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Capitalism at an Inflection Point

Dissatisfaction with corporations is near the top of the political agenda for both the left and for the right.

The Accountable Capitalism Act, a bill that would make all corporations with \$1 billion or more of annual revenue subject to a federal corporate governance regime (by requiring them to be chartered as a United States corporation), was introduced this past August by Senator Elizabeth Warren. Among other things, this regime would mandate that not less than 40% of the directors of a United States corporation be elected by employees, and that directors must consider the interests of all corporate stakeholders—including employees, customers, suppliers, investors, and the communities in which the corporation operates.

In a *New York Times* op-ed this month, Senators Chuck Schumer and Bernie Sanders discussed introducing federal legislation that would prohibit share buybacks (and perhaps dividends) if corporations do not meet specified employee wage and benefit levels.

Also, this month, Senator Marco Rubio, seeking to provide incentives for domestic investment, proposed ending the preferential tax treatment of stock buybacks. In a separate statement, Rubio said, “Changes in the 21st-century economy have upended the working lives of millions of Americans. Americans understand that something has gone wrong, and the failure of Washington to respond is one of the underlying currents in our nation’s disunity. Something needs to change.”

The passage of such laws in the United States currently seems highly unlikely. However, their introduction serves as a warning that legislative solutions that neither corporations nor investors would want could be imposed over time, if the issues of stakeholder interests and sustainable investment for long-term value creation are not adequately addressed by the private sector. It must be recognized that employee and public discontent leads to populism, and populism may well lead to state corporatism.

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Indeed, capitalism, as we know it today, is at an inflection point. For the past 50 years, corporate law and policy have been misguided by Nobel Laureate Milton Friedman's ex-cathedra doctrinal announcement that the sole purpose of business is to maximize profits for shareholders. Corporations have also been faced with technological disruption, globalization, financialization, capital markets dominated by short-term trading and focused on quarterly profits, and unrelenting attacks and threats by activist hedge funds seeking immediate shareholder value. In response, corporations have focused primarily on increasing shareholder wealth in the short term, at the expense of employees, customers, suppliers, long-term value creation and the local and national communities in which they operate. The prioritization of the wealth of shareholders at the expense of employee wages, confidence in continuity of employment, retirement benefits, and long-term growth gave rise to deepening inequality, and loss of the American Dream, resulting in populism that today threatens capitalism from both the left and the right.

To maintain market based capitalism, action by corporations, asset managers, and investors is imperative. *The New Paradigm*—a roadmap for an implicit corporate governance and stewardship partnership—is based on the idea that corporations and shareholders can forge a meaningful and successful private-sector solution to attacks by short-term financial activists and the short-termism that significantly impedes long-term economic prosperity. *The New Paradigm* is structured to obtain its benefits without the ill-fitting encumbrance of legislation and regulation. It is flexible and self-executing by corporations and investors adopting it and notifying each other that they have adopted it. It is not a contract and can be unilaterally modified. If both corporations and investors follow it, it will obviate the drive for legislation. See, [\*It's Time To Adopt The New Paradigm\*](#).

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