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WHY WE SHOULD STOP TEACHING *DODGE v. FORD*

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INTRODUCTION

WHAT is the purpose of a corporation? To many people, the answer to this question seems obvious: corporations exist to make money for their shareholders. Maximizing shareholder wealth is the corporation's only true concern, its *raison d'être*. Devoted corporate officers and directors should direct all their efforts toward this goal.

Some find this picture of the corporation as an engine for increasing shareholder wealth to be quite attractive. Nobel Prize-winning economist Milton Friedman famously praised this view of corporate purpose in his 1970 *New York Times* essay, "The Social Responsibility of Business Is to Increase Its Profits."¹ To others, the idea of the corporation as a relentless profit-seeking machine seems less appealing. In 2004, Joel Bakan published *The Corporation: The Pathological Pursuit of Profit and Power*, a book accompanied by an award-winning documentary film of the same name.² Bakan's thesis is that corporations are indeed dedicated to maximizing shareholder wealth, without regard to law, ethics, or the interests of society. Thus, as Bakan argues, corporations are "dangerously psychopathic" entities.³

Whether viewed as cause for celebration or for concern, the idea that corporations exist only to make money for shareholders is rarely subject to challenge. Although there is a tradition of scholarly debate among legal academics on this point, it has attracted little attention outside the pages of specialized journals.⁴ Much of the credit, or perhaps more accurately the blame, for this state of affairs can be laid at the door of a single judicial opinion: the 1919 Michigan Supreme Court decision in *Dodge v. Ford Motor Company*.⁵

I. *DODGE V. FORD* ON CORPORATE PURPOSE

The facts underlying *Dodge v. Ford* are familiar to virtually every student who has taken a course in corporate law. Famed industrialist Henry Ford was

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1. Milton Friedman, *The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 33.
 2. JOEL BAKAN, *THE CORPORATION: THE PATHOLOGICAL PURSUIT OF PROFIT AND POWER* (2004).
 3. *Id.* at 2.
 4. See Lynn A. Stout, *Bad and Not-So-Bad Arguments for Shareholder Primacy*, 75 S. CAL. L. REV. 1189, 1189–90 (2002) (noting the 1932 Berle-Dodd debate regarding the proper purpose of the corporation, as well as more modern scholarly disagreement on the subject).
 5. *Dodge v. Ford Motor Co.*, 170 N.W. 668 (Mich. 1919).

the founder and majority shareholder of the Ford Motor Company.⁶ Brothers John and Horace Dodge were minority investors in the firm.⁷ The Dodge brothers brought a lawsuit against Ford claiming that he was using his control over the company to restrict dividend payouts, even though the company was enormously profitable and could afford to pay large dividends to its shareholders.⁸ Ford defended his decision to withhold dividends through the provocative strategy of arguing that he preferred to use the corporation's money to build cheaper, better cars and to pay better wages.⁹ The Michigan Supreme Court sided with the Dodge brothers and ordered the Ford Motor Company to pay its shareholders a special dividend.¹⁰

In the process, the Michigan Supreme Court made an offhand remark that is regularly repeated in corporate law casebooks today:

There should be no confusion . . . A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of the directors is to be exercised in the choice of means to attain that end, and does not extend to . . . other purposes.¹¹

As will be discussed in greater detail below, this was merely judicial dicta, quite unnecessary to reach the court's desired result. Nevertheless, this quotation from *Dodge v. Ford* is cited almost invariably as evidence that corporate law requires corporations to have a "profit maximizing purpose"¹² and that "managers and directors have a legal duty to put shareholders' interests above all others and no legal authority to serve any other interests . . ."¹³ Indeed, *Dodge v. Ford* is routinely employed as the *only* legal authority for this proposition.¹⁴

6. *Id.* at 671.

7. *Id.* at 670.

8. *Id.* at 670–71.

9. *Id.* at 671.

10. *Id.* at 685.

11. *Id.* at 684.

12. ROBERT CHARLES CLARK, CORPORATE LAW 678 (1986).

13. BAKAN, *supra* note 2, at 36.

14. *See, e.g., id.*; CLARK, *supra* note 12, at 679; MARJORIE KELLY, THE DIVINE RIGHT OF CAPITAL: DETHRONING THE CORPORATE ARISTOCRACY 52–53 (2001); Lawrence E.

But what if the opinion in *Dodge v. Ford* is incorrect? What if the Michigan Supreme Court's statement of corporate purpose is a misinterpretation of American corporate doctrine? Put bluntly, what if *Dodge v. Ford* is bad law?

This Essay argues that *Dodge v. Ford* is indeed bad law, at least when cited for the proposition that the corporate purpose is, or should be, maximizing shareholder wealth. *Dodge v. Ford* is a mistake, a judicial "sport," a doctrinal oddity largely irrelevant to corporate law and corporate practice. What is more, courts and legislatures alike treat it as irrelevant. In the past thirty years, the Delaware courts have cited *Dodge v. Ford* as authority in only one unpublished case, and then not on the subject of corporate purpose, but on another legal question entirely.¹⁵

Only laypersons and (more disturbingly) many law professors continue to rely on *Dodge v. Ford*. This Essay argues we should mend our collective ways. Legal instructors and scholars should stop teaching and citing *Dodge v. Ford*. At the least, they should stop teaching and citing *Dodge v. Ford* as anything more than an example of how courts can go seriously astray.

II. *DODGE V. FORD* AS WEAK PRECEDENT ON CORPORATE PURPOSE

Let us begin with some of the more obvious reasons why legal experts should hesitate before placing much weight on *Dodge v. Ford*. First, the case is approaching its one hundredth anniversary. Henry Ford, John Dodge, and Horace Dodge have long since died and turned to dust, along with the members of the Michigan Supreme Court who heard their dispute. In fact, *Dodge v. Ford* is the oldest corporate law case selected as an object for study in most corporate law casebooks. This observation should provoke concern, for case law is a bit like wine: a certain amount of aging is desirable, but after too many years it goes bad—and it is a rare vintage that is still drinkable after a century. Why rely on a case that is nearly one hundred years old if there is more modern authority available?

A second odd feature of *Dodge v. Ford* is the court that decided it. The state of Delaware—not Michigan—is far and away the most respected and

Mitchell, *A Theoretical and Practical Framework for Enforcing Corporate Constituency Statutes*, 70 TEX. L. REV. 579, 601 (1992).

15. See *Blackwell v. Nixon*, Civ. A. No. 9041, 1991 WL 194725, at *4 (Del. Ch. Sept. 26, 1991).

influential source of corporate case law, a fact that reflects both Delaware's status as the preferred state of incorporation for the nation's largest public companies and the widely recognized expertise of the judges on the Delaware Supreme Court and Delaware Court of Chancery. California and New York have produced their share of influential corporate law cases, as has Massachusetts with regard to close corporations. Michigan, however, is a distant also-ran in the race among the states for influence in corporate law.¹⁶

Finally, a third limiting aspect of *Dodge v. Ford* as a source of legal authority on the question of corporate purpose is the important fact, noted earlier, that the Michigan Supreme Court's statements on the topic were dicta. The actual holding in the case—that Henry Ford had breached his fiduciary duty to the Dodge brothers and that the company should pay a special dividend—was justified on entirely different and far narrower legal grounds. Those grounds were that Henry Ford, as a controlling shareholder, had breached his fiduciary duty of good faith to his minority investors.¹⁷

As the majority shareholder in the Ford Motor Company, Henry Ford stood to reap a much greater economic benefit from any dividends the company paid than John and Horace Dodge did. Ford had other economic interests, however, directly at odds with those of the Dodge brothers. First, because the Dodge brothers wished to set up their own car company to compete with Ford (as they eventually did), Ford wanted to deprive them of liquid funds for investment.¹⁸ Second, Ford wanted to buy out the Dodge brothers' interest in the Ford Motor Company (as he eventually did) at the lowest price possible. Withholding dividends from the Dodge brothers was an excellent, if underhanded, strategy for accomplishing both objectives.¹⁹

16. See Guhan Subramanian, *The Influence of Antitakeover Statutes on Incorporation Choice: Evidence on the "Race" Debate and Antitakeover Overreaching*, 150 U. PA. L. REV. 1795 (2002).

17. See *Dodge v. Ford*, 170 N.W. at 685; see also Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733, 772–75 (2005) (explaining why profit-maximization proponents' reliance on *Dodge v. Ford* is misplaced); Nathan Oman, *Corporations and Autonomy Theories of Contract: A Critique of the New Lex Mercatoria*, 83 DEN. U. L. REV. 101, 135–36 (2005) (“Ultimately, the Michigan Supreme Court ruled for the Dodge brothers not because of some generalized duty to maximize shareholder value, but rather, because of the right of dissenting minority shareholders to be free from unreasonable oppression.”); D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277, 320 (1998) (“The court did not think it was enunciating a meta-principle of corporate law. Rather, the court thought it was merely deciding a dispute between majority and minority shareholders in a closely held corporation . . .”).

18. See Oman, *supra* note 17, at 135.

19. See Elhauge, *supra* note 17, at 774.

Thus *Dodge v. Ford* is best viewed as a case that deals not with directors' duties to maximize shareholder wealth, but with controlling shareholders' duties not to oppress minority shareholders. The one Delaware opinion that has cited *Dodge v. Ford* in the last thirty years, *Blackwell v. Nixon*, cites it for just this proposition.²⁰

Finally, not only is the Michigan Supreme Court's statement on corporate purpose in *Dodge v. Ford* dicta, but it is much more mealy-mouthed dicta than is generally appreciated. As Professor Einer Elhauge has emphasized, the Michigan Supreme Court described profit-seeking in *Dodge v. Ford* as the "primary," but not the exclusive, corporate goal.²¹ Indeed, elsewhere in the opinion the court noted that corporate directors retain "implied powers to carry on with humanitarian motives such charitable works as are incidental to the main business of the corporation."²²

III. THE LACK OF AUTHORITY FOR *DODGE V. FORD*'S POSITIVE VISION OF CORPORATE PURPOSE

Dodge v. Ford suffers from several deficiencies as a source of legal precedent on the question of corporate purpose. The case is old, it hails from a state court that plays only a marginal role in the corporate law arena, and it involves a conflict between controlling and minority shareholders that independently justifies the holding in the case while rendering the opinion's discourse on corporate purpose judicial dicta. Nevertheless, one might still defend the continued teaching and citing of *Dodge v. Ford* if the discussion of corporate purpose found in the case were an elegant, early statement of a modern legal principle.

Here we run into a second problem: shareholder wealth maximization is *not* a modern legal principle. To understand this point, it is important not to rely on the unsupported assertions of journalists, reformers, and even the occasional law professor as sources of legal authority, but instead to look at the actual provisions of corporate law. "Corporate law" can itself be broken down into three rough categories: (1) "internal" corporate law (that is, the requirements set out in individual corporations' charters and bylaws); (2) state corporate codes; and (3) corporate case law.

20. *Blackwell*, 1991 WL 194725, at *4.

21. Elhauge, *supra* note 17, at 773 (quoting *Dodge v. Ford*, 170 N.W. at 684).

22. *Id.*

Let us first examine internal corporate law, especially the statements of corporate purpose typically found in corporate charters (also called “articles of incorporation”). Most state codes permit, or even require, incorporators to include a statement in the corporate charter that defines and limits the purpose for which the corporation is being formed. If the corporation’s founders so desire, they can easily include in the corporate charter a recitation of the *Dodge v. Ford* view that the corporation in question “is organized and carried on primarily for the profit of the stockholders.”²³ In reality, corporate charters virtually never contain this sort of language. Instead, the typical corporate charter defines the corporate purpose as anything “lawful.”²⁴

What about state corporation codes? Do they perhaps limit the corporate purpose to shareholder wealth maximization? To employ the common saying, the answer is “not just ‘no,’ but ‘hell no.’” A large majority of state codes contain so-called other-constituency provisions that explicitly authorize corporate boards to consider the interests of not just shareholders, but also employees, customers, creditors, and the community, in making business decisions.²⁵ The Delaware corporate code does not have an explicit other-constituency provision, but it also does not define the corporate purpose as shareholder wealth maximization. Rather, section 101 of the General Corporation Law of Delaware simply provides that corporations can be formed “to conduct or promote any lawful business or purposes.”²⁶

This leaves case law as the last remaining hope of a *Dodge v. Ford* supporter who wants to argue that, as a positive matter, modern legal authority requires corporate directors to maximize shareholder wealth. On first inspection, corporate case law does provide at least a little hope. Contemporary judges do not cite *Dodge v. Ford*, but some modern cases contain dicta that echo its sentiments. Consider, for example, the Delaware Chancery’s statement in the 1986 case of *Katz v. Oak Industries* that “[i]t is the obligation of directors to attempt, within the law, to maximize the long-run interests of the corporation’s stockholders”²⁷

23. *Dodge v. Ford*, 170 N.W. at 684.

24. See JEFFREY D. BAUMAN, ALAN R. PALMITER, AND FRANK PARTNOY, CORPORATIONS LAW AND POLICY: MATERIALS AND PROBLEMS 171 (6th ed. 2007).

25. See Mitchell, *supra* note 14, at 579–80 (describing the statutes); *id.* at 579 n.1 (listing the twenty-eight jurisdictions having a constituency statute at the time of publication).

26. DEL. CODE ANN. tit. 8, § 101 (2008).

27. *Katz v. Oak Indus. Inc.*, 508 A.2d 873, 879 (Del. Ch. 1986).

This statement is about as *Dodge v. Ford*-like a description of corporate purpose as one can hope to find in contemporary case law. Many other modern cases, however, contain contrary dicta indicating that directors owe duties beyond those owed to shareholders. For example, just a year before the Delaware Court of Chancery decided *Katz*, the Delaware Supreme Court handed down its famed decision in *Unocal Corporation v. Mesa Petroleum Company*.²⁸ In *Unocal*, the court opined that the corporate board had a “fundamental duty and obligation to protect the corporate enterprise, which includes stockholders,”²⁹ a formulation that clearly implies the two are not identical.³⁰ The court went on to state that in evaluating the interests of “the corporate enterprise,” directors could consider “the impact on ‘constituencies’ other than shareholders (that is, creditors, customers, employees, and perhaps even the community generally).”³¹

Just as important, even shareholder-oriented dicta on corporate purpose of the *Katz* sort does not actually impose any legal obligation on directors to maximize shareholder wealth. The key to understanding this is the qualifying phrases “attempt” and “long-run.” As a number of corporate scholars have pointed out, courts regularly allow corporate directors to make business decisions that harm shareholders in order to benefit other corporate constituencies.³² In the rare event that such a decision is challenged on the grounds that the directors failed to look after shareholder interests, courts shield directors from liability under the business judgment rule so long as any plausible connection can be made between the directors’ decision and some

28. *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946 (Del. 1985).

29. *Id.* at 954.

30. See Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 293–94, 301 (1999) (arguing that directors should be viewed as owing fiduciary duties to the corporation itself, in addition to any duties they might owe to shareholders, and that duties to the company can include non-shareholder interests).

31. *Unocal*, 493 A.2d at 955.

32. See, e.g., CLARK, *supra* note 12, at 681–84 (noting the difficulty of establishing any long-run difference between public and private interests); Blair & Stout, *supra* note 30, at 303 (giving examples of how modern corporate law departs from “the norm of shareholder primacy” and noting that “case law interpreting the business judgment rule often explicitly authorizes directors to sacrifice shareholders’ interests to protect other constituencies”); Elhauge, *supra* note 17, at 763–76 (describing corporate discretion to refrain from legal profit-maximizing activity); Lisa M. Fairfax, *Doing Well While Doing Good: Reassessing the Scope of Directors’ Fiduciary Obligations in For-Profit Corporations with Non-Shareholder Beneficiaries*, 59 WASH. & LEE L. REV. 409, 437–39 (2002) (identifying doctrine that allows a corporation’s directors to consider other interests at the expense of the shareholder).

possible future benefit, however intangible and unlikely, to shareholders. If the directors lack the imagination to offer such a “long-run” rationalization for their decision, courts will invent one.

A classic example of this judicial eagerness to protect directors from claims that they failed to maximize shareholder wealth can be found in the oft-cited case of *Sblensky v. Wrigley*.³³ In *Sblensky*, minority investors sued the directors of the corporation that owned the Chicago Cubs for refusing to install lights that would allow night baseball games to be played at Wrigley Field.³⁴ The minority investors claimed that offering night games would make the Cubs more profitable.³⁵ The corporation’s directors refused to hold night games, not because they disagreed with this economic assessment, but because they believed night games would harm the quality of life of residents in the neighborhoods surrounding Wrigley Field.³⁶ The court upheld the directors’ decision, reasoning, as the directors themselves had not, that a decline in the quality of life in the local neighborhoods might in the long run hurt property values around Wrigley Field, harming shareholders’ economic interests.³⁷

Sblensky illustrates how judges routinely refuse to impose any legal obligation on corporate directors to maximize shareholder wealth. Although dicta in some cases suggest directors ought to attempt this (in the “long run,” of course), dicta in other cases take a broader view of corporate purpose, and courts never actually sanction directors for failing to maximize shareholder wealth.

There is only one exception to this rule in case law: the Delaware Supreme Court’s 1986 opinion in *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*³⁸ *Revlon* is a puzzling decision, not least because the Delaware Supreme Court decided the case the same year it handed down its apparently contradictory decision in *Unocal*. In *Revlon*, the board of a public company had decided to take the firm private by selling all of its shares to a controlling shareholder.³⁹ In choosing between potential bidders, the board considered, along

33. *Sblensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. 1968).

34. *Id.* at 777.

35. *Id.*

36. *Id.* at 778.

37. *Id.* at 780.

38. *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173 (Del. 1986).

39. *Id.* at 177–79.

with shareholders' interests, the interests of certain noteholders in the firm.⁴⁰ This was a mistake, the Delaware Supreme Court announced; where the company was being "broken up" and shareholders were being forced to sell their interests in the firm to a private buyer, the board had a duty to maximize shareholder wealth by getting the highest possible price for the shares.⁴¹

Upon first inspection, *Revlon* appears to affirm the notion that maximizing shareholder wealth is the corporation's proper purpose. In the years following the *Revlon* decision, however, the Delaware Supreme Court has systematically cut back on the situations in which *Revlon* supposedly applies, to the point where any board that wants to avoid being subject to *Revlon* duties now can easily do so. The case has become nearly a dead letter. Accordingly, while the Delaware Supreme Court has not explicitly repudiated *Revlon* (at least not yet), for practical purposes the case is largely irrelevant to modern corporate law and practice.⁴²

In sum, whether gauged by corporate charters, state corporation codes, or corporate case law, the notion that corporate law as a positive matter "requires" companies to maximize shareholder wealth turns out to be spurious. The offhand remarks on corporate purpose offered by the Michigan Supreme Court in *Dodge v. Ford* lack any foundation in actual corporate law.

IV. THE LACK OF AUTHORITY FOR *DODGE V. FORD*'S NORMATIVE VISION OF CORPORATE PURPOSE

Dodge v. Ford usually plays the role of Exhibit A for commentators seeking to argue that American law imposes on corporate directors the legal obligation to maximize profits for shareholders.⁴³ It is important to recognize, however, that many experts teach and cite *Dodge v. Ford* in a more subtle, and less obviously erroneous, fashion. To these experts, *Dodge v. Ford* is not evidence that corporate law actually requires directors to maximize shareholder wealth. Rather, many observers believe it is evidence that corporate directors *ought* to maximize shareholder wealth. In other words, many legal instructors teach *Dodge v. Ford* not as a positive description of what corporate

40. *Id.* at 178–79.

41. *Id.* at 182.

42. See Stout, *supra* note 4, at 1204.

43. See BAUMAN ET AL., *supra* note 24, at 87.

law actually is, but as a normative discourse on what many believe the proper purpose of a well-functioning corporation should be.

This is a far more defensible position. Nevertheless, the switch from using *Dodge v. Ford* as a source of positive legal authority to using *Dodge v. Ford* as a source of normative guidance carries its own hazards. Most obviously, it begs the fundamental question of what the proper purpose of the corporation should be.

It is not enough to state that *Dodge v. Ford* represents an important perspective on corporate purpose simply because many people believe it represents an important perspective on corporate purpose. This argument borders on tautology (that is, “*Dodge v. Ford* is influential because people think *Dodge v. Ford* is influential”). Perhaps many people do share the Michigan Supreme Court’s view that it is desirable for corporations to pursue only profits for shareholders. But why do they believe this is desirable?

At least until fairly recently, many corporate experts found the answer to this question in economic theory. Not too long ago, it was conventional economic wisdom that the shareholders in a corporation are the sole residual claimants in the firm, meaning shareholders are entitled to all the “residual” profits left over after the firm has met its fixed contractual obligations to employees, customers, and creditors. This assumption suggests that corporations are run best when they are run for shareholders’ benefit alone, because if other corporate stakeholders’ interests are fixed by their contracts, maximizing the shareholders’ residual claim means maximizing the total social value of the firm.⁴⁴

Time has been unkind to this perspective. Advances in economic theory have made clear that shareholders generally are not, and probably cannot be, the sole residual claimants in firms. For example, modern options theory teaches that business risk that increases the expected value of the equity interest in a corporation must simultaneously reduce the supposedly “fixed” value of creditors’ interests.⁴⁵ Another branch of the economic literature focuses on the contracting problems that surround specific investment in “team production,” suggesting how a legal rule requiring corporate directors

44. See Stout, *supra* note 4, at 1192–95 (critiquing the residual claimants argument for shareholder primacy).

45. See Margaret M. Blair & Lynn A. Stout, *Director Accountability and the Mediating Role of the Corporate Board*, 79 WASH. U. L.Q. 403, 411–14 (2001). See generally Thomas A. Smith, *The Efficient Norm for Corporate Law: A Neotraditional Interpretation of Fiduciary Duty*, 98 MICH. L. REV. 214 (1999).

to maximize shareholder wealth ex post might well have the perverse effect of reducing shareholder wealth over time by discouraging non-shareholder groups from making specific investments in corporations ex ante.⁴⁶ Yet a third economic concept that undermines the wisdom of shareholder wealth maximization is the idea of externalities: when the pursuit of shareholder profits imposes greater costs on third parties (for instance, customers, employees, or the environment) that are not fully constrained by law, shareholder wealth maximization becomes undesirable, at least from a social perspective.⁴⁷

Finally, it is becoming increasingly well-understood that when a firm has more than one shareholder, the very idea of “shareholder wealth” becomes incoherent.⁴⁸ Different shareholders have different investment time frames, different tax concerns, different attitudes toward firm-level risk due to different levels of diversification, different interests in other investments that might be affected by corporate activities, and different views about the extent to which they are willing to sacrifice corporate profits to promote broader social interests, such as a clean environment or good wages for workers. These and other schisms ensure that there is no single, uniform measure of shareholder “wealth” to be “maximized.”

Accordingly, most contemporary experts understand that economic theory alone does not permit us to safely assume that corporations are run best when they are run according to the principle of shareholder wealth maximization. Not only is *Dodge v. Ford* bad law from a positive perspective, but it is also bad law from a normative perspective. This gives rise to the question of how to explain *Dodge v. Ford*'s enduring popularity.

V. ON THE PUZZLING SURVIVAL OF *DODGE V. FORD*

Simple inertia may provide an answer, to some extent. Corporate law casebooks have included excerpts from *Dodge v. Ford* for generations, and it would take a certain degree of boldness to depart from the tradition. But there is more going on here than inertia. Casebooks change, but *Dodge v. Ford* remains. This suggests *Dodge v. Ford* has achieved a privileged position in the

46. See Blair & Stout, *supra* note 30; Margaret M. Blair & Lynn A. Stout, *Specific Investment and Corporate Law*, 7 EUR. BUS. ORG. L. REV. 473 (2006).

47. See Elhauge, *supra* note 17, at 738–56.

48. See Iman Anabtawi, *Some Skepticism About Increasing Shareholder Power*, 53 UCLA. L. REV. 561 (2006).

legal canon, not because it accurately captures the law (as we have seen, it does not) or because it provides good normative guidance (again, we have seen it does not), but because it serves law professors' needs.

In particular, *Dodge v. Ford* serves professors' pressing need for a simple answer to the question of what corporations do. Law professors' desire for a simple answer to this question can be analogized to that of a parent confronted by a young son or daughter who innocently asks, "Where do babies come from?" The true answer is difficult and complex and can lead to further questions about details of the process that may lie beyond the parent's knowledge or comfort level. It is easy to understand why many parents faced with this situation squirm uncomfortably and default to charming fables of cabbages and storks. Similarly, professors are regularly confronted by eager law students who innocently ask, "What do corporations do?" It is easy to understand why professors are tempted to default to *Dodge v. Ford* and its charming and easily understood fable of shareholder wealth maximization.

After all, explaining the true purpose of corporations is even more challenging and uncertain than explaining reproduction. From a positive perspective, public corporations are extraordinarily intricate institutions that pursue complex, large-scale projects over periods of years or even decades. They have several directors, dozens of executives, hundreds or thousands of employees, thousands or hundreds of thousands of shareholders, and possibly millions of customers. Corporations resemble political nation-states with multiple constituencies that have different and conflicting interests, responsibilities, obligations, and powers. Indeed, the very largest corporations (such as Wal-Mart, ExxonMobil, or Microsoft) have greater economic power than many nation-states do. These are not institutions whose behavior can be accurately captured in a sound bite.

The problem of explaining proper corporate purpose is just as off-putting from a normative perspective. Even the seemingly simple directive to "maximize shareholder wealth" becomes far less simple and perhaps incoherent in a public firm with many shareholders with different investment time frames, tax concerns, outside investments, levels of diversification, and attitudes toward corporate social responsibility. The normative question of what corporations ought to do becomes even more daunting when the answer involves discussions of avoiding externalities, maximizing the value of returns to multiple residual claimants, and encouraging specific investment in team production.

Faced with this reality, it is entirely understandable why a legal instructor or legal scholar called upon to discuss the question of corporate purpose might be tempted to teach or cite *Dodge v. Ford* in reply. Despite its infirmities,

Dodge v. Ford at least offers an answer to the question of corporate purpose that is simple, easy to understand, and capable of being communicated in less than ten minutes or ten pages. It is this simplicity that has allowed *Dodge v. Ford* to survive over the decades and to keep a place—however undeserved—in the canon of corporate law.

CONCLUSION

Simplicity is not always a virtue. In particular, simplicity is not a virtue when it leads to misunderstanding and mistake.

It might be perfectly fine for a Midwestern farmer to believe the world is flat. Although this simple model of the world is inaccurate, it is easy to understand and apply, and its inaccuracy is of no consequence for someone who travels only rarely and in short distances. A simple model of a flat world, however, might prove catastrophically inaccurate for a ship captain attempting to navigate from one continent to another. For the ship captain, a more complicated model that acknowledges the globe's spherical shape is essential to avoid disaster.

When it comes to corporations, lawyers are ship captains. Corporations are purely legal creatures, without flesh, blood, or bone. Their existence and behavior is determined by a web of legal rules found in corporate charters and bylaws, state corporate case law and statutes, private contracts, and a host of federal and state regulations. For lawyers, an accurate and detailed understanding of the corporate entity and its purpose is just as essential to success as an accurate understanding of geography and navigation is to a ship captain, or an accurate and detailed understanding of brain anatomy and function is to a neurosurgeon.

This is why lawyers, and especially law professors, should resist the siren song of *Dodge v. Ford*. We are not in the business of imparting fables, however charming. We are in the business of instructing clients and students in the realities of the corporate form. Corporations seek profits for shareholders, but they seek others things, as well, including specific investment, stakeholder benefits, and their own continued existence. Teaching *Dodge v. Ford* as anything but an example of judicial mistake obstructs understanding of this reality.