The Agency Cost Paradigm: The Good, the Bad, and the Ugly

Claire A. Hill[*]
Brett H. McDonnell[**]

I. INTRODUCTION

In the "managerialist" world that preceded our present world—the shareholder value world—some corporate managers could, and did, help themselves when they should have been doing their jobs. They were bad agents, using their positions to get unwarranted leisure and unwarranted perquisites at the expense of their principals, whether the principals were seen as the corporation, its shareholders, or both. The modern agency cost paradigm has focused the attention of courts, directors, and scholars on this problem, in part by conceptualizing the duty of corporate managers as maximizing shareholder value.[1] This paradigm has had a variety of effects: some good, some bad, and some ugly.

As for the good, the agency cost paradigm focused on this problem of managerial enrichment, emphasizing to the bad agents a message that they should not be working for themselves, and set about looking for a solution. It provided a simple, clear benchmark that may quickly indicate when managers are performing badly.

What about the bad? The pathologies of a laser-like focus on readily demonstrable—some would say short-term—shareholder value have become clear. Recent examples include takeovers and other transactions in which the principal motivations include reductions in research and development costs and tax savings through relocation to other jurisdic-

[*] Professor and James L. Krusemark Chair in Law, University of Minnesota Law School.
[**] Professor, University of Minnesota Law School.

1. The canonical references in the economics literature for this paradigm are Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777 (1972), and Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. & ECON. 305 (1976). The canonical reference in the legal literature is FRANK EASTERBROOK & DANIEL FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991).

tions.[2] These may not be as unambiguously bad as the bad agents' behavior in acting for themselves, but the bad, ambiguous though it may be, may ultimately prove more costly.

What about the ugly? Agency costs were supposed to go down if managers focused more on increasing share price. Hence, there was more emphasis on pay for performance (where performance was defined as an increase in share price, and share price was considered to accurately reflect performance) than on fixed salaries. But it has proven exceedingly difficult to define performance, and gaming of performance measures is scarcely uncommon. The ugly is how at least some managers have reacted to the agency cost paradigm's attempts to make them more focused on shareholder value—by increasing their own value first and foremost. They have used short-term gimmicks to get short-term stock price gains that will increase their own compensation, while making the corporation and its shareholders no better off. Thus, the agency cost paradigm probably has, in some respects, increased agency costs. That some managers would try to increase their compensation by gaming share prices would have been anticipated. But some sociology scholarship suggests that this effect was actually intended—that what motivated the shift from managerialism to shareholder value was not a (wholly) legitimate attempt to reduce those agency costs, but instead, at least in significant part, an attempt by institutional investors and other big market players to induce CEOs to game earnings formulas.[3]

The team production model of Blair and Stout[4] has helped expose some of the bad and the ugly in the agency cost and shareholder value paradigm. We think that paradigm stands quite weakened intellectually, and perhaps politically and legally as well (though perhaps not!). However, what should replace that paradigm remains hard to say.

This Essay proceeds as follows. Part II covers "the good." Part III covers "the bad." Part IV covers "the ugly." Part V concludes.

II. THE GOOD

During the 1970s and 1980s, commentators were increasingly bemoaning mediocre corporate results. Salient examples of corporations with large pots of unused cash in their corporate treasuries—and corpo-

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2. *See generally* THOMAS L. HUNGERFORD, POLICY RESPONSES TO CORPORATE INVERSIONS: CLOSE THE BARN DOOR BEFORE THE HORSE BOLTS (2014), *available at* http://www.epi.org/publication/policy-responses-corporate-inversions/.

3. *See infra* notes 26–34 and accompanying text.

4. *See* Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999).

rate managers' greater concern with golf than hard work—led to calls for more highly motivated managers.[5] Many economists argued that the prevalent strategy of corporations diversifying into unrelated companies, forming vast conglomerates (memorably called "diworsefied" by then-celebrity money manager Peter Lynch[6]), diminished shareholder value, and the evidence seems to support that critique.[7] Managers at the time got most, if not all, of their monetary compensation in the form of fixed paychecks.[8] There was apparently not much fear of being fired for less-than-stellar efforts or results. Nobody was monitoring management well enough. Shareholders' stakes were too small for the effort and expense to be worthwhile. Hence the title of Mark Roe's seminal 1994 book: *Strong Managers, Weak Owners*.[9] Corporate managers needed to be better motivated to add value, it was said. They needed to get pay for "performance."[10]

But what counts as performance? Shareholder value is typically assumed to be the ultimate metric. Two main arguments support this metric. First, because shareholders are the residual claimants who receive returns only after all other constituents have received their contractual returns, maximizing the return to shareholders should maximize the overall net returns generated by a corporation.[11] Second, the efficient capital markets hypothesis (ECMH) suggests that the market share price

5. *See, e.g.*, MARK J. ROE, STRONG MANAGERS, WEAK OWNERS: THE POLITICAL ROOTS OF AMERICAN CORPORATE FINANCE 9 (1994) ("General Motors lost billions in the 1980s and early 1990s, laid off tens of thousands of employees, and saw a big part of its once huge share of the American automotive market go to foreign competitors. Its managers were said to be out of touch and its board inattentive until GM lost an awesome *$7 billion* in 1991 in core North American automotive operations.").

6. *See* PETER LYNCH, ONE UP ON WALL STREET: HOW TO USE WHAT YOU ALREADY KNOW TO MAKE MONEY IN THE MARKET (1990).

7. For an exposition of the argument and also a critical perspective, see Rajesh K. Aggarwal & Andrew A. Samwick, *Why Do Managers Diversify Their Firms? Agency Reconsidered*, 58 J. FIN. 71 (2003).

8. Frank Dobbin & Dirk Zorn, *Corporate Malfeasance and the Myth of Shareholder Value*, *in* POLITICAL POWER AND SOCIAL THEORY 179, 192 (Diane E. Davis ed., 2005) ("Firms were, by their own accounts, relatively insulated from investor preferences in the 1960s and 1970s.").

9. *See* ROE, *supra* note 5.

10. *See generally* Jensen & Meckling, *supra* note 1.

11. ROBERT C. CLARK, CORPORATE LAW 389–90 (1986); EASTERBROOK & FISCHEL, *supra* note 1, at 36. Lynn Stout makes the point that calling what shareholders have "residual ownership" seems to suggest that their rights in the normal course are far greater than they are. Shareholders' residual ownership does not immediately give them rights to get at the corporation's money or direct its operations; they are mostly able to exercise ownership-type rights when the corporation is insolvent. LYNN A. STOUT, THE SHAREHOLDER VALUE MYTH: HOW PUTTING SHAREHOLDERS FIRST HARMS INVESTORS, CORPORATIONS, AND THE PUBLIC 36–44 (2012).

accurately captures shareholder value generated.[12] As part of the ECMH, it is also assumed that markets can properly discount for long-term investments. The problems—and they are huge—arise mostly from the possibility of managers gaming performance measures, but also from true conceptual difficulties inherent in accounting. But these are taken to be practical problems, admittedly large ones, but practical all the same. Once managers are to be motivated by compensating them for performance, a critical performance measure will be stock price as the appropriate measure of how a corporation, and hence its manager, is doing. This strongly reifies shareholder value in the immediate term as not just the measure of how a corporation is doing, but also of its aim.

Having one precise, readily available measure of managerial performance has major advantages. Shareholder value provides a precise tool of accountability. There is no judgment or discretion involved—one can simply look to the share price. Observers who must decide among many different possible investments have a clear measure, and managerial compensation can be easily tied to this measure.

As the agency cost paradigm was gaining influence, every day, metaphorically speaking, brought new stories of LBOs and MBOs that had vastly increased a company's value through the disciplining power of debt and the ability and incentive of the now-small number of shareholders to monitor management (of course, in the case of MBOs, this meant monitoring themselves) to achieve greater and greater "efficiencies," making more money with fewer employees, fewer assets, and so on.[13]

III. THE BAD

Unfortunately, the good contained the seeds of the bad. The very strength of using such a sharp measure of accountability has a well-known potential weakness. If the performance of agents is rewarded or punished according to one measure, those agents are likely to ignore elements of their jobs that have little or no effect on that measure.[14] This is

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12. *See* Eugene Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 J. FIN. 383 (1970); Ronald J. Gilson & Reinier Kraakman, *Market Efficiency After the Fall: Where Do We Stand Following the Financial Crisis?*, *in* RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATE LAW 456 (Claire A. Hill & Brett H. McDonnell eds., 2012).

13. *See* Steven N. Kaplan, *The Evolution of U.S. Corporate Governance: We Are All Henry Kravis Now*, 1 J. PRIVATE EQUITY 7 (1997).

14. *See* Bengt Holmstrom & Paul Milgrom, *Multitask Principal–Agent Analyses: Incentive Contracts, Asset Ownership, and Job Design*, 7 J.L. ECON. & ORG. 24 (1991). A related point should be made: well-intentioned judges might find it too easy to develop fiduciary duty jurisprudence that reflects the agency cost paradigm. After all, without the guidance of the agency cost paradigm,

not a big problem so long as the measure being used captures most of what the principal cares about. But it becomes a very big problem where the measure does not capture large parts of what the principal does care about. Thus, much depends upon the validity of the arguments that justify using shareholder value as a measure for what we want corporate managers to focus on, and it turns out those arguments are suspect.

For instance, shareholders are not necessarily the sole residual claimants. Therefore, helping shareholders may cause uncompensated harm to other groups within the corporation.[15] Employees, particularly those with significant firm-specific human capital, also have a stake in the long-term success of the business. Many commentators think that employees have not fared well in the era of shareholder value. Wages have stagnated, job security has decreased, and work hours have increased.[16] All of these trends have multiple causes, and we do not mean to pin it all on the changes in corporate law and corporate governance. But we do suspect that those changes have played a role. In particular, a focus on shareholder value has yielded some nontrivial number of highly leveraged acquisitions of corporations in which employees lost their jobs because the leverage was higher than the corporation's business could support, such that the corporation went bankrupt. The acquirers in these sorts of transactions, not infrequently, use some of the loan proceeds to pay themselves hefty management fees, making them less concerned about the moderate-term prospects of the corporation.

Creditors are another group that may have a degree of residual risk, to the extent that they do not have a complete contract that protects them from the many possible ways that managers may take on unexpected risks that increase the chances of default. An emphasis on shareholder value may cause the corporation to take on more debt, to reduce the corporation's tax burden, and to make more money on a smaller capital base, all increasing risk to the creditors. The managers might even do this preemptively to discourage possible acquisitions of the corporation.

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where fiduciary duties lead can be quite indeterminate. Indeed, one rationale both for giving directors considerable discretion, but also for requiring action that favors shareholders where there is a conflict, is precisely to prevent directors' mandates from being indeterminate.

15. *See* Blair & Stout, *supra* note 4; Kent Greenfield, *The Place of Workers in Corporate Law*, 39 B.C. L. REV. 283 (1998); Brett H. McDonnell, *Employee Primacy, or Economics Meets Civic Republicanism at Work*, 13 STAN. J.L. BUS. & FIN. 334 (2008); Marleen A. O'Connor, *The Human Capital Era: Reconceptualizing Corporate Law to Facilitate Labor–Management Cooperation*, 78 CORNELL L. REV. 899 (1993).

16. *See* William Lazonick & Mary O'Sullivan, *Maximizing Shareholder Value: A New Ideology for Corporate Governance*, 29 ECON. & SOC'Y 13 (2000).

An emphasis on shareholder value may also encourage and enable fiascos that result when shareholder activists think their ideas are far better than they turn out to be.[17] That being said, there does not seem to be any reason to suppose that the activists' bad ideas are worse than those of some boards.

There are additional examples of bad results. A focus on shareholder value may also induce managers to engage in other forms of generally antisocial behavior where other areas of the law do not adequately constrain them. Relatedly, it may lead them into forms of regulatory arbitrage, which allow exploitation of loopholes in the law that lead to increased profits without generating social value. A notable example includes corporations relocating to tax havens.[18] Finally, a focus on shareholder value may lead to retrenchment of long-term investments that have uncertain results but enormous potential value, including to society;[19] the paradigmatic example is research on life-saving drugs. Shareholders, too, should ultimately lose from this retrenchment. Markets may be myopic about such investments, not pricing them into present-day share prices, but ultimately, when a corporation's projects come closer to fruition, the share price should soar.

The foregoing argument is a bit more complicated than it might initially appear. What we have characterized as "bad results" are in many cases results that benefit shareholders at others' expense.[20] The agency cost paradigm assumes that good results are those that benefit shareholders; thus, the characterization of costs to others is not something that, as a matter of theory, agency cost adherents would necessarily find problematic.

The other main argument underlying the shareholder value story is the ECMH. It too has fallen on some hard times. When corporate gov-

17. A notorious case in point involves J.C. Penney: Pershing Square's ideas of how to improve the company proved disastrous. *See* Katherine Burton, *Defeat at J.C. Penney Hurts Ackman as Performance Trails*, BLOOMBERG NEWS (Aug. 13, 2013), http://www.bloomberg.com/news/2013-08-14/defeat-at-j-c-penney-hurts-ackman-as-performance-trails.html; Emily Glazer et al., *Ackman Moves to Dump Entire Stake in J.C. Penney: Citigroup Agrees to Sell Hedge Fund's Shares to New Buyers at $12.90 Each*, WALL ST. J. (Aug. 27, 2013), http://online.wsj.com/news/articles/SB10001424127887324591204579037251135114142.

18. David Gelles, *New Corporate Tax Shelter: A Merger Abroad*, N.Y. TIMES DEALBOOK (Oct. 28, 2013), http://dealbook.nytimes.com/2013/10/08/to-cut-corporate-taxes-a-merger-abroad-and-a-new-home/?_php=true&_type=blogs&_r=0.

19. Charles K. Whitehead, *Creditors and Debt Governance*, *in* RESEARCH HANDBOOK ON THE ECONOMICS OF CORPORATE LAW 68, 71 (Claire A. Hill & Brett H. McDonnell eds., 2012).

20. This is not so in all cases. Shareholders do not benefit where the corporation goes bankrupt because it took on too much debt, or where the corporation's performance suffers because the corporation pursued activist shareholders' bad ideas, nor do they benefit from cuts in research and development expenditures insofar as those expenditures might have had a spectacular payoff.

ernance advocates adopted the shareholder value model in the 1970s and 1980s, they saw ECMH as a leading truth of modern economics and finance. Today, there are many deep criticisms of the theory,[21] although it still has its defenders. The ambivalence of the economics profession today is well shown by the simultaneous award of the Nobel Prize to both the father of the ECMH, Eugene Fama,[22] and also to its most notable critic, Robert Shiller.[23] If the ECMH is badly wrong, then our supposedly simple and easy-to-read measure of shareholder value will often not produce the right answer as to how well a company's managers have done. Compensation measures tied to share price will reward random luck more and success in improving the company's performance less than we hoped and believed.

A final critique of the ECMH and share prices is that those prices do not do a good job of predicting and valuing performance that is far in the future. The high uncertainty surrounding future performance leads to very heavy discounting in the share price.[24] A resultant critique is that the move towards a focus on share value has caused corporations to have an increasingly short-term focus. As discussed above, important investments that only pay off in the long run, such as research and development, are slighted.[25]

Thus, even if the shareholder value movement has indeed succeeded in getting managers to work harder and more creatively to increase their company's share price, doing so may have hurt other groups involved in the corporation and even the interests of shareholders themselves in the long run.

IV. THE UGLY

Finally, there are pieces of the truth that are not just bad, but downright ugly. Could it be that, in many cases, the move to the agency paradigm, with its emphasis on shareholder value, has often not helped reduce agency costs, and even in some instances increased those costs?

21. *See generally* ANDREI SHLEIFER, INEFFICIENT MARKETS: AN INTRODUCTION TO BEHAVIORAL FINANCE (2000).

22. *See* Fama, *supra* note 12.

23. *See generally* ROBERT J. SHILLER, IRRATIONAL EXUBERANCE (2000).

24. A standard method of valuing businesses proceeds by calculating the discounted present value of expected future cash flows. High uncertainty is reflected in a high interest rate, which puts less weight on expected income in the more distant future. *See* WILLIAM J. CARNEY, CORPORATE FINANCE 90–95 (2005).

25. *See* Matteo Tonello, *Revisiting Stock Market Short-Termism* (The Conference Bd., Research Report No. R-1386-06-RR), *available at* http://papers.ssrn.com/sol3/papers.cfm?abstract_id=938466.

The debate over executive compensation suggests this possibility. Tying the payment of managers to the performance of their company's stock price was perhaps the central reform of the whole movement. Many still defend the effects of this reform.[26] However, there is much evidence that, in many corporations, managers have figured out how to turn the new forms of compensation to their advantage. They get rich from stock options without really improving the performance of their company. Stock-based compensation may have become a sign and source of agent misbehavior rather than a cure.[27] This criticism is by now well-known.

But the full story may be even uglier. One serious indictment of the agency cost paradigm has been curiously absent from the legal literature: that rather than a principled attempt at a solution to the problem of agency costs, it was instead a self-interested gambit by institutional investors and other prominent market players to motivate CEOs to game earnings figures. It is not just that managers have figured out how to game the system—doing so was part of the point from the beginning. A leading proponent of this theory is Frank Dobbin, a sociologist at Harvard. Dobbin and a co-author, Dirk Zorn, argue:

> Corporate malfeasance took a new form in the 1990s. Executives no longer looted company coffers and fled to sunny isles without extradition treaties. They lied about how much money their firms made. This practice was not new, but the peculiar form it took was new. They lied to make corporate earnings appear to rise at a constant rate toward an infinite horizon, and to conform to the projections of securities analysts. They cooked the books in both directions, withholding news of exceptional earnings as insurance against a rainy day. What produced this change in the nature of executive misbehavior? . . . [T]his change came about because three groups with new clout in financial markets succeeded in imposing their will on corporations. Those three groups—hostile takeover firms, institutional investors, and securities analysts—each had their own reasons for selling a new corporate strategy, in which "shareholder value" (defined eventually as the capacity to meet securities analysts' profit projections) was the holy grail. What redirected executive attention were the new rhetoric of shareholder value and a new compensation strategy. Institutional investors

26. *See* Kevin J. Murphy, *Executive Compensation: Where We Are, and How We Got Here*, *in* HANDBOOK OF THE ECONOMICS OF FINANCE (George Constantinides et al. eds.) (forthcoming).

27. *See generally* LUCIAN BEBCHUK & JESSE FRIED, PAY WITHOUT PERFORMANCE: THE UNFULFILLED PROMISE OF EXECUTIVE COMPENSATION (2004); *see also* Claire Hill & Brett McDonnell, *Executive Compensation and the Optimal Penumbra of Delaware Corporation Law*, 4 VA. L. & BUS. REV. 333, 365–66 (2009).

> encouraged firms to compensate executives with stock options, designed to align executive interest with shareholder interest—with the predictable consequence that executives would fib about profits.[28]

So, rather than a good-faith attempt to get managers to be less self-serving and to serve others who, clearly, were at least prominent among those they should have been serving, the agency cost paradigm was actually a cynical attempt by various major professionals to increase their own earnings through market reactions to accounting tricks. Wow.

"Out-dismaling" the dismal science is a good trick. Have Dobbin and Zorn pulled it off? Maybe, but maybe not. Their account leaves two puzzles. First, they point to three professional groups as leading the move to shareholder value: securities analysts, takeover firms, and institutional investors.[29] The personal incentives for such a move by securities analysts, including the fact that their interests do not necessarily align with those of shareholders, seem obvious enough. However, the other two groups present a bit more of a puzzle.

With takeover firms, it is certainly arguable, albeit debated, that measures that help takeover firms could hurt other shareholders (for example, if allowing target boards to bargain helps increase takeover premia).[30] However, our first puzzle is that takeover firms did not in fact succeed in their main policy goals in the '80s. They wanted a legal regime like that of the United Kingdom, which mandates target board passivity in the face of a hostile bid. Instead, they got the legal regime of Delaware, which has largely given boards room to put in place measures that make hostile takeovers effectively impossible. While it is debatable which regime is better for shareholders generally, it is clear that the regime preferred by takeover firms did not prevail in the United States.[31]

The second puzzle relates to Dobbin and Zorn's claim that institutional investors played a crucial role in articulating the myth of shareholder value, especially in their suggestion that this was an exercise by one group of business professionals to define the interests of others for their own benefit.[32] But why shouldn't institutional investors be appropriate representatives of the interests of shareholders generally? One reason why the institutional investor agenda may have diverged from the

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28. Dobbin & Zorn, *supra* note 8, at 180–82.

29. *Id.* at 181.

30. Albert O. "Chip" Saulsbury, IV, *The Availability of Takeover Defenses and Deal Protection Devices for Anglo-American Target Companies*, 37 DEL. J. CORP. L. 115, 156–57 (2012).

31. *See id.* at 135.

32. Dobbin & Zorn, *supra* note 8, at 188–90.

interests of shareholders that Dobbin and Zorn suggest is that the institutional investors "conned themselves" as to the benefits of the new approach.[33] We do think that could be a big part of the story, but it does make it seem like a less cynical game than their rhetoric elsewhere suggests. Matters are worse, though, if activist shareholders may often have interests that conflict with those of other shareholders. Some argue that they do.[34] Moreover, those running major institutional investors are themselves agents whose interests may conflict with their own principals. Involvement in shareholder activism may advance their own personal or political goals while not leading to higher returns for the funds they manage. However, others believe that activist shareholders have mostly helped advance the interests of shareholders generally.[35] If they are right, then Dobbin and Zorn would appear to be wrong on this point.

Thus, we are not quite sure what to make of Dobbin and Zorn's story concerning the genesis of the agency cost and shareholder value paradigm. Was it actually a rather cynical maneuver from the beginning, or have managers simply found ways to make cynical use of an honestly conceived set of reforms? Either way, at least in a number of corporations, the results are not pretty.

V. CONCLUSION

Where does this leave us? With the same difficult questions as before. We know who the corporation *is not* supposed to be benefitting, but we do not know who the corporation *is* supposed to be benefitting. As Blair and Stout note, their team production theory is not (necessarily) a stakeholder theory.[36] If a corporation can make more money by replacing all of its employees with robots, should it do so? Some might consider this question an easy one, in either direction. Those who find the question difficult may hope that, notwithstanding initial assessments, the money saving is ultimately illusory. Maybe many potential customers would be outraged and move their business to a competitor with human employees. Maybe the robots need expensive maintenance or the product simply is not as good, so that prices will have to be lowered precipitous-

33. *Id.* at 195.

34. *See* Iman Anabtawi & Lynn A. Stout, *Fiduciary Duties for Activist Shareholders*, 60 STAN. L. REV. 1255 (2008); Stephen M. Bainbridge, *The Case for Limited Shareholder Voting Rights*, 53 UCLA L. REV. 601, 628–36 (2006); Roberta Romano, *Public Pension Fund Activism in Corporate Governance Reconsidered*, 93 COLUM. L. REV. 795 (1993).

35. *See, e.g.*, William W. Bratton, *Hedge Funds and Governance Targets*, 95 GEO. L.J. 1375 (2007); Stewart J. Schwab & Randall S. Thomas, *Realigning Corporate Governance: Shareholder Activism by Labor Unions*, 96 MICH. L. REV. 1018 (1998).

36. Blair & Stout, *supra* note 4, at 253–54.

ly. But maybe—really, probably—not; shareholders would probably do better with a company staffed by robots.

The agency cost paradigm gives us an easy answer: that the robot replacement is good. Law would not go so far as to impose liability on directors failing to pursue the robot option. The directors could certainly avail themselves of business judgment deference. They would not even need to take the position that their decision was to maximize "company value" or "shareholder value," or that they did not want to fire the employees. But the corporation might be pursued by those seeking to replace a sufficient number of directors in order to choose the robot option. Indeed, pressure brought to bear on the corporation by shareholder activists such as Pershing Square or Third Point might push the directors to pursue the robot option in order to keep their own jobs. Managerialism gave directors and officers more room to decide for or against the robot option. Shareholder value, at least narrowly construed, pushes corporations in the direction of pursuing the option. Does shareholder value push too hard? Some accounts of shareholder value's force verge on caricature. The caricature is not just of the shareholder activists exerting pressure on corporations—it is also of markets, which, for instance, woefully over-discount longer-term payoffs, such as those resulting from research and development in drugs.

Unconstrained managers might act too much for themselves; reasonable people can differ as to how much of an issue agency costs are, and how much force is needed to constrain it. Shareholder value creates a tight constraint. To constrain tightly, it is necessary to provide a vision not just of what managers should not be doing, but also of what they should be doing—whose interests they should be serving and how much deference they get in making that decision, either at law or, increasingly, in the "court of market opinion." One thing that results from lack of constraint is clearly undesirable: managers benefitting themselves at the corporation's expense. The underlying worldview is one in which many things that people might view as benefitting themselves are at others' expense. Interestingly, this worldview also underlies criticisms of shareholder value; what shareholder activists seek to do is, in fact, at others' expense. Insofar as shareholder activists are their own principals or are in fact serving their principals, the issue is no longer agency costs. Rather, there is either a cost to "the corporation," "society," or even, potentially, the shareholders themselves insofar as the activists' view of shareholder value is in fact myopic, self-serving, or both (for instance, huge management fees to conduct value-destroying acquisitions).

There are a few things that we know, but many that we do not. We do not have a consensus on to what extent corporations have any sort of public obligations to help, or not hurt, other stakeholders. We do not even have a consensus as to the extent to which long-term corporate value differs from long-term shareholder value. And we do not have a consensus as to the extent to which particular actors in the corporate world would, but for constraints, act in a way that benefits themselves to the detriment of others. It is no wonder that the debate continues.