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Book Review Symposium on "Shareholder Value Myth" by Lynn Stout

Faith Stevelman*

Myths about Shareholder Value

Abstract: The concept of unitary "shareholder value" and its reflection in near-term stock prices formed the centrepiece of contemporary corporate governance up to the 2008 financial crisis. The crisis has elicited both more critical and clearer, book-length accounts of the relationship of law, corporate governance and finance. The concepts analysed in Lynn Stout's *The Shareholder Value Myth* are considered herein, as part of a commentary on the continuing evolution of academic corporate law and governance.

Keywords: financial crisis, corporate law, governance

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Who could possibly be against "shareholder value?" I cannot imagine many hands going up. Well, how about "shareholder value-ism" – the notion that enhancing shareholder value, as measured by near-term stock prices, should be the signal goal and yardstick for effective board and executive performance? Professor Lynn Stout, of Cornell Law School, scrutinizes this construct, under the rubric of "the shareholder value myth" in her eponymous new book. As Stout's title suggests, you should find this view of corporate purpose provocative indeed – notwithstanding that it has been orthodoxy within the legal and economic establishment for nearly three decades. This essay presents commentary on Professor Stout's book, situating it in the larger framework of pre- and post-financial crisis intellectual development in corporate law and governance.

The Shareholder Value Myth is part of a new wave of more critical, and also more intelligible, law and economics writing. Perhaps the times are changing? As if taking a page from her text, in the fall of 2012, Harvard Law School faculty held a colloquium to discuss whether financial markets and American style corporate governance arrangements are enabling too much short-termism. (Under the prevailing "Efficient Capital Market Hypothesis," no such "market myopia" was considered possible.[1]) The financial tumult of the past five years is giving rise to a new, more sceptical narrative of political economy – a movement I've dubbed "The New Candor." Seminal, book-length contributions have recently issued from Joseph Stiglitz,[2] Paul Krugman,[3] Nouriel Roubini,[4] Raghuran Rajan[5] and Robert Shiller, for example.[6]

But from the perspective of corporate law and governance, it's Stout's book that breaks new ground in The New Candor.[7] I cannot imagine a clearer, more accurate summation of the past 30 years' elite thinking about the interrelationship of law, corporate management and finance. Of course, many of us – academics and non-academics – are puzzling over how we got where we are in the current state of our economy and system of corporate and financial regulation. So Stout's is an important, clarifying contribution. Moreover, the book's lithe, hundred or so clearly written pages are the product of 20 years

1 For an early, formative treatment, see Fama (1970).

2 Stiglitz (2010) (presenting a model of the financial crisis and the new balance that must emerge between markets and governments to effectuate greater welfare and stability in the world economy).

3 Krugman (2009) (examining the role of capital in recessions and the application of neo-Keynesian policies in contemporary political economy).

4 Roubini and Mihm (2011) (presenting a series of bold financial regulatory and market reforms intended to stave off another financial crisis).

5 Rajan (2011) (taking broad stock of the global financial economy and advocating a set of reforms necessary to avoid another major financial disaster). Also notable is Amato and Fantacci (2011) (placing the function of finance in deep historical context and arguing that the securitization of debt has disrupted the essential balance of debt and credit).

6 Shiller (2012) (arguing that finance can be harnassed and controlled to benefit society overall).

7 For an extremely powerful, article-length treatment of the psychological, regulatory and economic effects of the financial crisis, see Mahmud (forthcoming). Professor Mahmud was a Fellow at the Woodrow Wilson School of Public and International Affairs, 2011–2012.

of meticulous, wide-ranging scholarship. Among other subjects, Stout's academic writing has engaged the relative efficiency of markets, the science of human motivation and choice,[8] contentions about the link between governance devices and stock price movements, and theories of firms and boards.[9] Hence Stout's views on efficiency, investor behaviour, and market response, as evident both in *The Shareholder Value Myth*, and her scholarly articles, are rigorously informed.

As she proudly admits, Professor Stout has maintained a career-long collaboration with a professional economist, Margaret Blair. (Notably, the pair's seminal writing on theories of firms and boards is mentioned in the *Citizens United* dissenting opinion.[10]) For this and other reasons, she occupies a unique position in her field. Though close enough to the intellectual epicentre of corporate law to read the runes, she's been too independent-minded to quiet her reasonable doubts.[11] Perhaps most importantly, *The Shareholder Value Myth* provides insight into the *conceptual mind's eye* of the corporate actors who brought on the denouement of the frothy, millennial financial economy. In essence, the book's central question is: "What were they thinking – or *not* thinking?"

Prior to digging into that seminal question, it's worth pausing to give kudos to Stout for stepping outside the academic lexicon and writing a book that allows readers to see where corporate managers and their financial and legal advisors have been, analytically, these past several years. Stout's speaking so plainly – without the hedges of equations, formalistic authorities and extensive footnotes – is an uncommon form of intellectual risk-taking in the corporate governance field. Given the high intensity of critique that circulates within the academy, most rational professorial choosers have avoided the possibility of

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8 Stout (2010a) (arguing in favour of the normative content of law as a tool of socio-economic regulation and applying the lessons of behavioural finance and sociology to establish positive legal mechanisms to spur welfare-enhancing transacting).

9 See, e.g. Blair and Stout (1999), recently cited by *Michigan Law Review* as one of the top-ten most frequently cited corporate law review articles of all time. Stout's publications are enumerated on her curriculum vitae, which is accessible from her webpage at http://ww3.lawschool.cornell.edu/faculty/faculty_cvs/Stout.pdf

10 *Citizens United v. Federal Election Commission*, 550 U.S. –, –; 130 S. Ct. 876, 971 (2010), at footnote 72.

11 As they have often more commonly found their voice outside of the established academic hierarchy, women corporate law scholars frequently have authored more innovative, if less openly celebrated, corporate law scholarship. See, e.g. Dallas (2012); Dickerson (2011); O'Connor (2006).

even more public scrutiny, potential condemnation and possible intellectual isolation.[12]

As Americans we often fail to prize public intellectuals, and yet we forfeit them at our peril. The insulating effect of social scientific and legal jargon – absent from *The Shareholder Value Myth* – is one reason why it can be hard to distinguish between valuable and craven or simply erroneous academic scholarship. In the pursuit of expertise, scholarly fields often become sequestered both from each other and the public's understanding. Consequently, too often it's easy to undervalue good scholarship, including discounting its relevance to both policy reform and excellent teaching.[13]

Even more incisively, the absence of more popularized, intelligible academic writing in the field of law and economics and finance surely played some role in the financial crisis: it made it easier for almost everyone to avoid discussing the most frightening, fundamental questions aloud, e.g. the potential for systemic illiquidity and insolvency, and flawed risk assumptions. Furthermore, to the extent that quantitative economics and finance did inform policy and corporate governance in this period, their conclusions, and the propriety of their assumptions, were not self-evidently obvious. As is always true, the "objective science" – and its reception – existed within and reflected a matrix of larger normative/narrative beliefs. At present we academics commonly refer to this matrix of beliefs as "market neo-liberalism" – an unfortunate nomenclature, because it obtains further opacity as it glances off the many strands of contemporary political liberalism. In any event, Stout eschews discussion of this more ambitious and contentious macro-intellectual history.[14]

Instead, *The Shareholder Value Myth* opens with a brief intellectual history of academic corporate governance. This historical discussion reminds us that there was hardly any "there, there" in the academic study of law's nexus to corporate management prior to the mid-1980s. The fact isn't much contested, but it is largely overlooked. Most contemporary corporate governance writing has been ahistorical in nature, which obscures the belated, indeed tentative

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12 An exception is Harvard Professor Lucian Bebchuk who is clearly at ease in the media spotlight, as evidenced by his Shareholder Rights Project, of which he is Director. According to its website: "The Shareholder Rights Project (SRP) is a clinical program at Harvard Law School. The SRP works on behalf of public pension funds and charitable organizations seeking to improve corporate governance at publicly traded companies in which they are shareowners, as well as on research and policy projects related to corporate governance." Http://srp.law.harvard.edu

13 In this vein, Stout's book would make an excellent contribution to both business and law schools' courses on corporate law and governance.

14 On this score, a superb job is done by Crouch (2011).

nature of the field.[15] Instead of history, or even the law itself, from the mid-80s onwards, as Stout discusses, corporate law professors largely trained their sights on the fields of academic finance and micro-economics to construct new theories of the appropriate relationship between law, markets and corporate governance. As they did so, they hewed to the lodestar of increasing "corporate efficiency," and thereby "shareholder value."

Hence what began as abstract, intellectual history, in *The Shareholder Value Myth*, becomes incipient interest group theory. After all, ideas do not cohere into new laws, or effectuate the repeal of old ones, via disembodied, "intellectual" forces. The cast of interested and interesting characters is expansive: lawyers and law professors, corporate boards and executives, bankers and other consultants, as well as politicians. Stout doesn't often enumerate them by name, but we can see the play of roles and institutions. What becomes clear is that amidst the prevailing *laissez faire* policy environment that followed the Cold War's end, those advocating that everyone would benefit from maximizing share prices stood to do well.

The profit potential was enormous, potentially blinding. Investment bankers made huge profits through mergers and recapitalization transactions aimed at "unlocking" shareholder value. Lawyers were crucial in negotiating, structuring and documenting these corporate deals, and advising companies in reducing the "burdens" of regulation. Sell-side shareholders routinely fared well in mergers and acquisitions transactions, while buy-side shareholders had little recourse.[16] Chief executive officers and their retinue made princely sums from golden parachutes and stock options linked to near-term stock prices. Accountants bent the rules of financial reporting, while their cohort, crafting sophistic tax avoidance schemes, garnered lucrative consulting fees. "Independent" directors, were compensated with stock options, while retaining their status as unbiased, disinterested overseers of good corporate governance. Moreover, in a darker, more specialized corner of the marketplace – beyond the gaze of most corporate academics and even most financial journalists – mortgage brokers, executives of unconventional, "shadow banking" financial services firms, and traders in derivatives were having a field day.

15 I have elsewhere discussed how the study of corporate social responsibility is a late-arriving, academic "orphan;" and the point holds true for the study of modern corporations as a general matter. Because its study is rightly highly synthetic in nature, the study of modern corporations and the history of corporate law is ill served by the current structure of academic inquiry. On this point, see Stevelman (2008/2009).

16 See, e.g. Afsharipour (2012) (summarizing empirical literature questioning the value of acquisitions to shareholders of acquiring firms).

All this corporate and financial transacting – in combination with new information technologies – yielded expanded data sets and new research opportunities for corporate law scholars. The most ambitious of corporate law professors, on their own or with finance or economics professors as co-authors, penned quantitative studies analysing the relationship between law, regulation, corporate governance and stock prices. Event studies, cross-sectional analysis and new applications of game theory, for example, became hot subjects for elite law school conferences and law review symposium publications. Throughout the 1990s and 2000s, these academic papers yielded suggestions for new shareholder-value-maximizing governance schemes – a new currency for earning even more prestigious publication venues, appointments and larger salaries. That this quantitatively enriched academic sophistication was married to the promise of enhancing value for shareholders clinched the deal. It created a scholarly juggernaut – a kind of professional/academic "bubble."

Though overly-zealous, none of this felt intellectually corrupt or even especially venal at the time. Stout is meticulous in never so insinuating. Indeed, the "manage for shareholder value/higher stock prices" construct could credibly be embraced as a no-lose proposition if one accepted three seemingly simple propositions.

First, there was the efficient capital market hypothesis (ECMH). In its most benign form, the ECMH stands for the notion that markets are superior to other forms of prognostication in establishing the present saleable value of commodities and other tradable goods, including shares of stock. Nevertheless, as a *hypothesis*, the ECMH presumed the presence of substantial liquidity, transparency as to price and the nature of the goods, the absence of fraud or other material forms of overreaching, minimal transaction costs and relatively autonomous, rational choosing. The problem was – these presumptions were often ignored by law reformers and legal commentators. Too often the conclusions of quantitative models were operationalized, applied to real transacting and policy making, without due attention to the friction and "slippage" arising in real-world transacting. In real corporate and financial transacting, of course, the ECMH's near-optimal, mechanistic conditions do not pertain. In legal commentary and the implementation of law and policy reforms, too commonly the ECMH's caveats assumed the status of boilerplate, academic fine print. This paved the way for rejecting the problem of disparate shareholder time horizons, for example – as Stout notes and is discussed further below.

The second intellectual pillar of the shareholder value movement was an adamantine belief in the sufficiency of contracts and extant regulations (even as they were being weakened by business lobbying). Written, oral or even implicit contracts were assumed to be adequate to protect employees, suppliers and creditors. Federal and state laws and administrative regulations were presumed adequately responsive to companies' overreaching against customers, employees, the environment and others. This presumption applied notwithstanding mounting corporate success in insulating corporate contracts – including labour contracts – from robust, arms' length bargaining,[17] and success, too, in loosening the laws and regulations that limited corporate externalities.[18]

The third intellectual pillar of shareholder value-ism was a disciplined inattention to subjects adjudged beyond corporate law and governance – which included almost all the subjects that make corporate affairs and their study dynamic, controversial and challenging. From the perspective of mainstream corporate law, these out-of-bounds subjects included inequalities of bargaining power, increasing market volatility, systemic risks unresolved through diversification, widespread biases and conflicts of interest among corporate advisers, the negative social effects of outsourcing and diminished corporate tax revenues, vastly increased income inequality, corporate rent-seeking through lobbying and electioneering, and the capture, potentially, of the judicial branch through judicial elections.[19] If the work wasn't about financial markets, takeovers or promoting corporate profits in the name of shareholders, it was considered by most mainstream corporate law scholars to be at best marginally important.[20]

Accepting this shareholder value-ist shape of contemporary corporate governance before the Great Recession: what made it so? Early on, Stout's book debunks the false notion that it is US corporate *law* that mandates shareholder supremacy. Stout is entirely, unequivocally correct in this conclusion. Under US corporate law, corporations are distinct legal entities apart from their shareholders. And boards have distinct, statutory authority (under state corporate law) to exercise their discretion in the management of corporate affairs. Shareholder value-ism finds no safe-harbour under either the law of property, or any other set of legal doctrines, including corporate law. Outside of the

17 See Westerna and Rosenfeld (2011) (documenting the decline in private sector union membership in the last quarter-century up through 2007, and noting its confluence with lower wages).

18 For an account of how the conservative political movement mobilized right-wing think tanks and foundations to thwart more socially progressive law and regulatory reforms (including environmental regulation), see Stefancic and Delgado (1996).

19 The highly organized, pro-business political and judicial lobbying efforts by the US Chamber of Commerce are now well documented. For data on the Chamber's lobbying expenditures see http://www.opensecrets.org/lobby/clientsum.php?id=D000019798 (revealing total lobbying expenditures by the Chamber of just short of $100 million for 2012).

20 Nevertheless, certain brave contrarians have persisted. Notable among the early progressive corporate law scholars are, for example, William W. Bratton, David Millon, Lawrence E. Mitchell and Marlene O'Connor. See, e.g. Mitchell (1997).

narrow context of sales of corporate control, US corporate law nowhere mandates that boards or executive officers must – even *should* – govern corporations to maximize stock prices or near-term shareholder value.[21] In sum, it's not corporate legal doctrine that made shareholder value-ism the prevailing *modus operandi* and overarching conceptual structure of US corporate governance.

Indeed, this gap between the doctrinal content of corporate law and the managerial/professional ideology of shareholder value-ism is one of the latter's most surprising features. Shareholder value-ism flourished among lawyers, academics and managerial elites who touted the optimality of the laws (especially Delaware's corporate laws), which stubbornly abjured embracing shareholder value-ism. Even to the present, Delaware's corporate law is resolutely "pro-managerialist" (favouring board discretion) rather than shareholder-valuist.[22]

So, if the origin and foundations of shareholder value-ism are not within law, then where else might its foundations lie? As Stout makes plain, economic or financial theory fares no better as an explanation. The principal/agent model ill fits the relationship of shareholders and boards in corporate practice. Legal academics have always known this, but most simply engaged in an intellectual "work around" that validated shareholder exceptionalism despite, not on account of, the insights from principal/agent theory.[23] Contemporary finance theory has moved well beyond the obsession with agency theory, and (as applied) rabid shareholder-centrism, but the force behind shareholder value-ism has abated only as a result of the humbling, real-world experience of the financial crisis.[24]

Accordingly, as Stout highlights, the performance of stock prices over the past 25 years, the heyday of shareholder value-ism, does not give rise to a robust endorsement of shareholder value-ism's effects for most equity investors or for US economic welfare more broadly[25] – leaving aside its effect on the very rich.

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21 See *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1985) and its progeny. For a commentary, see, e.g. Avi-Yonah and Sivan (2007).

22 Notable in this regard are the Delaware Court of Chancery's and Delaware Supreme Court's decisions in the litigation surrounding Air Products' unsuccessful hostile tender offer for AirGas. For an analysis, see, e.g. Davidoff (forthcoming).

23 As Stout's discussion highlights, the seminal work influencing the direction of contemporary corporate law scholarship in the direction of the agency cost analysis, see Jensen and Meckling (1976).

24 The roots of this line of inquiry trace back to Coase's (1937) insights about the boundaries of the firm (corporation) being a function of its success in reducing transaction costs (relative to market organization). For an excellent reexamination of the tenets of Coase's theory and its application to notions of corporate efficiency and shareholder value, see Biondi (2011).

25 For an account of why elitist political and economic systems ultimately lead to failed states, see Acemoglu and Robinson (2012).

Of course, the statistics regarding stock prices are radically altered by the "before" and "after" of the current financial crisis. Academic work completed before or during 2007 reflects a very different view of the synchronicity of stock price gains, shareholder valuist beliefs and managerial objectives.[26] (Investor returns began to take a hit after the technology stock crash of 2000, but the impact of that "crash" wasn't evident until considerably later.) Certainly once the market reversals of 2008 to the present are taken into account, the negative ramifications of shareholder value-ism's effect on shareholder wealth is powerfully evident.

At present, even the efficient capital market hypothesis is credibly contested – both at an empirical and theoretical level.[27] Cutting edge work in behavioural finance supports the effect of feedback loops ("reflexivity"), herd behaviour, and noise trading – all of which counsel against relying on stock price gains as the metric of increased shareholder or corporate wealth.[28] Turning to the behaviour of individual investors, moreover, the academic yield from evolutionary biology and neuroscience suggests that humans aren't nearly as socially autonomous or exclusively self-serving as the micro-economic foundations of shareholder value-ism suggest.[29] Stout's book deftly surveys all of this.

But the *coup de grace* in *The Shareholder Value Myth* is the shattering of the monolithic, reified "shareholder" crucial to shareholder value-ism. It really shouldn't come as a shock, but somehow it does. Once we peer through the institutional conduits that intermediate modern investing, shareholders are people. The human beneficiaries of corporate shareholdings, obviously, inhabit every social role, and even most economic classes, for example.[30] We presume that the majority of stock is owned by people who fit our understanding of being at least relatively wealthy; but the comprehensive embrace of corporate pension plans is changing even this assumption – as conventional retirement plans fade away. Furthermore, the returns on corporate stock indirectly affect the financial welfare of the "needy": through financial aid dependent on university endowments, and non-profits' endowments funding social services, for example.

26 See, e.g. Gordon (2007).

27 For a contribution to the latter, see Biondi, Giannoccolo, and Galam (2012).

28 The teachings of behavioural finance and its relevance to corporate investor behaviour is now well established. See, e.g. Barberis and Thaler (2005). For an excellent, recent work in this vein, see, e.g. Beunza and Stark (2011).

29 On the role of trust in enabling market transacting, see Stout (2010b).

30 More work needs to be done on the actual identity of stock beneficiaries – research that is impeded by the lack of transparency surrounding the ownership of corporate stock. For a fascinating glimpse into the identity of pension beneficiaries and its relevance to their investing behaviour, see Brown (2007).

As is true everywhere else of humans, upon closer scrutiny, shareholders are highly diverse in their opinions and preferences. Their preferences regarding risk tolerance, time horizon, liquidity, preferences between appreciation and income, optimal deference to law, and willingness to exploit externalities in the interest of corporate profit, all of these are subject to wide differentiation. This means that there is no singular, definitive metric of shareholder value. Shareholder value-ism, even on its own terms, is a flawed heuristic – a myth. It doesn't yield a meaningful, impartial alternative to the hard choices inherent in managing a business enterprises, or counselling those who do.

If Stout's volume had another hundred pages, I'd want them explore the relevance of diverse shareholder preferences for the legitimacy of corporate political spending.[31] Stout's hammering home of the non-uniformity of shareholder preferences makes the US Supreme Court's 2010 *Citizens United decision* even more troublesome.[32] That decision validated corporations' powers to spend company funds on political advertising in connection with elections. As a result of the decision, a torrent of corporate cash poured into the 2012 federal election cycle; and *Citizens United* also unleashed corporations to spend company funds in state judicial elections.[33]

There are two fundamental concerns about corporate political spending. The first is that it's not at all clear that corporate political spending is, in most industries, a sound investment for corporations. A recent statistical evaluation by Harvard Law Professor John Coates suggests that corporate political spending may even fail the agency cost test.[34]

But corporate political spending is problematic even if it is consistent with increasing corporate wealth. Most fundamentally, pooled corporate capital subsidizing a "business friendly" politician's election comes at the cost of

31 Corporate political spending received extensive coverage in the run up to the 2012 Presidential election, of course. In the summer and early fall of 2012, *The New York Times* published extensive coverage of corporate donations to nonprofits' campaign expenditures, noting the difficulty in tracking them. See, e.g. McIntire and Confessore (2012).

32 *Citizens United v. Fed. Election Commission*, 558 U.S. 50 (2010) (invalidating, on First Amendment constitutional grounds, legal limits on formally-campaign-independent election expenditures by corporations). The fact that, both before and after *Citizens United*, companies are not, in many cases, required to make public disclosures of their political expenditures is a fact I decried in print 15 years ago. Stevelman (1997) (describing the absence of transparency surrounding corporate funding of politically active nonprofit/social welfare organizations and around 501(c)(3)/(c)(4) entities, *inter alia*).

33 For an analysis of the interrelation of *Citizens United* and the law and practice of judicial elections, see Liptak (2010).

34 See Coates (forthcoming).

undermining the disaggregated shareholders' and non-shareholders' political preferences. Shareholders-as-humans are able to balance the pros and cons of alternative political and judicial candidates; Perhaps a shareholder is vehemently pro-life, while the "business friendly" candidate is pro-choice, for example. Again, individuals can weigh their competing value commitments in selecting among candidates. But corporate political expenditures take the personal beliefs of shareholders (and other constituencies) hostage to the trope of corporate exigency. The legitimating veneer of a unitary, "shareholder" political interest, is perhaps the biggest shareholder value-ist myth of all.

Towards the conclusion of *The Shareholder Value Myth*, Stout corrals several recommendations for improving corporate governance. We should not assume that everything that yields an uptick in stock prices is good for the economy, or for the company, its diverse constituencies, or even all its shareholders. Bankers, lawyers, consultants and academics should refrain from waxing euphoric over every transaction, device and strategy that promises to increase corporate profits in the name of creating real wealth. To date, no one has invented a magic wand that obviates the messy, hard work of addressing the competing imperatives of delivering quality goods and services, compensating and incentivizing employees (and managers), and rewarding investors. The shareholder value myth was a fantasy that masked unwelcome but realistic complexity.

Did corporate managers, bankers, lawyers, other finance professionals and law professors believe in the magic wand of shareholder value-ism? Did we sincerely believe in the "win-win," rising-tide-for-all-boats concept? Or was it just too easy to ignore the distinction between wealth being created and wealth being redistributed?[35] I don't know the answer. And to her credit, Professor Stout does not suggest there was anything fundamentally disingenuous about shareholder value-ism.

Rather, Stout concludes, it's time to move on intellectually speaking – time to generate a new paradigm that adequately reflects the complexity of corporations' and corporate managements' reality. A "board primacy" theorist, Stout proposes that we need to endorse boards' discretion; to accept that directors must inevitably balance competing corporate objectives, consistent with the discretion US corporate law affords them.

35 Too bad law and business students were not exposed to Thorsten Veblen's progressive, institutional socio-economic work, at the same time they were inculcated into the more the contextual, ahistorical views of neo-classical economic theorists and their lawyerly cohort. For the former, see Veblen (1899); for the latter see Easterbrook and Fischel (1991).

These suggestions are something of a cliff-hanger. Perhaps most trenchantly, boards face a profound structural impediment. We simply haven't figured out how to reconcile the multitude of functions we assign to boards with directors' part-time, effectively "outsider" status.[36] But fair enough – unresolved dilemmas are the inevitable result of writing to reach a large audience. And this is important work. People are hungering for informed, thoughtful commentary that might illuminate whether there's any logical connection between corporate elites' decisions and beliefs and the disaster that has befallen the economy (as expressed both in the Tea Party and people taking to sleeping in tents under "Occupy Wall Street" signs). On this score, Stout is cautious. She exhorts that ideas matter; there is, most certainly, a connection between good, sound theories and laws and good, sound institutions – including corporations and markets.

So what are the prospects of new intellectual paradigms for corporate law? Without doubt, the field of academic corporate law is growing broader – complementing insights drawn from traditional economics with those from sociology, political science, psychology and history. Scholars in law and the social sciences are committed to building a richer foundation for conceptualizing what corporations are, and what they do and do not do well.

If this works, we must hope, legal and social science scholarship may contribute to a more nuanced, more realistic and also more reflective policy middle ground – one that resists the extremes of lionizing corporations (as the right traditionally does) and inveighing against them (as the left traditionally does). The presentations at the 2012 Annual Meeting of the Society for the Advancement of Socio-Economics (SASE) were encouraging, although there were too few corporate legal academics in the mix.[37]

In sum: there's nothing wrong with believing in shareholder value – unless it's the only thing you believe in.

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36 In my opinion, the most basic unresolved "technical" problem in corporate governance is that we keep raising our expectations of what corporate boards should accomplish, while we condone a framework in which they serve in only a very part time capacity. For early, excellent treatment of the problem, see Dallas (1992).

37 Several of the most fascinating sessions were devoted to evolving theories of representation in accounting and valuation systems – a topic that was elevated from narrowly technical considerations of alternative "treatments" to the most fundamental epistemological problems of value and comparative schemes of regulation. Many of these sessions were organized by CNRS Professor Yuri Biondi, an Editor-in-Chief of the *Journal of Accounting, Economics and Law: A Convivium*. For additional works by Professor Biondi, relevant to this commentary, see especially, Biondi (2005); and in relation to governance, see Biondi (2009).

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