and the importance of that correspondence.

Colin tells us that we require – and now I use his terms – a radical reinterpretation of the nature of the corporation. That reinterpretation involves each company creating a sacred text by the board that sets out the corporation's purpose in some larger way; somewhere between a short book, a short red book, and a mission statement; to the end of causing the company, through the creation of that purpose, to focus on the way the company's business and the company's interests, interact with social policy.

Under current circumstances Colin tells us that neither the owners of the corporation nor the practice of corporate governance as we do now success in aligning corporate and social interests. Marty: as I read it, pretty much on the same page. The phrase for Marty is nicely turned: Capitalism is at an inflection point. There's a very nice phrase: The prioritization of the wealth of shareholders at the expense of every other stakeholder gave rise to a deepening inequality and populism that today threaten capitalism from both the right and the like.

The response, the new paradigm, is an implicit corporate governance and stewardship partnership. Implicit partnership means it's not a partnership; it's people who have shared interests and act to reflect them. That will allow business to address what for Colin and Marty is the real culprit. We know it well from the last 10 years. It's short term-ism.

Now Marty's view differs at the edges from Colin's. Marty typically has not favored imposing legal regulations on management, even if management defines them; but the difference in formal implementation isn't critical, I think, because Colin's radical reinterpretation is effectively unenforceable other than through ownership. The notion that a fiduciary duty on the part of directors to follow the corporate statement; and, when it's not followed properly, courts will intervene to decide whether the balance among shareholders was struck correctly; will also strike every lawyer in the room as utterly implausible.

That then leads to where Colin's talk ended, with the structure of ownership; block holders and Colin's [attraction 00:54:44] to families. Here's the first complication in the framing of the dilemma that brings us to the room today. In a period of genuine and warranted concern about income inequality, concentrating control of major corporations in a small number of families or other block holders is not an issue of corporate governance. It's an issue of real governance.

That kind of concentration of economic power in a small number of people is tracking another conversation that's going on now, which is, do we recover the antitrust laws' original concept; a populist perspective. So the notion of family ownership requires more than just corporate governance. It requires thinking about issues in how we run our democracy, and those won't get resolved by this group of people.

I'm not going to focus on Colin and Marty's framing of the problem other than to say, to begin, each of them have it half right. The focus on short term-ism, the exclusive on short term-ism, ignores the fact that markets can be myopic. They can lack information that management has and that is difficult for management to transmit to markets. That explains a concern about short term-ism, but market myopia is only half the problem. The other half is that managements also can be hyperopic over value of their current strategy.

Governance, whether it's a radical reinterpretation or a new paradigm, confronts a single core problem. When we're operating through a board and through management, how does the board distinguish between circumstances where the market lacks private information, and so short term-ism is the problem; and when management – holding, in effect, an [out of the money 00:57:22] call option – will behave the same way that option pricing predicts they will extend the period of the option and be persuaded that if they just get enough time to run this, they'll make it?

General Motors, GE – I have to live with PG&E providing my electricity. We've got plenty of evidence of that, too. Both problems are real. Identifying them isn't hard. Balancing them is.

Let me talk a little bit about the correspondence that we find here. Albert Hirschman is the author of what widely is viewed as the most important piece of nonformal corporate governance scholarship, "Exit, Voice, and Loyalty." He asks: How do I identify when, in the face of a poorly performing organization, when we should leave, when we should yell, and when we should stay?

I want to direct you to a different Hirschman book that speaks to the set of issues that Colin and Marty talk about. It's a book called "Shifting Involvements: Private Interest and Public Involvement." Essentially Hirschman lays out an endogenous, long cycle as public concern shifts back and forth between private interests and public interest. Let me track at least one piece of history. Long ago in a galaxy far away – Marty will remember it – Donald Schwartz from Georgetown: People became concerned that his effort to persuade Congress to federalize corporate law might actually work.

The result was the American Law Institute's "Principles of Corporate Governance," which was a way to marginalize that effort. Academics understand it. If something's going on that you don't like, what's the answer; we study it. If we study it for long enough, the cycle – as with respect to federal incorporation – will run. When the cycle runs the academic interest deteriorates from a joint effort, sort of internal acrimony.

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

That agenda, as I see it [unintelligible 001:00:45] is renationalization limits, worker participation in the board, limits on dividend payment, and the like. I have no idea, but Colin may, about any correspondence between the timing of the British Academy project and Corbyn's succession to Labour Party leadership. Even if there's some truth to it, coincidence is not necessarily causation. We see the same thing on our side of the Atlantic. Senator Warren's Accountable Capitalism Act that Marty refers to essentially tracks the same [unintelligible 01:01:33].

Let me close by talking about the feasibility of the two presentations. Focusing on feasibility is not to deny the power of the underlying theme but focusing, in the end, on how we get there. I've mentioned my concern with Colin's framing; that courts won't do it, and the concern about populism may not be met by creating an even more unequal distribution of power within the country. Marty's, though is – like a good lawyer – more technical. I just want to suggest that – and I will stop – the problem with the new paradigm, or the question with the new paradigm, isn't corporate governance. It's asset management.

At the moment Exxon, as an example, is trying to keep off the ballot a proxy initiative proposed by institutions, including [unintelligible 01:02:49], with $1.2 trillion under management; which sounds like a lot, but it's actually not. But there's another group, Climate Action 100+. It has 323 institutional investors as members. They run $32 trillion. That becomes a number that's significant if there is an issue that joins that group. It includes AllianceBernstein, PIMCO, Trillium.

There's six points that make me concerned. The first is, the business of the three large index holders is pretty straightforward. It depends on massive economies of scale. So profitability depends on asset flow. Second: Asset flows in the index fund industry, as opposed to active management don't depend on the managers' performance; because the managers' performance by definition do not differ among each other; and the price differentials are marginal.

A very large amount of institutional assets, particularly moving over the last couple of years, will vote for ESG based proxy proposals because of the preferences of their own beneficiaries and because they think it will attract cashflows, or simply because of what Jeff and I call the agency costs of agency capitalism. The three large index holders have different records with respect to voting on climate change. Vanguard is the least climate friendly. Black Rock's somewhere in the middle. State Street is much more friendly. The differences are not insignificant.

The simple prediction: Large institutions, who are the index managers' customers, will shift their index holdings to the most socially responsible manager; that is, which manager votes the way the 323 institutions in the Climate 100+ will want; and they'll take a little bit of reduction in return, because it in fact is what their managers want. The result: We shift the activists who Marty and Colin have been concerned about over the set of years for a different set of activists.

One was after money. Maybe you can make a deal with those people. The other are driven by principle. Those are harder deals to cut. If that prediction about the way institutions will push money managers, how investors will push money managers to vote – the problem, I think, is less socialism, whatever the term means these days; but rather a shareholder driven Green New Deal. However good shareholders are at one thing or another, designing responses to climate change isn't one of them.

That said, I'll stop; but my concern with two enormously well argued positions is not the position. It's how we do it. Perhaps at a second point the answer just may be better management. Costco pays its employees well. They compete extremely well with Sam's Club, which is the Walmart operation. There is not just one way to run a company; and if we can do a better job of persuading institutions that good managers, rather than short managers, are what we want, we'll do okay.

[Katherine]: All right. We're only two speakers into the day, and we already have radically different visions. Do you change corporations? Do you change the surrounding ecosystem, or do you focus on the surrounding ecosystem, work internally through other mechanisms? It's already a fun start. Mats Isaksson from OECD –

Mats: Thank you very much [Katherine]. Just the usual disclaimer up front, that what I may say is not necessarily the OECD and its individual member countries; except that this is a terrific book. I think all OECD member countries agree on that, and I can speak on their behalf. It is an interesting book, and it is a necessary book that I read with tremendous interest.

The fact is that it forces us to address some of the most fundamental concepts of economics and of politics. It is almost overwhelming, I would say, to take on and even to comment on; but it's necessary, because I think neglect of the issues that Colin raises has partly contributed to a situation of a rising degree of populism; at least in many European countries.

So the only thing I can do in order to try to take it down and get it into proportions one way or the other, and in a short period of time – I would like to chop it up in three different perspectives or observations; and particularly perspectives that have a bearing on situations where we approach, or where we go into, public policy implications of Colin's argument and Colin's book.

The first observation – this is a bit of an overwhelming task. Ron said that it takes us all the way to how we run our democracies. You said that's not what we're going to solve here today, but I actually would propose that, even if we will not solve it, I think at least we walk away with the understanding that Ron is correct. This is very much about how we want to live together as economic creatures and as social creatures. It's a very, very fundamental question. Colin has done us a great service to put this up for discussion.

It takes us all the way, I would say, from – when I did this I had to go to corners of my library I haven't been in for years, like Plato's "Republic," chapter four, on the king philosophers; and all the way to Karl Popper, of course; because these are the issues that are at stake. How do we formulate issues that relate to what Colin says, the interest of society? We have dealt with this issue ever since – and maybe even before – Plato. How do we actually find ways in society to arrive at an understanding of a common interest, and particularly as we recognize that there are conflicting ambitions among ourselves as economic and social individuals?

I think this will never go away. I'm not so sure that I walked away a wiser man when I came back from the library, but I think there were three observation that I brought with me that I want to dialog with Colin about. One is the constant interplay between politics and business. Even to the extent, through history, that they actually served as checks and balances vis-à-vis each other, if you want to win an election – at least in a democratic society – pushing the economy forward is a good start.

I also take away the many bad examples through history when you mix the two, when you mix politics and business into the same entity. There are really extreme examples in totalitarian states, of course; but there are also less benign examples in democracy over history. We should also remember in this juncture between politics and economics that, absent philosopher kings, there is really no public policy without politics; and there is seldom politics without populism. The antidote to this, I believe, is the rigor and the clarity that comes out of good jurisprudence and also academic work.

The second angle I wanted to raise relates to Sweden; not because I come from Sweden, but Colin has several good examples from Sweden in his book. What he does in these examples – it goes to the fulcrum, the nexus, of this issue between politics, markets, and collective prosperity. It is true: At the time of industrialization in Sweden, the companies were really social constructs. They were communal in a sense. They ran the housing. They took care of healthcare. They took care of the soccer field, the education, transportation; and up 'til fairly late, they even had the right to vote in municipal elections. We're talking a hundred years ago, not last decade.

With the progress of democracy in Sweden, all these functions were quite systematically dismantled. What was sort of an internalization of the corporations of externalities were, through the era of social democracy, externalized. The municipality took over the schools, the soccer field, the transportation, the housing, et cetera, et cetera. They did it under the assumption that this would be a more functional and rational way of decision making.

Politics was part of it; but it was also a division of labor where the social democratic governments, under their 44 or 50 years of reign, something like that, before they lost power the first time, basically instructed companies: Make as much money as you can, and we will make sure that, through the democratic process, through higher wages, through corporate taxes, we will decide how to use the proceeds.

But there is another part of that story as well that is sometimes neglected, because that can be seen as sort of a rational modernization of any country. I grew up in one of these towns, one of these factory towns, pulp and paper mill, factory town. They smell. What we often neglect is that this was also an individual freedom project for people, for individuals who didn't have, for education, to rely on the company's vocational training. They didn't have to stay in their housing. They could actually go and play for another soccer club.

This incentivized people to get a different training than their dad, maybe even go to university. They didn't want to be committed, [as] dad and granddad, to that company. They wanted to be free. They wanted society to help them on that journey and provide independent education that would take them away from that city. I wonder – and I haven't lived in Sweden for 25 years, but I often talk to people I trust. I think maybe this is part of the reason why there is actually quite little of this social responsibility purpose of the corporation discussion in Sweden today.

I don't hear it very often. We have Rolf Skog here from Sweden. He can tell us more. He knows more, but generally it's fairly absent. My third observation, which is very short, is – a bit shorter than Ron anyway. My third observation has to do maybe with something we can call unintended consequences. I'm doing that at the backdrop of what I understand is Colin's basic model; which is, corporations make commitments. They make these commitments with the support of a legal and regularly infrastructure that is either directly supportive – like accounting, new accounting practices et cetera – or at least benign in the sense that it doesn't deny them the possibility to take these other things into account.

They also change the balance of power from shareholders to a panel of – what would we call them? – trustees that can serve as the supervisors that the company actually keep these commitments. If they don't keep the commitments, regulation will step in. I'm not doing justice to the nuances of your construct, but I think those are the main elements.

I won't develop too much, because I think it's more for you to walk away and think about. Maybe my comments are a bit European. I don't know too much about the U.S., but one thing that strikes me immediately is, once corporations are given additional responsibilities, they will claim additional rights. It goes like horse and carriage. I promise you, as soon as there are more responsibility put on corporations, they will advance in terms of their rights in society. I'm not so sure, always, that in this world where corporations already wield a lot of power, if we want to advance that further.

The second unintended consequence that I think about, lurking, is the fact that if you force voluntary – you don't force voluntarily. But if you create, voluntarily or by charter, groups of different constituencies with intrinsically the same objectives at stake, you will build a very, very strong constituency. You will have labor; you will have management; you will have local constituencies, et cetera; all walking in the same direction. They will wield a lot of lobbying power.

You imagine a factory town somewhere in Germany. The company's mismanaged, but everybody's dependent on it. Everybody's committed to having this company run for another hundred years. There is very, very little politicians can do not to cater to their needs in terms of subsidies. Maybe there are trade advantages, extensions from competition policy, et cetera. I think this is something that we should look out for, because we've seen it happen. It is not to the benefit of society at large, and it's not to the benefits of the people who will be stuck in this.

For example, environment, which is one of my greatest concerns: When I grew up at this factory, which was pulp and – I learned to swim in mercury. It's very easy, because you float above. It was really, really polluting; but who are the biggest opponents to any question about regulation or legislation? It was the workforce, the unions. There were one or two guys in the workforce who said, maybe this is dangerous. They were frozen out. It was [unintelligible 01:22:34]. I remember this very well, because everything you have is at stake there; and you're in bed, sort of, with the company on a joint mission. So that's just another sort of figure in the margin where we can continue the discussion.

I think a third point is whether – and this is a generic thing with all these discussions about corporate governance and the role of the corporation. Are we just talking about public listed companies, of which we have fewer and fewer;

or are we talking about everyone? There is a recent Federal Reserve study, by the way, on the long-term investment between non-listed and listed companies. It actually shows very well that listed companies actually have more long-term investments than non-listed companies, although they are under this terrible pressure of stock market

So that's my last thing. I think there are things I can say sort of in a constructive fashion, but I will wait 'til the comments.

[Katherine]: Perfect – I appreciate that. Last but certainly far from least –

Marty: I trade you for a grownup –

[Katherine]: – Marty Lipton.

Marty: When I listened to David reading Ira's introduction, I said to myself, it's only people of our age – Ira's and mine, not David's – that realize that this has gone on for a long time; and most of the major issues are still not settled; and I'm not quite sure how we're going to settle them. Ron, as you might expect, pretty much summed up my views exactly as I would state them, so I won't repeat what he has said about them; and he was also accurate in saying that they pretty much totally coincide with Colin's, who has written a truly unique and magnificent book.

The scope of it – you must read it. It really does start 2000 years ago and work its way up to not just the current time but to the future. I think that if we're ever going to solve the problems that we've been discussing, the book is going to be the basis on which they're solved; not necessarily exactly in any one or all of the issues, but basically there's just no question that the book and, this morning Ron and Mats and Colin have identified all of these issues. We're not dealing with something where we don't understand what the issues are. We're dealing with something where the issues are very difficult to come to a resolution of that will satisfy the majority – hopefully the vast majority – of people.

Clearly we have not reached that point today, just the opposite. I'm not sure I can count all of the new paradigms that have been proposed in the last half dozen years to solve the problem. Some of them come close. Some of them don't come close together. Some of the organizations that have been established focusing capital on the long term; Coalition for Inclusive Capitalism; some of the older organizations, the Council of Institutional Investors going back to '85, ISS going back to '85 – I could go on, probably, for the rest of the time with organizations and proposals to solve the problems.

Law reviews are just replete with article after article. I had a lesson in law reviews in 1979. I wrote an article that flew in the face of the Chicago School of Economics, and they've been after me ever since.

So what do we do about all of this? One overriding concern of mine has been regulation and legislation. It seems to me that the history of the world has been, as you increase the amount of legislation and regulation, and you move away from competitive market determination of these basic economic issues, you approach a totalitarian government or failure. If you look at the history of socialism and communism, to use those as examples, right through to the current time, you either have failures and abandonment of socialism, or you have a totalitarian government that comes in and moves further and further; even one that comes in as it did in China 30 years ago – even when it comes in with a purpose of a market economy, it doesn't take too long before you end up with a totalitarian government.

One of the things that I've always felt is important in this is to try and solve the problems without government regulation. Ron aptly made reference to Ralph Nader and that point in time. The issue was not corporate governance. It was really antitrust, and it ended up without any conclusions; but the ALI spent 13 years, really, mulling it and accomplishing absolutely nothing. I have the two volumes on my office shelf there. If you could dust them off, they're a bright blue cover and very nice to have there; but no one ever looks at them anymore.

There is a new effort. Ed Rock is going to try and do a restatement of corporate governance, and I'm sure it will be an excellent work. Whether it will solve these problems, I don't know – maybe try and give a little further view of the new paradigm. As I mentioned, there are a lot of them. I did one for the World Economic Forum a few years ago. They asked me to focus on the issue and come up with a suggestion, and I did; and they issued it in September of 2016. They put it out at Davos in January of 2017, and it's gotten no place.

Somehow or other it annoyed me, so I played with it again recently and have come out with a revised version. The revised version has a purpose. After the initial issuance of the new paradigm, the Investor Stewardship Group was formed, which is a group of major investors and some corporations. They came out with the principles of what I'll call corporate governance and principles of stewardship, and some principles of engagement between the two; which was a sort of junior edition of the World Economic Forum new paradigm, which was quite extensive principles of corporate governance, quite extensive principles of engagement, and quite extensive principles of stewardship.

All of them pretty much coincide with what you heard from Colin earlier: commitment, trustworthiness, culture, purpose, so on. I think we all can agree on, those are the issues that we're dealing with and that they need to be solved. I continue to believe that it's possible to solve them. There's not much dispute with respect to what corporate boards and corporate management should do. There have been arguments over it over the past 30 years. They've all been resolved. Almost every major corporation today pretty much follows a set of corporate governance principles that everybody else is following and that – everybody, whether they believe in them or not, are resigned to them. There's not much of an issue with respect to them.

With respect to stewardship there's, I'd say, a major disconnect. Clearly stewardship is the solution to the problem. Just think about Elizabeth Warren's stakeholder bill. Basically what it does is impose classic stakeholder governance on corporations that have a billion dollars or more in revenue each year. The problem is that, unless the shareholders – who today own approximately 80 percent of the major institutions, own approximately of all major corporations – support the principles, you have a disconnect; and you're not accomplishing very much.

If Black Rock and State Street and Vanguard all come out and say, we're for purpose; we're for culture; we agree with all of this; but they continue to invest in activist hedge funds, they continue to vote for activist hedge funds, they continue short term-ism in order to be competitive with each other, we don't accomplish anything. That's what's happened. There's nothing new in the new paradigm, and there's really nothing new in the last 30 years; but the competitive features of the investment management business have essentially prevented a real resolution of the problem. Unless we can get the major investment institutions to buy into supporting purpose and culture, so on, we will not solve the problem.

Kristin has held up a zero to me, which means I'm out of time, I guess, or my whole approach to this was a zero and I should leave knowing that I have failed. I failed once before here in Columbia. I came here in 1955 as a teaching fellow to get a JSD degree studying under Adolf Berle. I arrived, very enthusiastic and whatnot; and Mr. Berle was really a terrific person. He had only one fault. He insisted that he would accept no thesis other than one that discussed the changes in corporate law which would result from the fact that share holdings were moving from individuals into pension funds and institutions, and that required a change in corporate law; and my thesis should discuss what the changes in corporate law had to be in order to accommodate this.

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

[Katherine]: All right, as much as I would love to take moderator's privilege, I think it's important we have a little time for questions from the audience. I would also ask Colin to come join us, if you will. I will open it up. Michael –

Michael: I don't know how you turn this on. Luckily I have somebody next to me who does. So there are three things that I think have changed since Friedman announced what you've described as his rule, and you really haven't emphasized, I think, any of the three. I think they make the problem harder and the solutions more elusive, but I think we ought to at least be aware of them. I'm sure everybody up there is aware of them, but I just want to mention them.

One, of course, is that the markets have become global under circumstances where the rules remain largely national. The second is that the shareholder ownership has actually become global and is becoming more global over time, at least of publicly traded companies. The third, which I think is really most important in raising the concerns that are leading to these proposals, is that business has become – at least in the U.S. – dominant politically in a way it was not when Friedman made his rule, or when the ALI was really studying the first time. Maybe by the 13 years when it ended, they had become more dominant.

The problem is that the management, which is seeking what has been described either as short term-ism or just general benefits for its shareholders is not just doing so in the marketplace; but it's doing so very successfully, I would say, in the political realm. That then exacerbates the maldistribution of income and wealth, since the shareholders are in the top half, at best, of the income distribution. It creates a particular frustration which can only be expressed in electoral politics, not in legislative politics; because it's in the legislative arena where the businesses are dominant, not in the electoral arena.

So this, I think, creates a risk for electoral politics. It adds to the risks that have been described that Colin began with, but nothing has been mentioned about that piece of it. It just seems to me it's important to have that piece of it in mind. I'm not sure – just to make the point more pressing – that Colin's notion of corporate purpose would really transform the role of business in the political realm. Maybe it would, depending on what the purpose was; but it seems to me at least is has to be included in the purpose in order for that to happen. It's an observation, but we always close with, what do you think of that.

Marty: Well, I'll respond one way. Problem – that is the beginning of state corporatism. It's the problem we seek to avoid. As you get companies into government, the reverse becomes true. You will government into companies. I think one of our mutual objectives is to avoid state corporatism, because it does lead ultimately to totalitarian government.

[Katherine]: In the back –

Female Voice: Yes, hello. So wonderful book, and a wonderful panel. Thank you. I had a couple of questions just based on the book. I'm wondering if there's an issue here in the distinction between companies and corporations; because especially in the book, there's an analysis even of the history of the word companies: companis, sharing bread. In many languages is translates into prosperity, growth, all these other things. I'm wondering if that's a very different concept.

It's more like having company over for dinner. It's the group of people that are at the heart of it, whereas the analysis is about corporations: corpus, bodies; something that, in U.S. law, has its own legal personhood, its own individuality.

It has a disassociation from its funders. It's not sharing bread with them directly. It's more out on its own for its own purpose. So you do trace, in the book, this problem that, when companies – partnerships, other associations like that – took on bigger projects, they couldn't handle it. It really was the corporate form which could handle really big productions, but we do seem to be walking this line. What kind of person is a corporation then? If it is an entity in and out itself, is it going to be a good citizen in society.

You seem to be blending ideas of the company back into the corporation, the people behind it. So some of the examples that you bring up in the book, and examples that you bring up now – Handelsbanken – but also you mention Bosch, one of the largest private corporations in the world, as a particular example of where a trust own a corporation, and therefore it's a private entity; it's more interested in long-term profits; it should act more ethically; but it's Bosch that's been intimately involved in the Volkswagen emissions scandals, and it's now pled in the Fiat Chrysler scandals.

Bosch seems to have been the entity that spread the emissions fraud all across the auto industry. So maybe there's something going on there where, even if it is still privately held, it's tied to long-term interests; those entities are not particularly interested in acting ethically if they can externalize harms for profit. So this tees up this issue. How do we keep pressure for a corporate purpose, a proper corporate purpose, without having shareholder primacy, or at least shareholder pressure, which we're talking about as being problematic? We don't want to go back to something that's totally private unless we can figure out how to also keep pressure for purpose, for the proper corporate purpose and have ethical actions there.

So I wanted to ask you to talk about that, to talk about how we – what would be the structural mechanisms that would walk that line, that would bring the ideas of company back into the corporation and not allow the kind of abuses that we are still seeing in somewhere private companies?

[Katherine]: I would actually use this question as a launching point to invite Colin to respond to the other comment earlier as well. I think this is a great question, but a lot of questions were raised thus far. So let's give our author a little time to respond.

Colin: Okay. Thank you very much indeed for a tremendous set of comments and observations throughout. I'll just start with the panel, and Ron's really very well articulated retort to precisely what the book doesn't say. If you look at the index, for example, the index refers to virtually every word in the book; but it doesn't mention the word short term-ism or anything like myopia or any equivalent;

and that is because it doesn't talk about short term-ism. That's because I'm not sure I believe in short term-ism; or at the very least, I don't think we know how to measure short term-ism.

Sixty years of research on the subject has produced absolutely no conclusion on the subject. So I couldn't possibly argue that that is the central underpinning of the book. That's not what it's talking about. It's talking about what I said in relation to contractual failures, regularly failures, government failures, et cetera.

Secondly, it is not saying that family ownership is desirable. Indeed I say that I don't expect that family ownership will be revived in Britain, which I cite as being the [company] that has very effectively extinguished family ownership. Coming to the point that was made in the first question about the changing nature of markets becoming more global, shareholders becoming more global, et cetera, I think that is extremely important; because what it's giving rise to is the phenomenon of the universal owner; and the phenomenon of the universal owner is that, because we all basically – through Vanguard and [unintelligible 01:48:44], et cetera, hold the entire global portfolio.

We're not influenced, or interested in the performance of individual stocks. We're interested in the systemic risks; the political risks, the environmental risks, the trade protection risks, the regularly risks, et cetera. Those are the things that move the stock markets and the indices. What that is basically saying is that different forms of ownership perform different functions, that the role of the index funds is extremely important in allowing you and me to invest in low cost – in equities around the world and allow companies to raise capital in that process.

The activist play a very important role in terms of providing precisely the interest in individual corporate performance that the universal owners don't, but it's very short term in nature. Therefore it is extremely important that we have anchor block holders to provide the third form, which is interest in individual companies that is long term in nature. That may come from families, but in many cases it shouldn't come from families. It might come from engaged institutional investors with block holdings, as increasingly the Canadian pension funds are doing, the sovereign funds are doing, et cetera.

The book talks about the benefits of diversity of ownership and the need for that diversity to correspond with the purposes of companies, and that there have been serious failures of that; particularly in the U.K. where, partly because of regulation, we've extinguished block holders by making it basically impossible for them to go on controlling companies. The notion that the book is in any way aligned with what Jeremy Corbyn is proposing is – it's exactly what Jeremy Corbyn is not proposing. I do not expect the current Labour Party to be the most likely political body that's going to adopt what's in the book.

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

But as again, the first question observed, there have been very substantial changes that have gone on in three dimensions. The first is that companies have become much more global, much larger; so that their impacts on society are not just national in nature. They are global; not simply because they are multinationals, but because their products are now global. Think Google. Think Facebook, et cetera. The implication of that is that we are particularly badly placed to deal with that through traditional government mechanisms, which are nationally based.

The second feature of change has been that the assets of companies have changed completely from being predominantly tangible assets to essentially intangible assets today. That means that those assets are not predominantly material. They are about what I was talking about: human, social, natural capital, et cetera. The implication of that is that in essence it turns the traditional view about legitimacy on its head, that the legitimacy that was derived from the property rights over the assets of the firm is becoming increasingly irrelevant as companies are increasingly dependent on external forms of capital; human capital, social, capital, and natural capital; and that instead their obligations in relation to them – not their rights – have substantially increased.

That comes onto the issue about the role of government, and the role of government essentially in performing these public functions and, as Mats put it, in terms of promoting freedom. The trouble with the notion of freedom is that, while competitive markets are important, it also requires another element, which Marty [unintelligible 01:54:24] very correctly referred to in terms of the capabilities of people to be able to actually be able to exercise choice.

That capability to be able to exercise choice derives from people's ability to be able to sustain not just the purchasing power over commodities but the relationships that are involved in terms of the delivery of those and in terms of people's fulfillment of what they see as being their own purposes. So freedom as such, that is viewed as being essentially derived from a separation of functions, actually requires a much more close relationship between government and business in terms of the provision of those functions.

I'd just like to end by –

[End of recorded material at 01:55:23]