Understanding Corporate Purpose: Bringing Clarity to Corporate Purpose, Success and Law

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We have misconceived the nature of the fundamental driver of a business, namely its profit. We do not account for its "true costs" and therefore do not report its "fair profits". Categorising this as a market failure arising from "externalities" has resulted in wrong policy prescriptions regarding competition and regulation to address the problem. Instead, we should recognise it as a failure to define the purpose of a business appropriately.

Corporate law and corporate governance standards should establish that a profit derives from solving, not creating, problems for others. This is not a stakeholder theory of the firm. It retains the notion of "shareholder primacy" in corporate law, with the duties of directors remaining solely to their shareholders, but in the context of the success of the corporation deriving from profit without harm.

The difference between the United Kingdom's Companies Act 2006 and recent proposed changes to New Zealand's Companies Act 1993 illustrates the reasons why broadening objectives of firms beyond shareholders to other stakeholders does not provide an appropriate resolution of the problem of internalising externalities.

As Adam Smith noted in The Wealth of Nations*, inclusion of profit without harm in law is central to freedom of choice of corporate purpose, the functioning of markets, the effects of competition and the ability of firms that incur their true costs to compete against those that do not.*

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I CAPITALISM

We are going through a profound change in business – the type of change that is observed every 60 or so years. The reason for this is that business is one of the most important institutions in our lives. It clothes, feeds and houses us. It employs us and it invests our savings. It is the source of economic prosperity, the growth of nations and the alleviation of poverty around the world. At the same time, it has been a cause of increasing environmental degradation, global warming, biodiversity loss, inequality, social exclusion and mistrust.

Every year for the past 40 years, Ipsos, the market research company, has undertaken a survey of 1000 people in the United Kingdom of which professions they trust to tell the truth. It records that trust in business leaders comes nearly bottom of a list of 30 different professions.[1] They come ahead of estate agents, journalists, advertising executives, government members and, at the bottom, politicians. They come below bankers, trade union officials, and "the ordinary man and woman in the street". This has been true of nearly all the 40 years of the survey. Mistrust in business leaders in the United Kingdom is profound, persistent and pervasive. To understand this, one needs to understand the fuel that drives the capitalism engine – profit.

II PROFIT

Profit is the source of the resources and the incentives that power business. Without profit, there is no capital in capitalism. However, we are misconceiving the nature of profit. Profit derives from the Latin *proficere*, *profectus* – to advance, progress. That is what profit should derive from, but too often it is associated with neither advancement nor progress.

To understand this, we need to lift the hood of capitalism and look below the bonnet of business. Profit is simply the difference between revenue and income earned, and the costs of running a business – its wages, supply, and capital costs. However, this ignores the detriments that companies impose on their employees in not paying living wages, not paying fair trade prices to suppliers, polluting the environment, extinguishing species and causing global warming through CO_2 and other emissions. In other words, companies are not incurring the costs of avoiding the harm they are causing and cleaning up the mess they are creating.

The reported costs of businesses are not therefore their true costs of avoiding imposing expense on others. They are engaging in a form of "unjust enrichment" and profiting at the expense of others. In signing off their accounts as being a "true and fair" representation of their financial condition, the directors of companies are doing no such thing. They are neither true nor fair. They are not true because they do not represent the true costs of a business, and they are not fair in reporting the fair or just profits earned.

1 Ipsos UK *Veracity Index 2024* (November 2024) at 3.

But it is not just a problem of an overstatement of profit; there is also an understatement. A firm cannot capture all the benefits it confers from training its employees, supporting its communities or improving its environment. In that respect, measured profit is an understatement of a firm's just profit. But there is an important distinction between the positive and the negative. While a company can and should incur the costs of cleaning up the mess it creates, it cannot automatically generate the revenue that it is not receiving for the benefits it confers on others.

III POLICY

This is generally regarded as a problem of externalities – a failure of markets, competition, regulation, taxation and reputation. But it is not external or extrinsic to the firm – it is internal and intrinsic to the nature of business and the determination of the fuel that drives business, namely profit. And in failing to diagnose the right problem, we are prescribing the wrong policy prescriptions.

Competition fails because good firms that record their true costs and just profits are out-competed by bad firms that do not and earn excess profits at the expense of others. Capital therefore flows from good to bad firms, resulting in a Gresham's law of bad firms driving out the good and competition resulting in runs to the bottom, not the top.

Regulation and taxation fail because companies lobby against them, employ consultants to help circumvent regulation and taxation, and preferably turn them to their competitive advantage. We are of course outraged by what the financial institutions did during the global financial crisis, and we are currently outraged by the revelations of water companies in the United Kingdom, one of the most extensively regulated industries in the world, profiting and paying their executives handsomely for dumping raw sewage in rivers, lakes and seashores.

While there is consensus about the outrage itself, there is none about what to do about it. The political left and environmental activists want more regulation and tougher enforcement of regulation. The political right and the anti-woke brigade regard that as an interference with freedom and liberty, undermining investment, growth and jobs. This is a primary cause of our polarised societies and politics, and it is threatening our democratic system.

We are not going to solve the problem so long as we regard it as an externality. Instead, we need to elevate our sights and ambitions from wading in the weeds of exploitation, expropriation and unjust enrichment to riding the waves of initiative, inspiration and innovation in creating just profits.

When this happens, two striking things follow. First, competition causes a run to the top, not the bottom, because good firms that earn just profits from incurring true costs are outcompeted by better, not bad, firms that earn larger just profits.

Second, the interests of business in just profit are aligned with those of the public sector in the public interest and the not-for-profit sector in social and environmental well-being. In place of the current conflict between government in the public interest and the private sector in profit is cooperation in a common purpose of shared prosperity around profiting from problem solving, not problem creation.

As a result, competition and support from government, charitable institutions and NGOs assist companies in capitalising and profiting from finding innovative solutions to the problems of people and planet.

IV CORPORATE PURPOSE

Corporate purpose is the reason why a business is created, why it exists, its reason for being. It is very fundamental. Corporate purpose is about solving problems – problems that you and I face as individuals, communities and the natural world, but doing so in a particular way – a way that is commercially viable, profitable and value-creating.[2]

The purpose of business is to produce profitable solutions for problems of people and planet, not profiting from producing problems for either. It then follows immediately that profit comes from solving, not creating, problems, and the interests of companies in profits are aligned with those of individuals, societies and the natural world.

This is not vague or woolly. It is not corporate responsibility (CSR) or environmental, social and governance (ESG) factors. It is not about promotion or marketing but the core of a business – its strategy – and it is the overarching framework within which a strategy lies. It is about what problems a business is there to solve, for whom, when, how it is going to solve those problems and why it is particularly well suited to solving them.

A company that illustrates the process of determining a meaningful problem-solving corporate purpose is the Danish pharmaceutical company Novo Nordisk. Over a period of years, Novo Nordisk realised that its purpose was not simply to produce insulin used in the treatment of diabetes and to sell it at a profit but to help people treat and avoid getting type 2 diabetes. It partnered with doctors, hospitals, universities, governments and health workers around the world in identifying changes in lifestyle, nutrition and diet that would help people do that.[3]

Far from detracting from the profitability and success of the business, this redefinition of the corporate purpose enhanced them. It was a source of increased corporate financial value, and today

2 For extensive discussion and justification of this see Colin Mayer *Prosperity: Better Business Makes the Greater Good* (Oxford University Press, Oxford, 2018); and Colin Mayer *Capitalism and Crises: How to Fix Them* (Oxford University Press, Oxford, 2024).

3 See Ben Jackson and Yassine El Ouarzazi "Novo Nordisk: An Ecosystem Approach to Preventing Diabetes" in Colin Mayer and Bruno Roche (eds) *Putting Purpose into Practice: The Economics of Mutuality* (Oxford University Press, Oxford, 2021) 363.

Novo Nordisk is the most valuable company by stock market capitalisation of any firm in Europe.[4] The reason for this is that in the process of finding ways of avoiding and treating diabetes, it discovered a weight loss drug – Wegovy – that has become a blockbuster and brought the firm international recognition and immense financial wealth.[5]

Not only does this demonstrate the potential benefits of companies having well-defined corporate purposes to which they demonstrate serious commitment, it also reveals some of the key components of what it takes to implement a corporate purpose. As part of a programme of research entitled the Enacting Purpose Initiative, a group of academics at the Saïd Business School in Oxford and the University of California Berkeley worked with the boards of several large corporations and other organisations in Europe and North America in developing a framework for embedding corporate purpose in their businesses.[6] The framework was called SCORE, where the five letters of the word are an acronym for the most important considerations.[7]

The first letter S stands for "simplify" – to simplify and clarify a company's purpose, which frequently involves going on a journey of discovery of what a company's purpose really is, along the lines of what Novo Nordisk did.

The second letter C is for "connect" – to connect the corporate purpose to a company's strategy and ensure that it is core to the business and the driver of what it does daily. It is also about connecting the firm to other organisations that are needed to assist it with solving problems – just as Novo Nordisk partnered with doctors and hospitals.

The third letter O is for "ownership" – ownership in the shareholding sense of who owns and controls the firm. Novo Nordisk is traded on the Danish and New York stock exchanges but also has a dominant shareholder, the Novo Nordisk Foundation,[8] that provides a high degree of stability and commitment to delivery of its corporate purpose. But it is also about ownership in the sense of everyone in the organisation appreciating the contribution they are expected to make to the corporate purpose, and ensuring that the culture and values of the organisation are aligned with its purpose.

The fourth letter R is for "reward" – ensuring that the financial rewards in the form of remuneration and promotion are related to the company's purpose. That requires measuring the

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4 StockViz "Largest companies in Europe by Market Capitalization" (17 December 2024) <www.stockviz.com>.

5 Gina Kolata "We Know Where New Weight Loss Drugs Came From, but Not Why They Work" *The New York Times* (online ed, New York City, 17 August 2023).

6 See Enacting Purpose Initiative "Enacting Purpose Initiative" <www.enactingpurpose.org>.

7 Enacting Purpose Initiative *Enacting Purpose within the Modern Corporation: A Framework for Boards of Directors* (2020) at 5–6.

8 Novo Nordisk "Share and ownership structure" (8 November 2024) <www.novonordisk.com>.

success of the company in delivering on its purpose in relation to a small number of key metrics and performance indicators (KPIs) – for example, KPIs regarding reductions in the incidence of diabetes in response to the interventions that Novo Nordisk made.

Finally, E is about "exemplifying" the corporate purpose, bringing it to life through narratives and stories that demonstrate the success of the company in delivering on its purpose and the challenges it faces in doing that.

Key to making this happen are measurement and reporting.

V REPORTING STANDARDS

There are two types of initiatives that are currently in progress on reporting. The first are proposals from the Securities and Exchange Commission (SEC) in the United States, and the International Sustainability Standards Board (ISSB), on sustainability-related financial risks, particularly climate-related financial risks, for example stranded fossil fuels.[9] But even these are controversial. Some believe that fossil fuels still have many years, if not decades, of useful commercial life left.

The ISSB would like to extend climate-related risk to other risks, especially nature and social risks, but this becomes increasingly controversial and difficult to measure. In addition, the ISSB approach only looks at the financial risks of shareholders, not the financial and non-financial risks of those impacted. It is therefore concerned not with the impact of firms on their environment and societies, but the converse – the impact of the environment and society on firms.

It is extrinsic ESG or "single materiality" and does not capture the risk that the firm imposes on the world around it. Adopting ISSB standards will therefore help protect firms' investors from global warming and social unrest but will do little or nothing to protect the environment and society from firms.

This can be illustrated by the response to the energy crisis that emerged in Europe after the Russian invasion of Ukraine. In the face of energy shortages, energy companies understandably turned on the fossil fuel taps. ISSB standards would have done little or nothing to encourage them to promote a transition to renewables because increased demand for fossil fuels diminished risks of them becoming stranded assets. Furthermore, they would have done nothing to prevent energy companies from raising prices to low income and vulnerable households and distributing the large profits earned to their shareholders as dividends or share buybacks. In other words, it would not have encouraged a just transition to renewables or redistribution of profits to vulnerable consumers.

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9 See IFRS Foundation *Progress on Corporate Climate-related Disclosures—2024 Report* (November 2024) at 5: "In June 2023 the ISSB issued its first two Standards—IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures*". The SEC proposal is now however subject to a voluntary stay: Securities and Exchange Commission *Re the Enhancement and Standardization of Climate-Related Disclosures for Investors* S7-10-22, 4 April 2024 (order issuing stay).

ISSB standards are not about measuring the damage done by companies to the environment or society and incurring the costs of cleaning up the mess they cause. They measure environmental and social financial risks, not true costs or fair profits. The second approach attempts to address this. It is associated with the Corporate Sustainability Reporting Directive (CSRD),[10] the Corporate Sustainability Due Diligence Directive (CSDDD)[11] and the Sustainable Finance Disclosure Regulation (SFDR) of the European Union (EU).[12]

This seeks to report on environmental and social, for example human rights, risks from the perspective of those affected by them, as well as those investing in firms. In other words, it measures the impact that companies have on the world around them as well as the converse. It is therefore an intrinsic form of ESG or "double materiality". In particular, the CSDDD requires companies not only to report on the impacts they have on others but to incur the costs of avoiding detriments in their supply chains.[13]

But there are three problems associated with this. First, many problems that firms create cannot be standardised. They are specific to the activities of firms, their locations, products, suppliers and technology. Second, the EU approach focuses on detriments and problems caused, not on innovations and solutions. It therefore raises the costs of firms, not their revenues, and risks making EU companies uncompetitive. So, it is opposed by many firms, people and politicians worried about its effect on jobs, investment and growth.

Third, it is just too complex. No one can understand all the complexities of single and double materiality, and extrinsic and intrinsic ESG. If you are not confused, you simply do not know what is going on. It is not inspiring or uplifting and it is not getting the universal buy-in it requires. Instead, we need something simple and effective that anyone can grasp, understand and believe in.

VI THE SOLUTION

Profiting from solving problems, not creating problems for others, is simple and understandable. Everyone can grasp the notion that companies should not be profiting at our expense. They do not have a right to profit at the expense of others. They have a responsibility to ensure that they do not, by incurring their true costs and they then have a right to profit as they wish, net of their true costs. Their true costs are established by rules and standards set by national governments, regulators, international organisations and their own determination of the detriments they cause others.

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10 Directive 2022/2464 on corporate sustainability reporting [2022] OJ L322/15.

11 Directive 2024/1760 on corporate sustainability due diligence [2024] OJ L.

12 Regulation 2019/2088 on sustainability-related disclosures in the financial services sector [2019] OJ L317/1.

13 Directive 2024/1760, above n 11, at 20.

We need companies to adopt purposes of profitably solving, not creating, problems for others. We need companies to determine the metrics of how they are affecting and impacting on the world around them. We need companies to incur the costs of cleaning up the mess they are creating, and account for this in the most basic form of cost accounting. And above all, we need it to be profitable for companies to solve problems.

Not profiting from producing problems is simply an extension of capital maintenance to those on whom a company impacts, such as the natural world. Producing profitable solutions is capital enhancement in investing to solve problems profitably, as determined by the company's purpose and priorities. This provides precision, simplicity and clarity to the purpose of business, its strategic objectives, the measures of its performance and profits that derive from solving, not causing, problems for others.

Is this just pie-in-the-sky wishful thinking? Or is it hard-nosed practical reality? It is not just practically possible but practically real and there are numerous examples of where it has been a reality.

VII FOUNDATION FIRMS

On his death in 1936, Henry Wellcome, one of the two founders of the Wellcome pharmaceutical company, put his firm Burroughs, Welcome & Co into the Wellcome Trust,[14] which is today one of the largest charitable foundations in the world. And in 1985, the trust began to sell its shares in the company, and eventually sold its remaining holding in 1995 to Glaxo plc to form GlaxoWellcome plc, which then merged with SmithKline Beecham in 2000 to become GlaxoSmithKline (GSK),[15] one of the most successful pharmaceutical firms in the world.

What is interesting about this is that the pharmaceutical company not only had a foundation – many companies have foundations – but that the foundation owned the firm. This is known as an "enterprise foundation". This type of corporate ownership is the basis of one of the most successful countries in the world with one of the highest incomes per capita, lowest levels of inequality, best employee relations, and highest levels of happiness.[16] It is also the home to the largest company by stock market capitalisation in Europe[17] and the largest charitable foundation, bigger than the next two largest – the Wellcome Trust and the Bill and Melinda Gates Foundation – combined.

The country is Denmark, and the company and Foundation is the Novo Nordisk pharmaceutical company and the Novo Nordisk Foundation. In Denmark more than half of the country's stock market

14 Wellcome Trust "History of Wellcome" (March 2021) <www.wellcome.org>.

15 Wellcome Trust, above n 14.

16 JF Helliwell and others *World Happiness Report 2024* (University of Oxford: Wellbeing Research Centre, 20 March 2024) at 17.

17 StockViz, above n 4.

capital is accounted for by such companies.[18] What marks Denmark out is that uniquely, it has arguably the most successful company law in the world, called enterprise foundation law, that regulates the ownership and conduct of enterprise foundations and ensures that, unlike Wellcome, they continue to uphold the purposes of their founders in perpetuity.

VIII LAW

Underpinning the above arguments is a moral principle that comes from a modified version of what is probably the most widely accepted moral principle, the Golden Rule – "do unto others as you would have them do unto you", or as it was originally expressed in the avoidance of the negative, "do not do unto others what you would not have them do unto you".

In the corporate context, I express this as what I term "the Moral Law" – "profit without harm". This is the corporate equivalent of the Hippocratic Oath of "do no harm". Unlike in medicine, doing no harm cannot possibly apply in business because business does harm all the time. Business must make hard choices between raising prices to consumers to protect employment or cut employment to reduce prices; to shift production from one locality to another; or to use polluting plastics or less durable recyclable materials. But it should not profit from decisions that fail to rectify the detriment they cause and the harm they inflict.

I am not going to pursue the significance of moral principles here but instead argue for the relevance of corporate law on pragmatic grounds of the functioning of competition and markets. In that regard, consider three famous quotes by the father of capitalism, Adam Smith:[19]

> It is not from the benevolence of the butcher, the brewer, or the baker that we expect our dinner, but from their regard to their own interest. We address ourselves, not to their humanity but to their self-love, and never talk to them of our own necessities but of their advantages.

In other words, businesspeople are motivated by self-interest.

But Adam Smith went on to say:[20]

> … he intends only his own gain, and he is in this, as in many other cases, led by an invisible hand to promote an end which was no part of his intention.

In other words, a businessperson's self-interest is guided by markets to a larger purpose.

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18 StockViz "Largest companies in Denmark by Market Capitalization" (17 December 2024) <www.stockviz.com>.

19 Adam Smith *An Inquiry into the Nature and Causes of the Wealth of Nations* (Ryerson University, Toronto, 2021) at 26.

20 At 473.

These two quotes come from Adam Smith's *The Wealth of Nations*. It is often thought hard to reconcile them with this third quote, from Smith's *The Theory of Moral Sentiments*: "We conceive ourselves as acting in the presence of … an impartial spectator, who considers our conduct with the same indifference with which we regard that of other people".[21]

It would seem as if the sentiments of the impartial spectator in *The Theory of Moral Sentiments* have vanished by the time we get to *The Wealth of Nations* and have been replaced by the invisible hand. But that would be an incorrect interpretation because it fails to recognise the importance of justice in *The Wealth of Nations*:[22]

> To hurt in any degree the interest of any one order of citizens, for no other purpose but to promote that of some other, is evidently contrary to that justice and equality of treatment which the sovereign owes to all the different orders of his subjects.

In other words, justice and fairness require that one party not be harmed for the benefit of another.

The importance of this comes not just from ethical considerations but from the functioning of markets:[23]

> All systems either of preference or of restraint, therefore, being thus completely taken away, the obvious and simple system of natural liberty establishes itself of its own accord. Every man, as long as he does not violate the laws of justice, is left perfectly free to pursue his own interest his own way, and to bring both his industry and capital into competition with those of any other man, or order of men.

In other words, Adam Smith argued that the avoidance of detriment being inflicted on one party for the benefit of another allows all parties to compete on equal terms with each other.

The universal application of profit without harm is therefore justified not only on moral grounds, but by the requirement in modern parlance for a "level playing field" in the functioning of markets. Without it, markets fail.

IX UNITED KINGDOM COMPANY LAW

In many respects, United Kingdom company law is a model. Section 172 of the Companies Act 2006 (UK) states that:

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21 Adam Smith *The Theory of Moral Sentiments* (Knud Haakonssen (ed), Cambridge University Press, Cambridge, 2002) at 152.

22 Smith, above n 19, at 694.

23 At 732.

> (1) A director of a company must act in the way he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole, and in doing so have regard (amongst other matters) to—
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> (a) the likely consequences of any decision in the long term,
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> (b) the interests of the company's employees,
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> (c) the need to foster the company's business relationships with suppliers, customers and others,
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> (d) the impact of the company's operations on the community and the environment,
>
> (e) the desirability of the company maintaining a reputation for high standards of business conduct, and
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> (f) the need to act fairly as between members of the company.

The last part of having regard to the long term, and the interests of other stakeholders, is described as "Enlightened Shareholder Value". What this does is clarify the matters to which directors should give consideration, but are not required to act on, in promoting the success of the company for the benefit of its shareholders in the long term.

The UK Corporate Governance Code, as set out by the Financial Reporting Council (FRC), then clarifies the relation of this to corporate purpose when it states that:[24]

> The board should ensure that the necessary resources, policies and practices are in place for the company to meet its objectives and measure performance against them.
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> …
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> The board should establish the company's purpose, values and strategy, and satisfy itself that these and its culture are all aligned. All directors must act with integrity, lead by example and promote the desired culture.

X NEW ZEALAND LAW

In New Zealand, the Companies Act 1993 states that:[25]

> … a director of a company, when exercising powers or performing duties, must act in good faith and in what the director believes to be the best interests of the company.

This is consistent with corporate and company laws around the world. However, the Companies (Directors' Duties) Amendment Act 2023 (the Amendment Act) sought to clarify and "avoid doubt" that:[26]

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24 Financial Reporting Council *UK Corporate Governance Code* (January 2024) at 6.

25 Section 131(1).

26 Section 131(5), as amended by Companies (Directors' Duties) Amendment Act 2023, s 4.

> … in considering the best interests of a company or holding company for the purposes of this section, a director may consider matters other than the maximisation of profit (for example, environmental, social, and governance matters).

In other words, the best interests of a company may include ESG considerations or a purpose other than financial considerations. However, far from avoiding doubt, this has created it. The Amendment Act was not equivalent to the alternative to mainstream corporation law in the United States, namely public benefit corporations, which *must* adopt a social or environmental purpose as well as a commercial one. It is not the same as the UK Companies Act which subsumes ESG considerations within the promotion of the success of the company for the benefit of its members. It is not the same as foundation enterprise law in Denmark which closely regulates the adoption and implementation of foundation purposes.

The concern that the New Zealand amendment raised was its lack of clarity, certainty and predictability about corporate purpose, how this should be measured and to whom the company would be accountable for its implementation. And it failed to address the fundamental problem raised by this article of the potential for maximisation of profit to be at the expense of environmental and social matters.

There are three requirements for clarity, certainty and predictability in the administration of the law. The first is a recognition that judges are not businesspeople. They are not equipped to, nor should they, make business judgements. Their role is to ensure that directors act within their authority and abide by the law, not opine on the merits of decisions made.

Second, businesspeople are not politicians. They have neither the capability nor the authority to make political judgements. They should stick to their knitting of making profits, not social or environmental judgements.

Third, the role of government is to determine the laws and regulations that are the basis of judges' judgments and directors' decisions.

The Amendment Act fell short on all three criteria. It required judges to opine on the merits of the environmental and social as against commercial matters which businesses prioritise. It involved directors in making decisions about matters that should be left to politicians. And it would have required government to introduce further laws and regulations to clarify the duties of directors in relation to environmental and social, as against financial, objectives. As a result, according to the most recent legislative proposals of the new government, the changes introduced with the Amendment Act will be likely repealed in 2025.[27]

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27 Cabinet paper "Modernising the Companies Act 1993 and making other improvements for business" (31 July 2024) at [18].

In contrast, the UK Companies Act does not fall short on any of the three criteria. It retains the sole focus of directors on promoting the success of the company for the benefit of its shareholders. It clarifies the issues in relation to society and the environment that directors should consider, and it leaves it to governments and regulators to determine where directors are required to act on their considerations.

This is where soft law in the form of corporate governance comes in. It falls to the Financial Reporting Council, or its proposed successor body, the Auditing, Reporting and Governance Authority (ARGA), to ensure that the governance, accounting, auditing and reporting of companies aligns with corporate purposes as specified in the UK Corporate Governance Code.[28] By emphasising a corporate purpose of producing profitable solutions for the problems of people and planet, not profiting from producing problems for either, it emphasises that in considering the interests of other shareholders, profit should not derive from harm.

The role of a general regulator, such as the FRC in the United Kingdom or the SEC in the United States, is then to draw a line between where the directors of a company should consider and must act to respect the interests of other stakeholders. It thereby brings clarity, certainty and predictability to the application of the law, diminishes the need for specific regulations, reduces the exposure of companies to litigation and aligns law, governance, reporting, accounting and auditing with the avoidance of profiting from harm.

XI CONCLUSION

The problem that has emerged has come from a confusion between the positive and negative aspects of corporate law. Adam Smith recognised that the aspect of justice which is required for the functioning of markets is avoidance of the negative – gain of one party at the expense of another – "profiting without harm".

This is only partially a political matter. The power of governments to identify and enforce the avoidance of harm is rapidly diminishing as a combination of artificial intelligence and biotechnology leaves regulatory standards increasingly far behind. It is largely a matter for corporations themselves and their governance, accounting, auditing and reporting, as well as corporate law, to ensure that businesses' interests in profits are aligned with solving, not producing, problems for others.

28 Financial Reporting Council *Our approach to Regulation: The FRC and the Regulators' Code* (August 2024) at 3.