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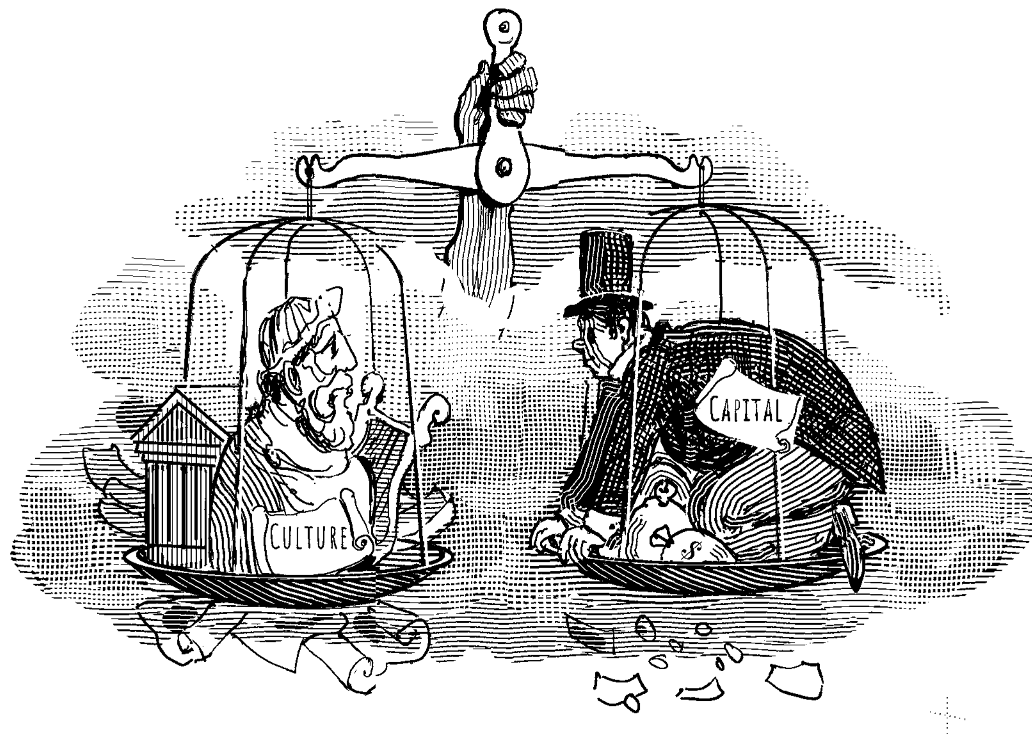
Book Review by J. Eric Wise

Corporations, Ancient and Modern

For Profit: A History of Corporations, by William Magnuson.
Basic Books, 368 pages, $32 (cloth), $19.99 (paper)



I came up for air after a recent corporate board fight—a governance wrangle over the removal of certain company directors—and picked up a copy of *For Profit: A History of Corporations* by William Magnuson. The book examines the purposes of corporations and what they did or do, from Rome to the present day. The author is a professor of corporate law at Texas A&M, who briefly worked at the white shoe New York law firm of Sullivan & Cromwell, which is currently at the center of the cryptocurrency disaster known as FTX.

This is fitting. Although the FTX bankruptcy occurred after the publication of *For Profit*, in a way the FTX corporate bramble is about the purpose of corporations. FTX founder and former CEO Sam Bankman-Fried espoused "effective altruism" as the corporate ethos of the FTX exchange. FTX would earn money to give it away. Alas, it is now alleged that Mr. Bankman-Fried simply gave away other people's money, some of it to himself.

The legitimate purposes corporations may pursue—whether "effective altruism," shareholder interest, or something else entirely—are set by the regimes and cultures within which they reside. All societies with complex economies face a problem: how will capital be aggregated to enable the launch of enterprises of great pith and moment? Corporations, or something like them, arise in cities, both ancient and modern, in response to basic and great needs.

The first definition of justice in Plato's *Republic*—our greatest work on the connection of the regime and human flourishing—is given to the wealthy arms trader (and resident foreigner) Cephalus. Socrates reduces Cephalus' definition to "speaking the truth and paying your debts," which the philosopher quickly debunks.

The notion that justice is paying one's debts and telling the truth happens to be the central truth of commercial justice: the enforcement of contracts and disclosure. These simple principles inform much of American commercial law, from the Uniform Commercial Code to the Securities Act of 1933 and Securities Exchange Act of 1934. Collateral rights under the Uniform Commercial Code are created by a promise and are perfected by telling the truth, i.e., notice to the world of interest in the property. The SEC's Rule 10b-5 makes it obligatory to tell the truth in connection with the purchase and sale of a security. This is accompanied by a civil obligation, a debt to pay, to compensate the defrauded in money. The debt can escalate and become owed to society—and result in criminal proceedings.

Why is paying one's debts and telling the truth important enough to be mentioned so early in the *Republic?* I suspect it is because commercial life, though not the end of the city, is nonetheless important to the city's power to advance its objects, defeat its enemies, and deliver on its promise of human well-being.

Athens was able to carry on its war with Sparta from 431 to 404 B.C. in large part because of a massive store of capital amassed by the Delian League, which Athens ran for its own benefit. Through this franchise Athens commanded trade among allies and trading partners, and raked off a significant skim for itself. The temple of Apollo at Delos had been the site of the treasury of the league until Pericles moved the treasury to Athens in 454 B.C. This store of liquid capital sustained Athens through its conflict with Sparta, enabling Athens to build ships, buy allies, and ultimately invade Sicily. If the Syracusans hadn't held out, Athens likely would have won the war. And, but for the capital stored in the Delian League treasury, the Syracusans would have had no one to hold out against.

The economic life of a city may be vulgar. It is nonetheless complex and vitally important to the city's flourishing. Trade leads to mon-

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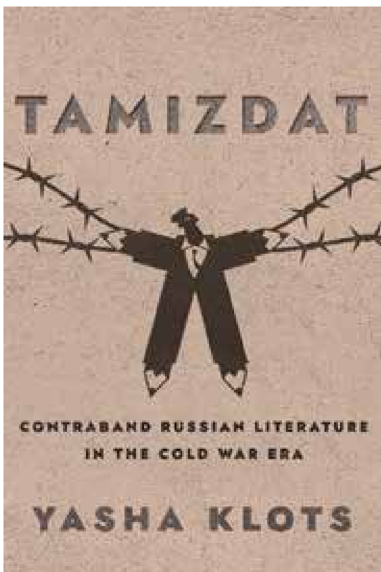
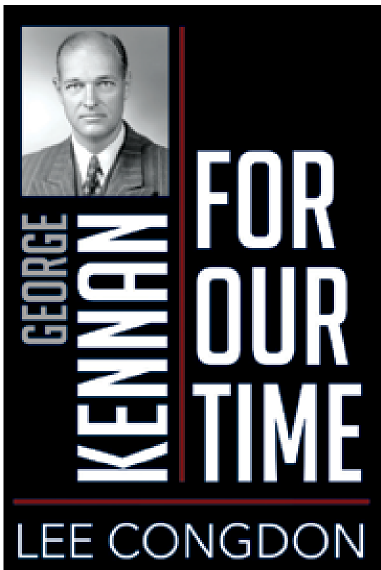
PHILOSOPHICAL VIEW





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ey, which leads to the accumulation of liquid capital, which leads to leisure, which makes possible philosophy. Accumulated capital also begets security.

To secure such public needs all complex economies tend to bring forth conventions for enterprise organization that have, or have partial reflections of, several characteristics: personhood, limited liability, and management separate from interests of ownership.

Personhood is the principle that the acts of people on behalf of the organization are acts of the organization, not the people. As Mitt Romney, hurrying his way to losing a national election, famously told hecklers at the Iowa State Fair, "Corporations are people." Romney was right in what he said, just wrong in how and to whom he said it. The term "corporation," Magnuson points out, comes from the Latin "corpus," meaning body.

Limited liability is the principle that owners are not liable for the acts or debts of the corporation. When George, Thomas, Alexander, Gouverneur, and Benjamin agree to pool their money in a corporation—say $1,000 each—once invested the most they each can lose is their invested $1,000. Limited liability also extends to managers. So if George, Thomas, Alexander, Gouverneur, and Benjamin decide to act as managers, absent some kind of wrongdoing, they will not be liable for the acts and debts of the corporation, even though they may carry out those acts and incur those debts for the corporation.

Management separate from interests of ownership is the principle that the owners do not have to be involved in the day-to-day operations or even in the oversight of the corporation. James may manage the corporation, and George, Thomas, Alexander, Gouverneur, and Benjamin may passively await quarterly reports and periodic dividends.

This is where Magnuson comes in. He agrees on the basic principles of the corporate enterprise organization. He hangs his story about corporations on events surrounding several interesting corporate enterprises and what they did or are doing. He starts with the Roman *societas publicanorum* and proceeds through the Florentine banking of the Medici, the East India Company, and the corporations that built the American transcontinental railroad. Magnuson ends with Ford, Exxon, private equity firm KKR, Michael Milken, and Facebook. By choosing stimulating vignettes, Magnuson keeps his reader engaged in what can be a rather prosaic topic.

The Roman *societas publicanorum* built roads, aqueducts, and other infrastructure. *For Profit* describes how these societies of *publicani* pushed for the expansion of trade, which brought Rome into conflict with Carthage and Gaul. Magnuson also details how the *societas publicanorum* collected Roman taxes and provided administrative infrastructure for the Roman republic, and how Caesar Augustus nationalized this infrastructure after the transformation of the republic into the Roman Empire.

Next Magnuson tells us how the Medici created perhaps the first bank holding company as a means of insulating their banks from the collapse of any one of them. The Florentine bank owned its various branches and the losses of each branch were isolated in separate corporate bodies. The profits aggregated and flowed upward. Patronage of the arts ensued; you know the names Botticelli, Donatello, Michelangelo, and da Vinci thanks to Medici corporate banking.

The East India Company, Magnuson explains, was a chartered corporation by shares, which was granted a monopoly in trade. By making money from the monopoly, the East India Company created concentrated revenue streams that could be taxed by the crown. Not only did the East India Company make a lot of money and generate a lot of tax revenue, it inspired the growth of corporate forms and stock trading in London. It grew so powerful that it had a private navy and army and conquered a sizable portion of the globe for England.

The Union Pacific Railroad Company and the Central Pacific Railroad raised money and built the transcontinental railway, a vital piece of infrastructure linking the United States, East and West, together. In the process it killed off the vast herds of buffalo that roamed the plains, and in time killed off the Lakota and Cherokee, who had been pushed to the plains by Eastern settlers and Andrew Jackson, and the Comanche and Apache, who had long called the plains their home and the buffalo their source of food and shelter.

Henry Ford changed America and the world, Magnuson recounts. Ford married mass production and the corporate form to create a gargantuan manufacturing infrastructure. Marvelous efficiencies were introduced with specialization, in which each operation was divided into tasks that took the least thought and the least motion to complete, and through vertical integration—Ford Motor Company as much as possible controlled the manufacturing process from raw materials to final assembly.

Ford Motor Company also stands out because of a dispute Henry Ford had with his

shareholders, brothers Horace and John Dodge. Ford Motor Company amassed a significant amount of cash. Making cars is an inherently cash intensive business. Ford had a twist on this. Ford believed that he, through Ford Motor Company, was serving a great purpose by bringing affordable mobility and high wages, lifting the ordinary man from dependence and subsistence to independence and surplus.

To do that, Ford wanted to plow profits—all his surplus cash—back into his business to make more cars, more cheaply and to pay a higher wage. The Dodge brothers, on the other hand, felt they were entitled to a dividend from surplus cash. Henry Ford refused, and in the resulting litigation in *Dodge v. Ford Motor Company* (1919) the Michigan Supreme Court handed down an opinion that included the principle that a corporation is run for the benefit of its shareholders, namely, for the purpose of making profit. This became the general rule for corporations in America, confining them to money-making.

This clarified certain features of American economic life, but it blurred others. It doubtless contributed to the rise of unions—also a corporate form—since the corporation was now obligated to look exclusively after shareholder interests. Corporations were obliged in a sense to find the cheapest labor and hold its cost down. What's a man who sells his labor to do except organize, pool his dues in a corporate treasury, and act collectively through the union if capital is similarly collectivized in the corporate form? Arguably, *Dodge v. Ford* also led to corporate America's notoriously myopic behavior, as quarterly earnings demands crowded out long-term thinking.

Magnuson doesn't stop there. Mass-produced automobiles led to mass demand for energy, which led to Exxon and to global corporate interests. American corporate capital, mass production, and petroleum extraction helped win World War II. Kohlberg Kravis Roberts & Co. (KKR) invented private equity. Milken perfected the junk bond—excuse me, the high-yield bond—and the leveraged buyout. This translated into a flowering financialization of enterprise organization, which did not stop at the borders of nations. Finally, the tech boom emerged from the internet and gave us Mark Zuckerberg, Jeff Bezos, Jack Dorsey, Peter Thiel, Elon Musk, and others. Magnuson ends noting that "corporations have often failed in their obligations to society."

Indeed, it's difficult not to observe that in the 21st century the corporation appears to have become a vehicle of material corpulence for a small number of people. Whether this wealth and attendant influence is directed toward a public good is a serious question. The now frequent condemnation of oligarchs from many important corners signals an answer: it is not.

Though William Magnuson concludes *For Profit* with a discussion of principles corporations ought to live by, such as thinking long term and treating workers well, he interestingly does not mention one of the most significant recent corporate developments: Environmental, Social, and Governance (ESG). Today, the principles of *Dodge v. Ford* have fallen out of favor. Running corporations for the benefit of shareholders is out. Harnessing them for other public purposes is in.

> These days, many organizations are figuring out what sustainability actually means—because it's not only about the environment. A truly sustainable organization may consider what is good for people and planet at the core of its business decisions—and by doing so, it can inspire and cultivate a prosperous and sustainable future, for itself, its people, and its community.

The above quotation, clearly shaped by ESG, is taken from a large accounting firm's website, on a page entitled "Finance for a sustainable future: A new dynamic opportunity." Accounting firms are corporations selling services to corporations, and as students of Econ 101 know, they are selling these services because corporations are buying. Why are they buying? Someone, or something, has undertaken to yoke corporations to specific public causes.

ESG seeks to confine capital to corporations that are certified to serve interests that we might say are distinct from the basic financial interests of shareholders. Of course, we can disagree about the criteria which ESG uses to impart public directedness to corporate entities. Why ESG is happening, however, is no mystery. Corporations are creatures of regimes and their laws and customs. They will serve, one way or another, the interests of regimes, just as the *societas publicanorum* served Rome and the East India Company served England. They are never off the leash for long.

A spirited board fight is about shareholder control of a specific corporation. But there is a larger battle continually waged for control of corporations generally—inasmuch as justice seems to require more than paying one's debts and telling the truth.

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