Articles

Plato, The Prince, and Corporate Virtue: Philosophical Approaches to Corporate Social Responsibility

By Colin Marks* & Paul S. Miller**

Few men have virtue enough to withstand the highest bidder.
—George Washington

Introduction

Corporate Social Responsibility (CSR) was debated long before the meltdown of the economy in the fall of 2008. As Robert Reich noted in 2007:

Over 80 percent of corporate recruiters say business school graduates should display an awareness and knowledge of CSR. Hundreds of corporate conferences are held on it annually. Tens of thousands of corporate executives listen attentively to consultants who specialize in it explain its importance. The world’s top CEOs and officials, gathering annually at the World Economic Forum in Davos, Switzerland, solemnly discuss it and proclaim their commitment to it. Numerous “social auditors” now measure how well corporations have achieved it, and hundreds of companies produce...

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2. CSR is defined and described infra Part I.A.
glossy company reports touting their dedication to it. NGOs—non-governmental organizations, with full-time staffs, Web sites, newsletters, and funding appeals—develop codes of corporate conduct on aspects of it, and rate corporations on their adherence to it. At least eight hundred mutual funds worldwide say they are devoted to it. The United Nations Global Compact, launched at Davos in 1999, enumerates goals for it, and by 2006 more than three thousand firms had signed on. Great Britain even has a minister for it. 4

Of course, how to achieve CSR depends greatly on what your view of a company’s social obligations entail. The famous economist Milton Friedman argued that if corporations are making money, they are meeting their social obligations. 5 However, many scholars, identified as progressives, argue that CSR seeks more from corporations than profit making. 6 In the legal academic literature, these so-called progressives argue that CSR, and the debate that surrounds it, recognizes that corporations can act for the benefit (or detriment) of others beyond themselves. 7 But CSR cannot be some sort of internalized code for corporate operations as corporations do not have an inner conscience. 8 It must, therefore, be a tool to be used by a corporation’s human agents. 9 Progressive scholars have argued that corporations exist to fulfill various social goals. 10 It therefore stands to reason that what those particular goals are may be added to or changed as society wishes. At the other end of the spectrum are those who urge a more Friedman-friendly approach—that corporations should act to the benefit of their owners, i.e. shareholders. This shareholder primacy norm (SPN) recognizes that corporations should do what is best first and foremost for their own interests, and CSR should be used to enhance, not impede, their goals. But people run a corpo-

7. See Colin P. Marks, Jiminy Cricket for the Corporation: Understanding the Corporate Conscience, 42 VAL. U. L. REV. 1129, 1149 (2008) (“What is important, however, is what the CSR debate represents, i.e. recognition that corporations have the ability to choose to engage, or not engage, in behavior that benefits some entity, group, or individual other than just the corporation.”).
8. Id. at 1144 (citing LAWRENCE M. FRIEDMAN, A HISTORY OF AMERICAN LAW 134 (3d ed. 2005) (“[C]orporations are obviously not human. . . .[and] could act to ‘aggregate the worst urges of whole groups of men . . . .’”)).
9. Among the types of tool it might be: An ethics code (obviously), a “how to” guide for corporations to manage their public reputations, or a means to create value through eliminating waste and discovering new products. See JUST GOOD BUSINESS: A SPECIAL REPORT ON CORPORATE SOCIAL RESPONSIBILITY, supra note 3, at 7–10.
10. Allen, supra note 6, at 271.
ration.\textsuperscript{11} So whenever we are discussing corporate responsibility of any sort, we are discussing the conduct of corporate officers.\textsuperscript{12} The question then becomes: What might influence these corporate officers to adopt CSR initiatives; that is, does CSR help corporations survive and does the role of the corporation within society compel the adoption of CSR initiatives despite the harm it may do to the corporation?\textsuperscript{13} This article explores these questions using the philosophical frameworks of Machiavelli and Plato.

In *The Prince*, Machiavelli wrote of the need for leaders to appear virtuous, even if they must sometimes act against such virtues.\textsuperscript{14} A Prince should appear virtuous so as not to antagonize his subjects, as they might overthrow him.\textsuperscript{15} At the same time, the prince cannot let virtue stop him from acting when he sees threats to himself (and by extension, the state).\textsuperscript{16} CSR can be seen as a means by which corporations appear virtuous. The degree to which such a use is legitimate depends on the degree to which one considers *The Prince* to be legitimate.\textsuperscript{17} It is not too far-fetched to envision today’s CEO seeing his survival and the company’s survival as one and the same. The paths to the upper echelons of corporate power are as varied as those of the Renaissance Prince.\textsuperscript{18} The modern CEO might be well disposed to act on Machiavelli’s suggestions.

\begin{itemize}
\item[11.] Marks, supra note 7, at 1144.
\item[12.] Id.; Friedman, supra note 8, at 134.
\item[13.] The definition of harm in this context can be a whole discussion in itself. Is it just the short term reduction in profits that might otherwise be present without CSR, or can longer term, indirect harms to the society that the corporation is part of also be taken into account?
\item[14.] Niccolo Machiavelli, *The Prince* 60 (Daniel Donno trans., Bantam Classics 1966, 2003) (1513) [hereinafter *The Prince*] (“Therefore a prince will not actually need to have all the qualities previously mentioned, but he must surely seem to have them. . . . [H]e must stick to the good so long as he can, but, being compelled by necessity, he must be ready to take the way of evil”).
\item[15.] Id. at 70 (“[T]he prince . . . [should] endeavor to avoid those things which would make him the object of contempt or hatred”).
\item[16.] See id.
\item[17.] As an example of those who believe it legitimate, consider *Management and Machiavelli* by Anthony Jay. It presented *The Prince* as a primer for how management should conduct itself. Jay did not present his book as a means of acquiring power; instead he viewed Machiavelli as presenting the best method for analyzing problems of leadership. Antony Jay, *Management and Machiavelli: An Inquiry into the Politics of Corporate Life* 25 (1968). (“I have called this book Management and Machiavelli not because it is based on Machiavelli’s arguments but because it is based upon his method, the method of taking a current problem and then examining it in a practical way in the light of experiences of others who have faced similar problems in the past.”). But if his method is valid, so too must be its conclusions.
\item[18.] The Prince, supra note 14, at Ch 3–14.
\end{itemize}
A Machiavellian viewpoint, however, is probably not how progressive proponents of CSR would like it analyzed. After all, CSR proponents want corporations to act with the interests of other stakeholders, such as employees and the communities affected by the corporation, in mind as they pursue profits. Which philosopher, then, might present a competing vision to *The Prince*? This article puts Plato forward as the counter to Machiavelli. According to Homeric thought, the goods that should be striven for are riches, power, status, and prestige—for one’s self and one’s country. The personal attributes that allow a man to reach such goals are considered virtues. The conduct of the leading figures of Fifth Century B.C.E. Greece and the Italian Renaissance embodied this viewpoint.


20. Alasdair MacIntyre, *Whose Justice, Which Rationality?* 26 (1988). Such virtues were referred to as areté. These were virtues that allowed a person the courage to be daring (andreia) and knowing when to be cautious (sophrosunē).

Consider Achilles, the hero of the *Iliad*. When he is denied what he considers his rightful reward by Agamemnon, the head of all forces, he does not perform his duty and fight for Greece but completely withdraws from the conflict. This action nearly causes Greek defeat at Troy. The *Iliad* presents Achilles conduct as correct; he does not kill Agamemnon, even though the prize is rightfully his, because he is the king; neither does he continue to fight for his country or his kin, because his skills are not properly recognized. In short, Achilles is not a reliable man, but he is successful in Greek eyes.

The conduct of Odysseus also supports this contention. In the *Iliad* and the *Odyssey*, his chief skill is his cunning; he does not overcome his opponents in combat (although capable of doing so); He creates the Trojan horse; He tricks the Cyclopes; he sleeps with Circe to gain her trust (all the while Odysseus wife is fending off suitors who demand her favors). So, Odysseus is not a man to be trusted, but he is successful. *See, e.g.*, Id. at 13–14.

21. In Ancient Greece, Pericles, the ruler of Athens at the height of its empire, clearly views Athens success as justifying its aggrandizement. The moving of the treasury of the Doric league (originally created to repel any future Persian incursions) was seen as a reward for Athenian leadership. It was used to build the Acropolis (which served no military purpose), which both served to promote the glory of the city and provide the Athenian citizens, who were key to Pericles staying in power, more jobs and lower taxes. The consequence of Pericles’s actions was ultimately defeat in the Peloponnesian Wars. *The New Encyclopedia Britannica* 242–53 (vol. 20, 15th ed. 2002) (on Fifth and Fourth Century B.C.E. Greece);

In Renaissance Italy, the Medici and the Borgia families embraced the Homeric virtues. Both of them, from rather humble beginnings, used money and less savory methods to become rulers of large parts of Italy. The conflict between the two families was only resolved with the death of Alexander VI and the election of the Medici ally Julius II. Afterwards, the Medici ruled through the papacy, through Leo X and Clement VI. For both families, the key virtues were not those of Christian piety but those which allowed their families to prosper—wealth, cunning, and ruthless. *The New Encyclopedia Britannica* 215–19 (vol. 22, 15th ed. 2002) (on Renaissance Italy).

Some historic examples might be appropriate—perhaps Pericles and Alciabades in Athens and the Medici and Borgia families in Italy.
But what happens when these virtues lead to disaster? This is what happened to Athens after its defeat in the Peloponnesian War and contributed to the near-constant warfare in Italy during the late Middle Ages and Renaissance Era. These are the times in which Plato and Machiavelli wrote. We may find ourselves in a similar time right now, as the old economic and political assumptions of the past 20 years are brought into question as a result of the near collapse of the financial markets.

Machiavelli’s solution was victory and order at all costs, a reinforcement of Homeric ideals. Plato’s answer was radically different:

"Unless philosophers become kings in our cities, or unless those who are now kings and rulers become true philosophers, so that political power and philosophic intelligence converge, and unless those lesser natures who run after one without the other are excluded from governing, I believe there can be no end to troubles . . . , in our cities or for all mankind."

For Plato, it was the conduct of men that led to bad results, and what were once seen as virtues that govern their actions should be changed for new ones if disaster results. Plato did not advance this argument naïvely; he was well aware of the consequences it could bring, but felt it had to be made.

For instance, the great Greek statesman, Pericles, was a promoter of public works, commissioning the sculptor Phidias to complete a number of works including the Acropolis. Pierre Leveque, *The Birth of Greece* 100, 112 (Harry N. Abrams, Inc. ed., Anthony Zielonka trans., 1994); *The Oxford History of Greece and the Hellenistic World* 144 (John Boardman et al., eds., 1988). While these works helped beautify Athens, they also helped employ citizens. Leveque, supra note 21, at 100. Thus Pericles both enhanced the city and his own reputation through such patronage. Some historic examples might be appropriate—perhaps Pericles and Alcibiades in Athens and the Medici and Borgia families in Italy.

22. See extensive discussion infra Part II.C.1.

23. With himself as Odysseus, to judge by his letters, see *The Prince*, supra note 14, at 5 (“Having read this thing, one will see that I did not sleep of gamble away the fifteen years I engaged in the study of statecraft, and anyone ought to value the services or a man who has become richly experienced at another’s expense.”), and dedications to Lorenzo di Medici, id. at 16 (“And if from your great height Your Highness will sometimes cast a glance below to these lowly places, you will see how undeservedly I endure the heavy and relentless malice of fortune.”).


26. E.g., *Plato, Apology*, Crito (detailing the trial and death of Socrates. The crux of the case against him was his opposition to the Homeric religion and his encouragement
This article’s topic, however, is not the paths of justice in the ancient or renaissance world, but whether these two philosophers can help us understand how (or whether) CSR can (or should) be applied today, perhaps even to warn us of its abuses or encourage CSR’s healthy application. Part I explains CSR’s historic development in both the business management and legal academic context. Part II explains the relevance of Machiavelli and Plato’s works in a modern context. Part III applies the paradigms set out by Machiavelli and Plato to the legal academic approaches to CSR. The article concludes that analogies can be drawn between Machiavelli’s view of power and the SPN and between Plato and the Progressives if they are considered at the level of the corporate entity. But the people who actually wield the power in corporations may not see their interests aligned with shareholders and instead may be more like the foreign invaders that Machiavelli warned against. Viewed from this perspective, the Machiavellian model may be more in line with how corporations are actually governed. Such a model, however, has evaded description. It mimics both the shareholder primacy norm and the Progressive Movement at times; but, under examination, it should not be embraced by either the SPN proponents or Progressives.

I. An Overview of Corporate Social Responsibility

A. CSR Defined: Theories Furthering Corporate and/or Societal Purposes

Before delving too deeply into a discussion of CSR, it is useful, if not essential, to review what activities are encompassed by the term. What exactly does it mean to be socially responsible as a corporation? Is merely obeying the law socially responsible? What about choosing to go “green,” which also has economic benefits to the corporation, as well as society? Or is CSR just another way of describing corporate charity? How one defines CSR is important as it affects whether an individual supports it. Milton Friedman’s view of CSR provides a classic example of this.

of his followers to do the same. These were early works of Plato, written ten to twenty years before The Republic. In continuing to this theme the rejection of old religious practices, including their ethical codes, Plato knew the consequences could be fatal.

27. Or perhaps seeks to simply obscure the corporation’s activities within a pleasant green veneer. See Joe W. Pitts, III, Corporate Social Responsibility: Current Status and Future Evolution, 6 Rutgers J. L. & Pub. Pol’y 334, 375 (2009) (“The criticism of CSR as merely, or excessively, a public relations activity represents the frustration some critics have with the pace of progress on the ground and insufficient or counterproductive implementation of the concept.”).
1. Friedman’s View of CSR

Friedman denounced CSR by stating that, in a free economy, “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition, without deception or fraud.”\(^{28}\) Based on this quote, one could easily conclude that the thrust of Friedman’s argument was to reject CSR as a legitimate business pursuit. However, further reading of Friedman’s essays reveals that Friedman’s definition of CSR was very specific. To Friedman, CSR was nothing more than giving away profits to unrelated charitable causes. If a charitable donation was in fact tied to some other corporate goal, ulterior or otherwise, Friedman simply did not call it CSR. Indeed, Friedman seemed to think it was dishonest to even label such giving as CSR, stating that he admired those corporations “who disdain such tactics as approaching fraud.”\(^{29}\)

A closer review of Friedman’s essays on CSR reveals that, though he may not have considered it part of CSR, he did believe that corporations have responsibilities to groups outside their own shareholders—to abide by the laws in place by governments as well as by custom. In another essay, Friedman expounds that the corporate executive’s responsibility “is to conduct the business in accordance with [the shareholders’] desires, which generally will be to make as much money as possible while conforming to the basic rules of the society, both those embodied in the law and those embodied in ethical custom.”\(^{30}\) Thus, though Friedman was against corporate executives giving away profits (unless so ordered by the owners/shareholders), if he was presented with a model in which legal compliance was an aspect of CSR, he surely would favor at least that aspect of it.

Many scholars take a broader view of CSR than Friedman. They would argue that CSR includes an economic and ethical responsibility in addition to a legal compliance responsibility. Yet Friedman’s ire at corporate giving is not isolated. Indeed, philanthropic activities are

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\(^{29}\) Id. at 41. As Friedman notes, however, he would not advocate that corporations refrain from using the label CSR if it advantaged the corporation because that would, in itself, be asking the corporations to engage in a socially responsible activity. Id.

\(^{30}\) Id. at 37 (emphasis added).
often included under ethical responsibility and are the focus of controversy in academic circles.\footnote{M. Todd Henderson & Anup Malani, Corporate Philanthropy and the Market for Altruism, 109 Colum. L. Rev. 571, 581–82 (2009) (noting the arguments made in favor of and against corporate philanthropy).}

2. The Business Scholars’ Views of CSR

Business management literature has explored the topic of CSR.\footnote{See generally Marks & Rapoport, supra note 3, at 1273–75 (2009). As Cynthia Williams has noted, “[l]egal academics have struggled to produce useful definitions of CSR, and in that effort may be well advised to look to management literature.” Cynthia A. Williams, A Tale of Two Trajectories, 75 Fordham L. Rev. 1629, 1647 n.54 (2006) [hereinafter Williams, A Tale of Two Trajectories].} This literature defines CSR as including a business’s responsibility to the wider societal good beyond the business’s economic performance.\footnote{Archie B. Carroll, A Three-Dimensional Conceptual Model of Corporate Performance, 4 Acad. Mgmt. Rev. 497, 497–98 (1979) [hereinafter Carroll, A Three-Dimensional Conceptual Model].} Professor Archie Carroll’s model is most often cited.\footnote{See Aviva Geva, Three Models of Corporate Social Responsibility: Interrelationships Between Theory, Research, and Practice, 113 Bus. & Soc’y Rev. 1, 2 (2008) (referring to Carroll’s article 1979 article on CSR as a “foundational article on social performance.”); Dirk Matten & Andrew Crane, Corporate Citizenship: Toward an Extended Theoretical Conceptualization, 30 Acad. Mgmt. Rev. 166, 167 (2005) (noting that Carroll’s 1979 model of CSR is widely cited).} In 1979, Carroll categorized CSR into four social responsibilities that businesses have to society: economic responsibilities, legal responsibilities, ethical responsibilities, and discretionary (sometimes called philanthropic) responsibilities.\footnote{Carroll, A Three-Dimensional Conceptual Model, supra note 33, at 499; Archie Carroll, The Four Faces of Corporate Citizenship, 100/101 Bus. & Soc’y Rev. 1, 1–2 (1998); Geva, supra note 34, at 5–7; Matten & Crane, supra note 34, at 167.} The first category, economic responsibility, represents the basic responsibility of a business to be profitable.\footnote{Matten & Crane, supra note 34, at 167; Carroll, A Three-Dimensional Conceptual Model, supra note 33, at 500.} The second category, legal responsibility, represents the responsibility of a business to operate within the framework of legal requirements.\footnote{Carroll, A Three-Dimensional Conceptual Model, supra note 33, at 500.} The third category, ethical responsibility, represents the “responsibility to do what is right, just, and fair.”\footnote{Matten & Crane, supra note 34, at 167.} Though ethical norms are embodied in both the economic and legal responsibilities, this category embodies society’s “expectations of business over and above [any] legal requirement.”\footnote{Carroll, A Three-Dimensional Conceptual Model, supra note 33, at 500.} The final category, discretionary or philanthropic responsibility, represents society’s expectation that a business should
assume social roles above and beyond its economic, legal, and ethical responsibilities.\textsuperscript{40} This could include making contributions for “various kinds of social, educational, recreational, or cultural purposes.”\textsuperscript{41}

Of all the categories, philanthropic responsibility provokes significant debate among scholars.\textsuperscript{42} While it is somewhat inaccurate to label something as both discretionary and as a responsibility, Carroll maintained this category as a part of his CSR concept because he viewed society as expecting businesses to engage in some discretionary activities.\textsuperscript{43} However, other commentators disagree on the discretionary nature of philanthropic activities and instead subsume them under the economic and ethical responsibilities, or as being an integral part, rather than a discretionary part, of CSR.\textsuperscript{44} The debate centers on whether CSR includes only, as its essential parts, the economic, legal, and ethical responsibilities, or whether CSR should also include philanthropic activities.\textsuperscript{45}

Friedman rejected the concept of philanthropic/discretionary giving as necessarily undemocratic.\textsuperscript{46} He argued that when a corporate executive spent corporate funds on charity, that executive spent the shareholders’ money, via the shareholder’s interest in the corporation, for a general social interest.\textsuperscript{47} Thus, such an executive would essentially be imposing a tax on either the customers, through higher prices, or on its own employees in the form of lower wages.\textsuperscript{48} Friedman argued that this imposition of taxes and expenditure of assets is a government function that should be left to the legislature to impose.\textsuperscript{49}

\textsuperscript{40} Id.
\textsuperscript{41} Matten & Crane, \textit{supra} note 34, at 167. Carroll originally conceptualized these categories into a pyramid, and though he claimed they were not mutually exclusive, they were ordered by their “fundamental role in the evolution of importance.” Carroll, \textit{A Three-Dimensional Conceptual Model, supra} note 33, at 499–500. As a pyramid, economic responsibilities were at the bottom, topped by legal responsibilities, then by ethical responsibilities, and finally, by discretionary responsibilities at the very top.
\textsuperscript{42} Geva, \textit{supra} note 34, at 9.
\textsuperscript{43} Carroll, \textit{A Three-Dimensional Conceptual Model, supra} note 34, at 500.
\textsuperscript{44} See Geva, \textit{supra} note 35, at 6, tbl.1 (explaining how intersecting and concentric circle models of CSR differ from Carroll’s pyramid model).
\textsuperscript{45} This concept is sometimes referred to in the business management literature as “corporate citizenship.” Matten & Crane, \textit{supra} note 35, at 168.
\textsuperscript{46} \textit{Friedman, The Essence of Friedman, supra} note 28, at 38–39.
\textsuperscript{47} Id. at 38.
\textsuperscript{48} Id.
\textsuperscript{49} Id. Friedman also appeared to take the view that CSR was a very narrow category of giving that did not benefit the corporation. Friedman was not critical of a corporation engaging in charitable giving when it provided an advantageous tax deduction or garnered good public relations but noted that it may be hypocritical to term such giving as socially responsible. Id. at 41. Thus, giving that falls within one of the other responsibilities (eco-
In contrast, Carroll’s hierarchy simply has philanthropy as a discretionary part of CSR.

This optional view of philanthropic giving contrasts with a second view of CSR, which is embodied in a growing trend suggesting that businesses have a responsibility beyond their legal and ethical responsibilities. As one commentator has noted, “[p]hilanthropy . . . appears to serve as the distinguishing point between the neoclassical economic position and the new widely accepted notion of corporate citizenship, which highlights the importance of corporate giving.”

Thus, this newer line of thinking embraces discretionary giving as an essential part of CSR, which may be subsumed under the other responsibilities.

3. Legal Scholars’ Views on CSR

The above debate mirrors an ongoing one within the legal academic community over the role of the corporation within society. As early as the 1930s, Adolph Berle and E. Merrick Dodd debated the idea that a business might wish to aspire to a higher goal than simply turning a profit. Berle took the position that a corporation owes only a duty to the shareholders to maximize wealth, while Dodd suggested that a corporation should serve a social purpose as well. Dodd’s side of this debate has been described by some legal academics as Corporate Social Responsibility (CSR). Thus far, legal academics have not uniformly defined CSR. As Professor David Engel noted, “[t]he people who say they are discussing corporate social responsibility are by no means all interested in the same questions, and they often seem to be talking past each other.” However, generally speaking, most seem to assume a definition similar to the one assumed by Milton Friedman: CSR refers to promoting activities that benefit society at the economic, legal or ethical) arguably appears to be acceptable corporate behavior in Friedman’s view.

50. Geva, supra note 34, at 9.
51. Id.
52. Id. at 6-9.
55. Id.
pense of profits. This definition of CSR, as Jill Fisch has noted, is “characterized by its view that corporations have obligations to non-shareholder stakeholders and the public generally; these obligations include duties of fairness and morality that extend beyond legal and contractual rules.” Thus the term CSR is often associated with progressive corporate law proponents.

This, however, actually represents just one side of the legal academic debate over the role of CSR, the other side being the SPN. Rather than argue over how to define CSR, as the business management academics have done, many legal academics have simply adopted the view that CSR proponents are advocating for the progressive corporate law viewpoint. This progressive corporate law philosophy is counter to the SPN which sees a corporation as the property of its shareholders and views executives as owing duties primarily to its shareholders, with little concern for non-shareholder stakeholders (except to the degree that it would affect the shareholders). Though there are various shades of gray in the debate, for the purposes of this article, we will focus our discussion on the SPN and Progressive ends of the debate.

a. The Shareholder Primacy Norm

At one end of the spectrum is the property conception of the corporation. The corporation is the property of its owners, the shareholders. As the directors of a corporation are elected by the shareholders, their duty is to direct the corporation for the benefit of the shareholders. This sentiment was expressed most vividly in the 1919 case of *Dodge v. Ford Motor Co.* In *Dodge*, the plaintiffs, who were minority shareholders in Ford Motor Company, brought suit against the directors to compel the issuance of a dividend. Controlling shareholder Henry Ford announced his motive for this decision in a press release, stating, that it was his intention “to employ still more men; to

56. See, e.g., *id.* at 9–10 (“It seems to me . . . that the basic question of [CSR] is not whether we wish to compel or forbid certain kinds of corporate conduct by legislative command, for example, but rather whether it is socially desirable for corporations organized for profit voluntarily to identify and pursue social ends where this pursuit conflicts with the presumptive shareholder desire to maximize profit.”).


58. Arguably, the business management literature has a healthier view of CSR as including responsibilities to make a profit which should be balanced with other responsibilities. See Marks & Rapoport, *supra* note 3, at 1281–83.


60. 170 N.W. 668 (Mich. 1919).

61. *Id.* at 679.
spread the benefits of this industrial system to the greatest possible number, to help them build up their lives and their homes. To do this, we are putting the greatest share of our profits back into the business.” Based on this and other comments by Henry Ford, the plaintiffs sued to enjoin Ford from expanding its operations by building a smelting plant and to compel Ford to issue a special dividend. The lower court agreed with the plaintiffs, enjoined Ford Motor Company’s use of the surplus to expand its operations, and ordered a special dividend to be issued.

On appeal, the Michigan Supreme Court announced in very clear terms to whom the corporation owed its loyalties. In reviewing Henry Ford’s testimony as well as legal precedence, the court stated:

There should be no confusion (of which there is evidence) of the duties which Mr. Ford conceives that he and the stockholders owe to the general public and the duties which in law he and his codirectors owe to protesting, minority stockholders. 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 directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes.

Though the court reversed an injunction based upon the expansion of Ford’s operations, it did affirm a portion of the trial court’s order requiring a distribution of approximately $20 million of the cash surplus, finding that even with some of the money being diverted to the expansion of operations, the surplus was great enough that it was the directors’ duty to distribute “a very large sum of money to stockholders” in the form of a dividend. Thus, the Dodge case demonstrates the duty of care owed by corporate directors and has been interpreted as equating this duty with a duty to maximize profits for the benefit of the shareholders.

This property model is commonly equated with the SPN, in that it places the maximization of shareholder wealth above more altruistic

62. Id.
63. Id. at 672–74.
64. Id. at 677–78.
65. Id. at 683 (“It is the contention of the plaintiffs that the effect of the plan is intended to be . . . to continue the corporation henceforth as a semi-eleemosynary institution and not as a business.”).
66. Id. at 684.
67. Id. at 685.
68. Allen, supra note 6, at 268.
concerns. This conception of the corporation is most often aligned with the position of Adolph Berle (of the Berle/Dodd debate described above) as well as with Milton Friedman’s conception of the corporation. Indeed, Friedman considered it undemocratic for corporate directors to expend corporate monies on charity, as that was a role better left to elected representatives. However, this view is not necessarily limited to charitable contributions. Some scholars have asserted that even legal compliance should be tempered by economic concerns. A 1982 article by Frank H. Easterbrook and Daniel R. Fischel argued in a footnote, that:

managers do not have an ethical duty to obey economic regulatory laws just because the laws exist. They must determine the importance of these laws. The penalties Congress names for disobedience are a measure of how much it wants firms to sacrifice in order to adhere to the rules; the idea of optimal sanctions is based on the supposition that managers not only may but also should violate the rules when it is profitable to do so.

This view is not necessarily consistent with Friedman’s view, however, as even Friedman noted that the responsibility to maximize profits was tempered by “conforming to the basic rules of the society, both those embodied in law and those embodied in ethical custom.” Nonetheless, in the context of legal compliance, this focus on profits demonstrates the heart of the SPN. Though other stakeholders (such as employees, customers, or the community affected by the corporation) may have claims based upon contact or other areas of the law,

69. D. Gordon Smith, The Shareholder Primacy Norm, 23 J. CORP. L. 277, 278 (1998). Smith argues that the shareholder primacy norm has mutated from its origins and is “nearly irrelevant to the ordinary business decisions of modern corporations.” Id. at 279.


73. Frank H. Easterbrook & Daniel R. Fischel, Antitrust Suits by Targets of Tender Offers, 80 Mich. L. Rev. 1155, 1177 n.57 (1982). As Professor Cynthia Williams has observed, this view was rejected in an initial draft of the American Law Institute’s PRINCIPLES OF CORPORATE GOVERNANCE as “‘premised on a false view of the citizen’s duty in a democratic state.’” Cynthia A. Williams, Corporate Compliance with the Law in the Era of Efficiency, 76 N.C. L. Rev. 1265, 1271–72 (1998) [hereinafter Williams, Corporate Compliance] (quoting PRINCIPLES OF CORPORATE GOVERNANCE § 2.01 cmt. f (Tentative Draft No. 1, 1982)). While the Easterbrook/Fischel view of legal compliance could be viewed as quite extreme, it should be noted that some level of balancing is just a part of everyday business, if not life. After all, who among us has not violated traffic laws such as speed limits based on our own internal cost/benefit analysis?

corporate law’s proper focus is upon the interests of the shareholder.75

b. Progressives

In response to the SPN, Progressives advocate a broader stakeholder model, under which “the corporation serves the interests of all the corporation’s stakeholders, including shareholders, but the shareholders do not enjoy primacy over other stakeholders.”76 As Professor D. Gordon Smith succinctly describes this movement:

What rankles the progressives is that the descriptive claim [that corporations usually operate in the best interests of shareholders] represents a state of affairs they find repugnant. The primary item on the agenda of the progressives, therefore, has been to change corporate law in a way that accounts for the needs of non-shareholder constituencies.77

Merrick Dodd’s debate with Berle provides a source for the modern Progressive Movement’s conception of corporate purpose. Dodd stated that:

[b]usiness—which is the economic organization of society—is private property only in a qualified sense, and society may properly demand that it be carried on in such a way as to safeguard the interests of those who deal with it either as employees or consumers even if the proprietary rights of its owners are thereby curtailed.78

This is not to say that the progressive movement in corporate law requires corporations to become eleemosynary institutions. Progressives simply view the responsibilities of a corporation as going beyond serving the shareholder’s bottom line. Not surprisingly, Progressives reject the law-as-price theory promoted by Easterbrook and Fischel, whereby corporations can weigh the consequences of conforming to or violating the law and choose violation if the risks are acceptable.79

The progressive movement has been criticized by shareholder primacy norm proponents as requiring corporate boards to serve two masters—both shareholders and stakeholders.80 Faced with such a

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75. Smith, supra note 69, at 277–78 (“Employees, creditors, suppliers, customers, and others may possess contractual claim against the corporation, but shareholders claim the corporation’s heart.”).
76. Choudhury, supra note 71, at 665.
77. Smith, supra note 69, at 281.
78. E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 Harv. L. Rev. 1145, 1162 (1932).
79. See generally Williams, *Corporate Compliance*, supra note 73.
choice, corporate managers inevitably must choose one over the other—or even worse, neither. Easterbrook and Fischel noted that “[a] manager told to serve two masters (a little for the equity holders, a little for the community) has been freed of both and is answerable to neither.”81 SPN proponents would thus argue that the norm best serves the interests of all stakeholders.82

Perhaps in light of this, many commentators have adopted a middle-ground approach to CSR. The concept of “shared values,” in which corporations should strive to identify areas where they can serve both their own interests and the interests of society, is a common theme in this literature.83 Indeed, one of the authors of this article has elsewhere put forth a conception of CSR that would require a balancing of economic, legal, and ethical interests in any decision-making.84 However, middle-ground is not always conveniently found, and ultimately, lines defining the corporate purpose must still be drawn.

B. CSR at the Margins

In some areas, such as charitable donations, it is easy, or at least easier, to find common ground between what is good for society and what is good for the corporate bottom line. Indeed, Friedman appeared to think it hypocritical to recognize such giving as CSR, because it was self-serving to the corporation. As Friedman recognized, it may well be in the long-term interest of a corporation that is a major employer in a small community to devote resources to providing amenities to that community or to improving government. It may make it easier to attract desirable employees, reduce the wage bill, lessen losses from pilferage and sabotage, or result in other worthwhile effects.85 But despite Friedman’s reluctance to label such giving as CSR, modern academics have seen this arena as one where CSR has the most potential.

However, there are a number of areas where the goals of society are adverse to, or at least do not necessarily align with, corporate interests.

82. Yosifon, supra note 80, at 258–59.
83. See, e.g., Margaret M. Blair, Director’s Duties in a Post-Enron World: Why Language Matters, 38 Wake Forest L. Rev. 885, 885 (2003); Judd F. Sneirson, Green is Good: Sustainability, Profitability, and a New Paradigm for Corporate Governance, 94 Iowa L. Rev. 987, 989–90 (2009). See also Choudury, supra note 71, at 631–34.
84. Marks & Rapoport, supra note 3, at 1281–83.
85. Friedman, The Essence of Friedman, supra note 28, at 41.
1. Corporations Not Following the Law

One glaring example of conflict between corporate and societal interests is the arena of legal compliance. Should corporations weigh the costs of legal compliance with the risks of getting caught and the severity of the penalty imposed (as Easterbrook and Fischel have argued)? A hypothetical may help illustrate this point.

A Better Crop, Inc. (“ABC”) is a produce wholesaler with its headquarters in California. ABC sells produce, such as lettuce, tomatoes, and other fruits and vegetables to retail grocers. The primary pesticide used by ABC on its farms (and its contracted farms) is XYZ, which has been the subject of recent studies regarding autism. Though there is some preliminary data correlating the pesticide to autism, the evidence is vague and no causal link has yet been shown. Nonetheless, in response to these studies, California imposes a ban on the use of XYZ on commercial farms. However, the fine imposed for violating the ban is small, and it is doubtful that it will be strictly enforced. Though ABC is concerned about the possible negative publicity should their abuses come to light, the cost of switching from XYZ to another pesticide would increase the prices they would have to charge for produce by 15%. If ABC went pesticide-free, they would have to charge an additional 20% to account for the loss in crops. Both options will likely drive down consumption of ABC’s products and hurt ABC’s bottom line. Should ABC take the risk of getting caught, as it is still more profitable to use XYZ?

Such a hypothetical brings into stark contrast the contradictory goals of society and the corporation. Accepting that society imposes such fines where it finds the conduct in question objectionable, then should corporations, which owe their very existence to the State in the first place, respect such laws? Or is the severity of the fine a reflection of how reprehensible society finds the conduct? In other, words, if society was serious about such abuses, would it not create a more severe punishment and stricter enforcement provisions? However, even if this is true, could not the corporation, wielding its power and influence, lobby to ensure a light fine or penalty so that the costs of non-compliance are negligible?

2. Corporations Changing the Law

This brings up yet another area where diverging views of CSR are brought into conflict. As Professor Jill Fisch has pointed out, the corporation, unlike the Holmesian “bad man,” has the ability to ensure
that its conduct is not illegal through lobbying efforts.\textsuperscript{86} Under the SPN, corporations should use such lobbying powers to benefit the corporation’s bottom line (and thus benefit its shareholders). This power has come into even greater focus with the recent Supreme Court decision, \textit{Citizens United v. FEC}.\textsuperscript{87}

In \textit{Citizens United}, the nonprofit corporation, Citizens United (CU), produced and distributed a movie critical of 2008 presidential candidate Hillary Clinton.\textsuperscript{88} The 90-minute movie titled \textit{Hillary: The Movie}, was released in theaters and on DVD leading up to the 2008 election primary.\textsuperscript{89} CU was also approached to release the movie on pay-per-view, with CU paying $1.2 million to do so.\textsuperscript{90} CU intended the movie to be viewed free of charge,\textsuperscript{91} but doing so put CU at risk of running afoul of the Bipartisan Campaign Reform Act of 2002 (BCRA), which prohibited corporations from either using general treasury funds to make direct contributions to candidates or from making “independent expenditures that expressly advocate the election or defeat of a candidate, through any form of media, in connection with certain qualified federal elections.”\textsuperscript{92} CU sought declaratory and injunctive relief from the Federal Elections Commission challenging the constitutionality of the BCRA with regards to both the prohibition of this speech as well as the disclaimer and disclosure requirements.\textsuperscript{93}

The lower courts denied relief based upon \textit{stare decisis}, as the Supreme Court had previously upheld the constitutionality of the BCRA\textsuperscript{94} in \textit{McConnell v. FEC}\textsuperscript{95} and \textit{Austin v. Mich. Chamber of Commerce}.\textsuperscript{96} On appeal, the Supreme Court, in a 5-4 decision, overturned \textit{McConnell} and \textit{Austin} and found the BCRA’s prohibition on corporate political speech unconstitutional.\textsuperscript{97} Among the concerns raised by the government on appeal was that allowing corporations to take part in

\begin{itemize}
\item \textsuperscript{86} Fisch, supra note 19, at 1608–09.
\item \textsuperscript{87} 130 S. Ct. 876 (2010).
\item \textsuperscript{88} \textit{Id.} at 886–87.
\item \textsuperscript{89} \textit{Id.} at 887. Coincidentally, the movie referred to Clinton as “Machiavellian.” \textit{Id.} at 890.
\item \textsuperscript{90} \textit{Id}.
\item \textsuperscript{91} \textit{Id}.
\item \textsuperscript{92} \textit{Id.} at 887.
\item \textsuperscript{93} \textit{Id.} at 888.
\item \textsuperscript{94} \textit{Id.} at 888.
\item \textsuperscript{95} 540 U.S. 93 (2003).
\item \textsuperscript{96} 494 U.S. 652 (1990).
\item \textsuperscript{97} \textit{Citizens United}, 130 S. Ct. at 913.
\end{itemize}
such political speech would open the door to corruption. The Court, however, was not so concerned based on the record before it, stating:

When Congress finds that a problem exists, we must give that finding due deference; but Congress may not choose an unconstitutional remedy. If elected officials succumb to improper influences from independent expenditures; if they surrender their best judgment; and if they put expediency before principle, then surely there is cause for concern. We must give weight to attempts by Congress to seek to dispel either the appearance or the reality of these influences. The remedies enacted by law, however, must comply with the First Amendment; and, it is our law and our tradition that more speech, not less, is the governing rule. An outright ban on corporate political speech during the critical pre-election period is not a permissible remedy. Here Congress has created categorical bans on speech that are asymmetrical to preventing quid pro quo corruption.

The Court concluded that “[n]o sufficient governmental interest justifies limits on the political speech of nonprofit or for-profit corporations.” The Court did uphold, however, the BCRA’s disclaimer and disclosure requirements.

This new holding brings into even sharper focus the power the corporation has to influence government. As Professor Erik Gerding commented soon after the decision:

From a pure descriptive standpoint, after the Citizens United decision, it seems impossible to argue that these spheres [corporations and government] can be neatly separated. Corporations are not just playing by the rules, they have the right to participate in setting them. Moreover, they may be the 800 lb gorilla in the room. The problem the Progressive Movement faces with regard to lobbying and free speech actions is that the corporation has no ability to weigh right from wrong; it is questionable, in some circumstances, what best advances societal goals. Ultimately, because of this lack of corporate conscience, the corporation must rely upon its agents, i.e. the board of directors and its officers. In such areas, CSR comes down to how those individuals view the corporate purpose and their roles in pursuit of that corporate purpose. A review of two classic works on the nature of

98. Id. at 908–09.
99. Id. at 913.
100. Id. at 913.
101. Id. at 916.
103. Fisch, supra note 19, at 1603; Marks, supra note 7, at 1149.
power and how it should or could be wielded offers insight into the nature of corporate governance and CSR. This is not to say, however, that these officers and directors are permitted to act in completely self-interested ways. Officers and directors owe a fiduciary duty to the corporation, which is generally described as encompassing two more specific duties: a duty of care and a duty of loyalty. Professor Gevurtz aptly summarizes these duties as “[a] duty to exercise care in avoiding harm to the corporation, and a duty of loyally placing the corporation’s interests ahead of one’s own.” The obligations imposed by this fiduciary relationship would seem to support the SPN in that the officers and directors should be placing the corporation’s interests (and therefore the shareholders interests) ahead of their own, but this conclusion presumes that the corporate purpose is to narrowly serve it shareholders, which the progressives take issue with.

Also, despite this fiduciary relationship, officers and directors still maintain a great deal of discretion to act as they see fit under the business judgment rule. This rule requires courts, when reviewing the decisions of corporate managers, to exercise restraint in second-guessing decisions that produce poor results. This means that though corporate managers are bound to make decisions that are in the best interest of the corporation, a plausible articulated corporate purpose may suffice for satisfying the business judgment rule. This again places the power of corporate governance into the hands of the of-


106. Gevurtz, supra note 104, at 278–79.

107. See, e.g., Sinclair Oil Corp. v. Levien, 280 A.2d 717, 720 (Del. 1971) (“A board of directors enjoys a presumption of sound business judgment, and its decisions will not be disturbed if they can be attributed to any rational business purpose.”). See also Christopher M. Bruner, The Enduring Ambivalence of Corporate Law, 59 Ala. L. Rev. 1385, 1425 (2008); Krishnan S. Chittur, Resolving Close Corporation Conflicts: A Fresh Approach, 10 Harv. J.L. & Pub. Pol’y 129, 154 (1990) (“So long as the controlling stockholder’s conduct is not outrageous—that is, a plausible business reason can be articulated—his decisions are protected by the business judgment rule.”); Douglas K. Moll, Shareholder Oppression in Texas Close Corporations: Majority Rule (Still) Isn’t What it Used To Be, 43 Tex. J. Bus. L. 21, 35 (2009) (“When the business judgment rule applies, judicial scrutiny of a board’s substantive business decision is practically non-existent. The directors are entitled to prevail when their actions are challenged so long as they can articulate any rational business purpose for their conduct.”); Lynn A. Stout, Why We Should Stop Teaching Dodge v. Ford, 3 Va. L. & Bus. Rev. 165, 170–71 (2008) (“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 possible future benefit, however intangible and unlikely, to shareholders.”).
officers and directors. A review of two classic works on the nature of power and how it should or could be wielded offers insight into the nature of corporate governance and CSR.

II. Corporations and Business Ethics of the Past: Plato, Machiavelli, and the City-State.

Given the corporation’s reliance on its agents, namely the CEO, the Board of Directors, and other corporate officers, CSR scholarship benefits from determining how corporate agents might use corporate assets, for what purpose, and what might influence their behavior. Platonic and Machiavellian theories are not the first that are generally used when analyzing corporate ethics. Utilitarian theory, with its emphasis on maximizing “happiness,” together with classic economic theory, has been important in providing ethical underpinnings for the shareholder primacy position. However, most progressive commentators adhere to a more Kantian point of view, which focuses on determining what is “right” or “good” objectively and then determining whether an action falls within that measurement. Both the Utilitarian and Kantian approaches are problematic. As is clear from the discussion above, proponents of the SPN do not believe that CSR adds anything meaningful. They argue that it is at best a distraction and at worst a violation of the fiduciary duties corporate officers owe to their shareholders. Likewise, the progressive position preordains that CSR, particularly its philanthropic aspects, should be followed. To progressive proponents, the pursuit of wealth for its own sake “represents a state of affairs that they find repugnant.”

The Utilitarian/Kantian dichotomy, while useful, puts all sides of the CSR debate into set positions. There is a third branch of Western philosophical thought that argues social goals are best pursued by defining the characteristics people should have, especially the character-

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108. GEORGE P. FLETCHER, BASIC CONCEPTS OF LEGAL THOUGHT 144 (1996) (“The most common mode of moral reasoning in the Anglo-American tradition is cost/benefit analysis—the “balancing” of competing advantages and disadvantages of adopting particular courses of action.”).

109. Id. at 146–51, 149 (“In the end Kant’s moral teaching demands purity from all of us.”).

110. This is somewhat of an oversimplification of the dichotomy, and arguments could certainly be made that Progressives also follow a global utilitarian model in that corporations should maximize the happiness of society if it outweighs the pain inflicted upon itself. A full discussion of the Utilitarian/Kantian dichotomy is beyond the scope of this article, but it is at least important to recognize the link between these philosophical schools of thought and modern approaches to CSR.

111. Smith, supra note 69, at 281.
istics of rulers. Two of the most important works that follow this approach are Plato’s *The Republic* and Machiavelli’s *The Prince*. These works may allow better insight into how corporate actors would and should use CSR. As a first step, this article addresses whether it is actually valid to compare the City-States of Ancient Greece and Renaissance Italy with the modern corporation.

### A. The City-State and the Modern Corporation

#### 1. The Problems of Governance

Both *The Prince* and *The Republic* are tracts of political theory. They are concerned with the mechanics of government, namely, how rulers should rule. But why should we look to them for guidance on corporate conduct? Corporations are, after all, creatures of government, subject to governments, not governments themselves.  

Corporations are created for the same purposes as the city-state: as a “response to human needs.” Plato states that in nature each person had to see to his own needs. Eventually, it was seen that it was better for a person to concentrate his efforts on producing that for which he has a talent. Plato explains:

> Since each person has many wants, many partners and purveyors will be required to furnish them. One person will turn to another to supply a particular want, and for a different want or need he will seek out still another. Owing to this interchange of services, a multitude of persons will gather and dwell together in what we have to come to call the city or the state.  

According to Plato, the scope and size of the city-state expands as new specialties are identified and new groups of specialists join the population to meet the needs of those who desire them. First, the basic necessities are met: food, shelter, and clothing. The producers of these goods are further subdivided (weavers, shoemakers, stonemasons, carpenters).

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112. *See, e.g.*, Dartmouth Coll. v. Woodward, 17 U.S. 518, 636 (1819) (“A corporation is an artificial being, invisible, intangible, and existing only in contemplation of law. Being the mere creature of law, it possesses only those properties which the charter of its creation confers upon it, either expressly, or as incidental to its very existence. These are such as are supposed best calculated to effect the object for which it was created . . . . But this being does not share in the civil government of the country, unless that be the purpose for which it was created.” (Marshall, C.J.)).


114. *Cf. id.* at 369b–c (examining the structure of cities as a function of people requiring more than they can provide for themselves).

115. *Id.* at 370d.

116. *Id.* at 369c.

117. *Id.* at 369d.
carpenters, smiths, and other craftsmen), then a network of distributors (merchants) is introduced, as well as transporters.\footnote{Id. at 370c–371b.} Eventually, the city-state will become so large that very particular specialists will be needed who are capable of protecting friends, guarding against enemies, and have the wisdom to do so in all its aspects, not just on the field of battle.\footnote{Id. at 375a–376c.}

Machiavelli’s description of the rise of the state is also rooted in basic human need: “for in the beginning of the world, the inhabitants being few, they lived dispersed for a time in the manner of beasts. Then, as the population increased, they drew together . . . the better to defend themselves.”\footnote{Id. at 374d–e.} In short, the state was formed to promote human welfare. According to Machiavelli, the leader of the state “must provide in such a way that, in whatever circumstances, the citizens will always be in need of him and his government. Then they will always be loyal to him.”\footnote{Niccolo Machiavelli, The Discourses 102 (Daniel Donno trans., 1966) (contained in The Prince, supra note 14).} Machiavelli calls such people “The Prince.”\footnote{The Prince, supra note 14, at 46.}

For a compelling comparison of the ancient and renaissance city-state with the modern corporation, consider Peter Drucker’s The Concept of the Corporation. Drucker’s description of the purpose of a corporation closely aligns with Plato’s and Machiavelli’s description of the state: “When we say that the corporation is an institution we say that, like any institution, it is an instrument for the organization of human efforts to a common end.”\footnote{Peter F. Drucker, The Concept of the Corporation 20 (Transaction Publishers 1993) (1946). Also consider the Code of Conduct for Google, Inc., which states “[o]ur products, features and services should make Google more useful for all our users, whether they’re searching, advertising or posting content, and whether they’re large corporations or individuals. We have many different types of users, but one guiding principle: ‘Is what we are offering useful?’” Code of Conduct Part I.b., Corporate Governance, Google Investor Relations, http://investor.google.com/corporate/code-of-conduct.html (last updated Apr. 8, 2009).} Drucker, like Plato and Machiavelli, considers leadership a paramount concern:

[T]he large corporation is in no way different from an army; it must have the equipment but also, as in the army, equipment is of no avail without the functional organization of human effort. And like the army or like any other social institution, the things that
really count are not the individual members but the relations of command and responsibility among them.\textsuperscript{125}

As with every other institution, the survival and successful functioning of the corporation depends on the solution of three interdependent problems . . . Of these problems, the decisive one, particularly in the corporation, is the problem of leadership. . . . No institution can possibly survive if it needs geniuses or supermen to manage it.\textsuperscript{126}

While this is admittedly a cursory examination of the parallels between the modern corporation and the city-state, it is clear that both the state and the corporation are institutions created for the purpose of furthering human achievement and face similar leadership questions.

2. The Comparison of the Governed

Given that there were no corporations in either Machiavelli’s or Plato’s era, philosophical ideals regarding governing city-states and poleis provide us with the closest analogies in terms of population and economic power.\textsuperscript{127} Indeed, the size of some corporations dwarfs even the largest of the city-states and poleis: Walmart employs over two million people worldwide\textsuperscript{128} and recorded $13.4 billion in profits in

\begin{footnotesize}

125. Drucker, \textit{supra} note 124, at 25–26. It is interesting to note that Drucker’s purpose in some ways was also similar to Machiavelli: the preservation of the corporation, “[It is] the organization which the corporation must maintain and the survival of which is the supreme law. . . and makes survival all the more the measure of all its actions and decisions.” Id. at 26.

126. Drucker, \textit{supra} note 124, at 2. It may seem that Drucker argues against a Prince as Machiavelli envisions him. But Machiavelli clearly envisioned the Prince having a management team (Machiavelli himself aspired to be part of Lorenzo di Medici’s in Florence):

[T]here is no way of avoiding flattery except by letting men know that they will not offend by telling the truth; yet if every man is free to tell you the truth, you will not receive due respect. Therefore a prudent prince will pursue a third course, choosing the wise men of his state and granting only to them the freedom to tell him the truth, but only concerning those matter about which he asks, and no others. Yet he should question them about all matters, listen to their opinions, and then decide for himself as he wishes. He should treat these councils and the individual advisers in such a way as to make it clear that their words will be the more welcome the more freely they are spoken. Except for these men, he should listen to no one, but rather pursue the course agreed upon and do so resolutely.

\textit{The Prince, supra} note 14, at 88.


\end{footnotesize}
2009; Microsoft employs 88,414 people worldwide and anticipated $17.23 billion in profits in 2009; Exxon Mobil reports to employ nearly 80,000 worldwide and recorded $45.22 billion in 2009. While shareholder numbers for these corporations are difficult to ascertain due to the constant trading of stocks, Walmart has over three billion shares outstanding. Microsoft has in excess of eight billion shares outstanding, and Exxon Mobil has over five billion shares outstanding. Therefore, it seems certain these companies have thousands, or even millions, of shareholders.

Compare these corporation numbers to those of the poleis and city-states during Plato’s and Machiavelli’s time. Plato lived from 428–348 B.C.E. Though population estimates from this time period are scant, data does exist for some of the poleis. For instance, the polis of Mantinea, which occupied an area of roughly 295 km, did not have more than 3,000 people as of 420 B.C.E. It has been estimated that in 318 B.C.E. Megale polis’s population was around 65,000. When the territory of Thebes was conquered and razed in 335 B.C.E. by Alexander the Great, more than 6,000 men were killed, and the remaining population of 30,000 men, women, and children

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136. Mogens Herman Hansen & Thomas Heine Nielsen, An Inventory of Archaic and Classical Poleis 8 (2004). These numbers generally come from army figures, which give a "rough idea of the number of adult male citizens of military age who are fit for military service." Id.
137. Id. at 518.
138. Id. (“[I]t is not possible to give any exact estimate of the size of the population on this basis.”).
were sold into slavery.\textsuperscript{141} Machiavelli lived from 1469–1527 C.E. and the population data from his life is likewise approximate, but according to one source, the estimated population of all of Italy in 1450 C.E. was only 7,500,000 people.\textsuperscript{142} According to another source, fifty years later the estimate was 10,500,000 people.\textsuperscript{143} As Italy was not unified until 1861, these population numbers are distributed among as many as nineteen autonomous regions.

\section*{B. Machiavelli’s \textit{The Prince} and Doing What Is Necessary}

It is important to recognize that Niccolo Machiavelli wrote \textit{The Prince} with one primary goal in mind; it was a naked attempt to get into the good graces of Lorenzo Medici.\textsuperscript{144} It was also a failure in that regard.\textsuperscript{145} It is often overlooked that his advocacy for a monarchy may well have been more the act of a courtier than a reflection of his political beliefs.\textsuperscript{146}

\begin{enumerate}
\item \textsuperscript{141} \textit{Id.} at 455.
\item \textsuperscript{143} Thomas A. Brady, Jr. et al., \textit{Handbook of European History 1400-1600: Late Middle Ages, Renaissance, and Reformation 13} (E.J. Brill 1994).
\item \textsuperscript{144} \textit{The Prince}, supra note 14, at 5–6. (“I . . . have composed a little book, De Principatibus . . . to a prince—especially a new prince—it ought to be welcome. Therefore I am addressing it to the Magnificent Giuliano . . . . There is my wish that these Medici lords would begin to use me, even if they were to start by setting me to roll a stone.”) (letter to Francesco Vittori, December 10, 1513). \textit{See also The Essential Writings of Machiavelli}, at xix (Peter Constantine ed. & trans., 2007).
\item The Lorenzo Medici here is not Lorenzo the Magnificent, who died in 1492. It is instead, his grandson. Originally, \textit{The Prince} was to be dedicated to Giuliano Medici, Lorenzo the Magnificent’s son, who died in 1516. \textit{The Prince}, supra note 14, at 135 n.1.
\item \textsuperscript{145} This failure could not have been unexpected. After all, he had been tortured in January of 1513 on suspicion of seeking the overthrow of the Medici government.
\item \textsuperscript{146} There has never been any doubt among the students of Machiavelli that he believed in republican government over monarchies. Rousseau believed the book to be a subversive writing,
\begin{quote}
Machiavelli was a gentleman and a good citizen; but being attached to the house of Medici, he was forced during the oppression of his country to disguise his love of liberty. The very choice of an execrable hero [Cesare Borgia] reveals his secret intention, and the antithesis between his principles in his book \textit{The Prince} and those in his \textit{Discourses on Livy} and \textit{The History of Florence} proves that this profound political thinker has so far had only superficial or corrupted readers. The Pope’s court strictly prohibited his book, which I can well believe, since that was the Court he depicts most plainly.
\end{quote}
\end{enumerate}

\textit{Jean-Jacques Rousseau}, \textit{The Social Contract} 118, n.* (Maurice Cranston trans., 1968) (1762). Antonio Gramsci, an Italian Marxist, went so far as to argue \textit{The Prince} was a proto-revolutionary work, as it exposes the tactics of the rulers to the common people. \textit{Antonio Gramsci, The Modern Prince and Other Writings} 135–36 (Louis Marks trans., 1957).
Notwithstanding these caveats, Machiavelli’s advice is as relevant to corporate CEOs as it was to Medici. Consider:

Wisely pursued, the advice I have given above will make a new prince appear to have been long established in his state, and it will bind him more securely and more firmly to it than if he had actually been long established there. The actions of the new prince are . . . closely watched. . . and when they are recognized to be fitting and able, they win men over and compel their allegiance more than ancient lineage does; for men are more taken with the present than with the past. When they find themselves well off in the present, they enjoy it and seek nothing more. Indeed, so long as the prince does not neglect his duties, they will undertake to defend him in every way.\textsuperscript{147}

This was an explicit reminder to Medici that his family had only been back in power for a very short time and had conquered Florence with a Spanish Army.\textsuperscript{148} The Florentines were not used to his rule and might decide to revolt again, as they had 18 years before. Such can be said to be similar for the CEO, with Directors and shareholders always looking over his shoulder. Follow my advice, says Machiavelli, and you and your state (corporation) will thrive.

\textit{The Prince} is divided into three parts. The first part essentially lists all the different ways a man may become a prince: through inheritance, through force of arms, by evil means, or by religious office;\textsuperscript{149} it is not germane to this article. The second part concerns what a ruler should do to hold onto power once acquired.\textsuperscript{150} The final part was an argument for what should happen next in Florence and on the Italian Peninsula.\textsuperscript{151}

We will focus on the second part of \textit{The Prince}, which is about maintaining power and furthering goals, particularly the goals of personal and political survival. According to Machiavelli, order is the only way to ensure social stability, and the key to order is a strong ruler. One of his key points is that moral obligations should not stand in the way of survival.

Many men have imagined republics and principalities that never really existed at all. Yet the way men live is so far removed from the way they ought to live that anyone who abandons what is for what

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\item[147.] \textit{The Prince}, supra note 14, at 89–90.
\item[148.] \textit{Id.} at 3. The former regime, which Machiavelli was part of, had lost a war and been turned out by the Medici dynasty. The Medici had backed the winning side in a larger war for control over Italy and essentially sought Florence as a spoil after an eighteen year absence. \textit{Id.}
\item[149.] \textit{Id.} at 16–51.
\item[150.] \textit{Id.} at 51–89.
\item[151.] \textit{Id.} at 89–97.
\end{enumerate}
\end{footnotesize}
should be pursues his downfall rather than his preservation; for a man who strives after goodness in all his acts is sure to come to ruin, since there are so many men who are not good. Hence it is necessary that a prince who is interested in his survival learn to be other than good, making use of this capacity or refraining from it according to need.\textsuperscript{152}

Machiavelli discusses two issues relevant to the modern corporate officer: (1) Should the Prince be virtuous? and (2) What should his spending policies be with regard to virtue? Whether one should be virtuous, Machiavelli argues, depends on to what degree it helps the prince, and through him, the state, survive and thrive. As he states:

How praiseworthy it is that a prince keeps his word and governs by candor instead of craft, everyone knows. Yet the experience of our own time shows that those princes who had little regard for their word and had the craftiness to turn men’s minds have accomplished great things. . . .

Therefore a prince will not actually need to have all the qualities previously mentioned, but he must surely seem to have them. Indeed, I would go so far as to say that having them all and always conforming to them would be harmful, while appearing to have them would be useful.\textsuperscript{153}

At the same time, the prince cannot give into his appetites. He should always appear to be, and actually be, virtuous, whenever possible.\textsuperscript{154} The prince should discard virtue only when it is required, not

\textsuperscript{152} Id. at 61–62. There can really be no doubt that Machiavelli was thinking of Plato, among others. However, as will be discussed below, Plato’s focus was just as much on the injustice he was describing as it was on the perfect city that never existed. Machiavelli did not have any problems with goodness as such. However, he did not really have much problem with vice either. To wit:

Everyone will admit that it would be very praiseworthy if a prince had all those above-named qualities that are deemed good; but since he cannot have them, nor devotedly adhere to them, because human conditions will not permit, he must be sufficiently prudent to avoid a reputation for those vices which would deprive him of his state and, if possible, also avoid those that would not deprive him of it. In case he is unable to avoid these last, however, he need not be overly concerned. Moreover, he need not be concerned if he acquires a reputation for those vices without which he would be unlikely to save his state. For, everything considered, he will find things which, though seeming good, will lead to his ruin if pursued, and others which, though seeming evil, will result in his safety and well-being.

\textsuperscript{153} THE PRINCE, supra note 14, at 68–69.

\textsuperscript{154} Id. at 69.

Therefore, a prince will not actually need to have all the qualities previously mentioned, but he must surely seem to have them. . . . That is, it will be well for him to seem and, actually, to be merciful, faithful, humane, frank, and religious. But he should preserve a disposition which will make a reversal of conduct possible in case the need arises.
simply because he can.\textsuperscript{155} The reason for this is straightforward: the prince cannot afford to be hated.\textsuperscript{156} If a prince is hated, then the population has no reason for him (and by extension his state) to survive.

The activities of a prince are not solely concerned with following high moral standards. At some point, money must be spent. Of course, there are necessary expenditures—the government’s servants must be paid, defenses must be maintained, and so forth. Yet, some spending is a matter of the prince’s discretion. Such spending has no purpose other than enhancing the prince’s reputation. Machiavelli argues that the prince must be careful with his money:

I say that it would be well to be reputed generous. Yet to be so generous as to gain a reputation for this quality is harmful. . . . To be reputed generous among men, one must indulge in every form of ostentation, with the result that any prince who does so will have to spend all of his resources and, to keep up his reputation, will have to burden his people unduly by resorting to extortionate taxation and every other means of raising funds.

Therefore, being unable to assume the virtue of liberality so that it will be recognized and yet create no danger, a wise prince will not object to being reputed a miser.\textsuperscript{157}

However, Machiavelli recognized that many notable rulers in the past—Cyrus, Alexander, and Julius Caesar—were seen as generous. The key, argued Machiavelli, was whether the prince was spending his own money, his subjects’ money, or someone else’s.\textsuperscript{158} If it was his subjects’ own funds, the prince must be frugal, lest he face the choice of being either “poor and contemptible or, to escape poverty, becom[ing] rapacious and hateful.”\textsuperscript{159} On the other hand, if the funds being spent were from another source, such as bounty from pillaging and extorting conquered lands, then there is no reason for the prince not to be generous, especially to his army.\textsuperscript{160}

\textit{Id.}

155. \textit{Id.}

156. “Of all the things [the prince] must guard against, hatred and contempt come first. . . .” \textit{Id.} at 64. “Still a prince should make himself feared in such a way that, though he does not gain love, he escapes hatred. . . .” \textit{Id.} at 66.

It is interesting to note that Machiavelli sees the chief cause for hatred for the prince is seizing the property of his subjects. “[A]bove all, he should refrain from the property of others, for men are quicker to forget the death of a father than the loss of a patrimony.” \textit{Id.}

157. \textit{The Prince, supra} note 14, at 63.

158. \textit{Id.} at 64.

159. \textit{Id.} at 64.

160. \textit{Id.} This particular aspect of Machiavelli’s thought is particularly relevant depending on whether corporate officers view the corporations’ assets as belonging to themselves
Machiavelli saw the prince’s ability to stay in power as a balancing act between doing what was required to stay in power and not doing so much as to be despised for it. Ultimately, however, Machiavelli condones any action of a prince that keeps him in power; only failure is unforgivable.\footnote{161} In this way, Machiavelli mirrors much of Ancient Greek thought, particularly that of Athens in the fifth century B.C.E., prior to its defeat in the Peloponnesian Wars. Machiavelli aspired for a prince who could free Italy from its foreign occupation.\footnote{162} Anything that could accomplish this would, in his view, be seen as good and be appropriately rewarded by all.\footnote{163} This is consistent with the Athenian perspective that looked to external accomplishments to indicate individual and societal excellence.\footnote{164} In this view, if the end is met, any means to obtain it are justified. The most important response to this is unquestionably Plato’s \textit{The Republic}.

\section*{C. The Platonic Alternative}

Since \textit{The Prince} is a purely political tract, and \textit{The Republic} a largely ethical one, how can Plato be seen as responding to Machiavellian theory, especially two thousand years before Machiavelli was born? To answer this question, we will examine the similarities in the

\begin{quote}
along with the shareholders, or if they view the shareholders property as something they “handle.”
\end{quote}

\begin{quote}
161. Consider:
One could cite a host of modern examples and list the many peace treaties, the many promises that were made null and void by princes who broke faith, with the advantage going to the one who best knew how to play the fox. But one must know how to mask this nature skillfully and be a great dissembler. Men are so simple and so much inclined to obey immediate needs that a deceiver will never lack victims for his deception. Of recent examples proving this, there is one I will not omit. Pope Alexander VI never gave thought to anything but deception and never lacked someone on whom to practice it. There never was a man who made promises more persuasively or swore to them more solemnly and kept so few of them as he. Yet his tricks always brought the results he desired, for he knew this side of the world well.
\end{quote}

\textit{Id.} at 68–69.

\begin{quote}
162. \textit{Id.} at 94–97.
\end{quote}

\begin{quote}
163. This opportunity, therefore, must not be allowed to pass, so that Italy after so long a time may find her redeemer. I cannot describe with how much love, with what thirst for revenge, with what resolute loyalty, with what tenderness, with what tears he would be received in all those provinces which have endured these foreign hordes. What gates would be closed to him? What people would deny him obedience? Whose envy would oppose him? What Italian would withhold his allegiance?
\end{quote}

\textit{Id.} at 97.

\begin{quote}
\end{quote}
political situations of the two periods, followed by Plato’s response to the Ancient Greek mindset (and by extension Machiavelli).

1. Plato’s Greece and Machiavelli’s Italy

_The Republic_ was written sometime between 380 and 360 B.C.E. in Athens. At that time, the Greek city-states were in the middle of a century of intercity warfare. It began with the Second Peloponnesian War in 431 B.C.E. and ended with the loss of Greek independence to Macedon in 336 B.C.E. after the Battle of Chaeronea. Within Plato’s lifetime, he saw the destruction of the Athenian Empire and the weakening of the entire Greek peninsula as Phillip II sought his own hegemony. Plato’s ultimate conclusion was that, whether by base appetite or incorrect morality, the constant drive to victory, by individuals or individual city-states with no concern for the consequences of ceaseless war, was destroying his country. He wrote _The Republic_, in part, to address his concerns and propose a solution.

Machiavelli’s Italy, especially Florence, was equally war-torn. With the end of the Hundred Years War in France in 1453 and the Conquest of Granada in Spain in 1492, the rulers of those two nations turned to the Italian peninsula to fight proxy wars. In Florence, Machiavelli watched the destruction of the old order with the invasion of Charles VII of France, saw Savanorola’s extreme religious theocracy ended with an _auto de fe_, the rise and fall of an oligarchical republic (for which Machiavelli served as Secretary to the Second Chancery of the Signoria) under Pier Soderini, and the return of the Medici at the head of a Spanish army. What happened in Florence was going on elsewhere in the Peninsula, and Machiavelli saw Italy as “more enslaved than the Hebrews, more servile than the Persians, more scattered than the Athenians, leaderless, disordered, beaten, despoiled, bruised, trampled, subject to every kind of injury.”

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166. _Id._
167. _E.g._ _The Republic_, supra note 24, at 278b–c (“Nor can we permit it to be said that the gods plot against the gods and make war upon each other—which is in any case false—if we want our future guardians to abhor even the thought of quarreling among themselves. . . . If we could get them to believe us, we would tell our future guardians that quarreling is a blasphemy, and we would say that to this day there has never been a quarrel among citizens.”).
169. _Id._ at 215–19.
170. _The Prince_, supra note 14 at 94–95.
2. The Republic

The Republic and The Prince, then, both arose from times of extreme social instability. Yet the authors came up with very different solutions. Plato argued that, contrary to common belief, tough times do not require “tough” leaders, but that such leaders are actually responsible for the hardships of the populace. Machiavelli, as already discussed, argued that it would be best for a leader to establish himself in power and then devote his energies to staying there, as stability would be better for the populace at large than the chaos of constant upheaval.\footnote{Id. at 89–90.}

In Book I of The Republic, Socrates is attending a religious festival and visits the home of an old friend.\footnote{THE REPUBLIC, supra note 24, at 327–328b.} Through his dialogue with his companions, Socrates proposes the following theory: the unjust man will harm both the just and the unjust in pursuit of his own gains, while the just man harms only the unjust who would harm others or himself.\footnote{Id. at 350d–354b.} He further argues that injustice can never be profitable, as those who are unjust cannot help but to conduct their lives badly, while those who are just govern their lives well, and by extension, live well.\footnote{Id. at 353b–358a.}

In Book II of The Republic, Plato begins to directly address the issues that Machiavelli would later raise in The Prince. Here, Socrates is confronted by Glaucon and Adeimantus, who present arguments about the type of person who is successful in becoming a leader of the city. Consider the following in light of our discussion of The Prince.

Perfect injustice denotes the perfectly unjust man. . . . He must be allowed to enjoy the greatest reputation for justice all the while he is committing the greatest wrongs. If by mistake any of his misdeeds should become known, he must be endowed with ample powers of persuasion so that he can cover them up. Should he need to use force, let him do so with boldness and manly strength—and by mobilizing friends and money.\footnote{Id. at 361a–b.}

You know well how fathers lecture theirs sons (and guardians their charges) about man’s obligation and also how they use words that compliment not justice but the good repute that comes with it. They calculate that a reputation for justice will gain a man public office and fortunate alliances and all the things that Glaucon already said would accrue to the unjust man who wears the cloak of righteousness.\footnote{Id. at 363a.}
These arguments on the success of the unjust man were presented as a goad to Socrates, daring him to respond to the success of figures who had brought Athens and Greek society as a whole into crisis.177

For Plato, the ruler epitomized by Machiavelli’s prince was the embodiment of the worst possible person, the tyrant. The tyrant, according to Plato, arises when people, fearing the loss of their goods in the face of a perceived evil, choose a protector.178 This is much the role that Machiavelli sees the prince playing.179 However, Plato views the arrival of the tyrant as the final disaster for a community.180 Rather than protecting the people, he enslaves them, takes all steps necessary to secure his power and feed his appetites, and in the search for new conquests creates pretexts to make war. The tyrant thus makes the very people who chose him even less safe than before.181 Unlike Machiavelli’s prince, having secured power the tyrant is unconcerned

177. You have said that justice belongs to that highest class of good things which not only produce good effects but which are, above all, valuable in themselves. . . . So tell us how justice benefits a man intrinsically, and in the same way how injustice harms him. Let others praise or blame the respective rewards and reputations. . . . I repeat, then, disregard outward appearances, and prove to us that justice is better than injustice by showing us the effects each has on a man’s soul and how and why each effect can properly be called good or evil. 

Id. at 367c–e.

178. Id. at 565c–d.

179. This opportunity, therefore, must not be allowed to pass, so that Italy, after so long a time, may find her redeemer. I cannot describe how much love, with what thirst for revenge, with what resolute loyalty, and what tenderness, with what tears he would be received in all those provinces which have endured these foreign hordes. What gates would be closed to him? What people would deny him obedience? Whose envy would oppose him? What Italian would withhold his allegiance? This barbarian domination stinks in everyone’s nostrils. Let your illustrious house take up this task, then, with that boldness and with that hope which is reserved to just enterprises, so that this nation may be ennobled under you banner and so that under your auspices the words Petrarch wrote may come true: Against barbarian rage, Virtue will take the field; then short the fight; True to their lineage, Italian hearts will prove their Roman might.

The Prince, supra note 14, at 97.

180. The Republic, supra note 24, at 569b–c.

181. Id. at 565d–568d. Plato even observed that the tyrant would no doubt attract poets and other people capable of persuading others of the advantages of the tyrant’s system. Id. at 568a–c. Machiavelli’s championing of Cesare Borgia looks perhaps even worse is such light. See The Prince, supra note 14, at 82–83.

Another aspect of the Tyrant, and a very important one for Plato, is that the Tyrant’s appetites do not bring him satisfaction. Instead, they increase anxiety, for the Tyrant believes all share his approach and is always fearful of the next Tyrant. So just like the Prince, the Tyrant pays intense attention to those who he rules. But not to appease them, but to locate threats. This is why Plato believes that the unjust man, of with the Tyrant is the paramount example, cannot be happy. Id.
with even the appearance of virtue, since he views his subjects as potential threats to his rule.182

So how is the city to avoid the injustice personified by the tyrant? In a word: education. For Plato, education was the crucial component for justice: educate citizens properly, and the ruler (who comes from the citizens, and is sometimes directly chosen by them) will be just as a matter of habit.183 This is especially important because Plato felt that a guardian must be “high spirited,” a person who actually wants to lead and have others follow him.184 Plato was aware such high spirits can cause people to be “quick-tempered and savage with one another.”185 Therefore, there must be some means by which rulers can learn to be “fierce to their enemies but gentle to their friends” lest they “destroy one another before their enemies ever get at them.”186 In order to know when to be fierce and when to be gentle, a ruler must be a lover of learning, a philosopher.187 This makes education a vital component

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182. See The Prince, supra note 14, at 82–83.

It is a fair question as to whether the Tyrant would be happier and less insecure were he to have The Prince to examine. At first, a distinction can be made that between the Tyrant and the Prince are those appetites. For Machiavelli, a Prince is focused on stability, and he cannot be seen as giving his desires free reign less it threaten his rule. Id. at 68–69. He would agree that the Tyrant’s rule cannot last because his appetites will cause him to be hated.

Machiavelli’s argument, for Plato, falls apart because of Machiavelli’s insistence that the only art that the Prince should be concerned with are the military ones. Id. at 68. Such a training, however, simply replicates the Homeric insistence on winning and personal excellence being one and the same. E.g., The Republic, supra note 24, at 390a–391c (Where Socrates asserts that the actions ascribed to Achilles in the Iliad cannot have been those a virtuous person, despite Homer’s insistence otherwise.). The Tyrant’s appetites arise, in part, because of that training. Instead, and this is the crucial point for Plato, it is the education that a ruler receives beyond the purely military ones, that create an excellent ruler. It is not enough that rulers know how to fight. The ruler must also be philosopher, which is to say, a person who is concerned with, and trained to be able to find, the truth.

183. Unless philosophers become kings in our cities, or unless those who now are kings and rulers become true philosophers, so that political power and philosophic intelligence converge, and unless those lesser natures who run after one without the other are excluded from governing, I believe there can be no end to troubles, my dear Glaucn, in our cities or for all mankind. Only then will our theory of the state spring to life and see the light of day, at least to the degree possible.

Id. at 473c–e.

184. Id. at 375b.

185. Id.

186. Id. at 375c.

187. Do you not see that knowing and not knowing are the sole criteria the dog uses to distinguish friend from enemy? Does it not follow that any animal that verifies his likes and dislikes by the test of knowledge and ignorance must be a lover of learning?

Oh, indeed.
for a just society, because it is only through education that justice can be nurtured within each individual.  

It is within his discussion of the ideal educational curriculum, and the exclusion of the heroic poems from it, that Plato presents the characteristics of the just ruler and the just society. Those characteristics are: a ruler must be able to identify a wrong and not excuse it because it was the action of a god or other powerful figure; restraint cannot be abandoned in order to punish wrongdoing; oaths and treaties (which had the force of law in Ancient Greece), once taken, should be followed; be courageous; be truthful unless there is a legitimate public good, such as deceiving enemies, for a lie; be moderate in all conduct, especially those concerning bodily appetites; and do not let the desire for wealth get in the way of doing what is proper and humane. It is important to note here that, according to Plato, it is the combination of all these characteristics that leads to justice; justice does not exist on its own.

And is not the love of learning the same as the love of wisdom which, in turn, is philosophy? All are identical.

Then let us be bold. Having made the case for the dog, let us make the case for man as well: he who is gentle to his friends and to those he knows must by nature be a philosopher.

\[Id. \text{ at } 376b–c.\]

188. But now comes the question of his upbringing and education. How shall we manage them? Is this question not germane to the principle objective of our inquiry, namely, the origin and role of justice and injustice in the city? Of course, we do not want to be tedious by prolonging the argument beyond a reasonable length. Neither, however, do we want to omit anything essential to our discussion.

\[Id. \text{ at } 376c–d.\]

The question of education is clearly relevant to our inquiry. The question of the educations curriculum was equally important for Plato:

Then you will also understand that the most important part of any work is its beginning. This is especially true for the education of young children. At this tender age they are the most impressionable and therefore most likely to adopt any and all models set before them.

True.

Then we can hardly afford to let the children listen to just any tales or fables recounted by just any teachers who happen along. We surely don’t want the children to adopt opinions and beliefs that might be largely contrary to the kinds of values we deem desirable for them to have when they become adults.

\[Id. \text{ at } 377a–b.\]

189. \[Id. \text{ at } 378b.\]

190. \[Id.\]

191. \[Id. \text{ at } 379e.\]

192. \[Id. \text{ at } 386a.\]

193. \[Id. \text{ at } 389b–c.\]

194. \[Id. \text{ at } 389d–c.\]

195. \[Id. \text{ at } 390e.\]
The fact that Plato targeted the heroic myths is especially crucial to the discussion of CSR and business ethics in general. Plato quite deliberately wanted to have stories of bad conduct by powerful people excluded because of the tendency to glorify such behaviors simply because they are done by the powerful. It was his belief that rather than serving as cautionary tales, such stories instead became examples to be emulated. At a time when powerful business people are referred to as “Masters of the Universe,” Plato’s argument here resonates.

III. Corporate Virtue: The Fate of CSR at the Hands of Philosophy

Having examined *The Prince* and *The Republic*, they can now be applied to CSR and the modern corporation. When examined in terms of the self-preservation of the corporate entity, Machiavellian concepts support the SPN, while Plato’s ideas could be viewed as landing on the side of the progressives. What seems equally clear, however, is that examples support each model’s approach to CSR as making good business sense; it all depends on what particular situation a company finds itself in. When the analysis focuses on how those who manage the corporation utilize CSR, it appears that management can (and does) adopt either of these two positions—a SPN or a Progressive stance—to support the decisions made. Thus, corporate managers may be operating under a Machiavellian model that is not embodied by either of these two legal approaches to CSR, but which mimics them as a justification to achieve a self-interested result.

A. *The Prince*, Shareholder Primacy, and CSR

There is a direct correlation between *The Prince* and CSR. As the prince has absolute power, any action he takes is discretionary. He has no obligation to follow the law because he is the law. Some proponents of the SPN, such as Easterbrook and Fischel, take a similar position, arguing that any obligation to comply with a law is simply a

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196. *See id.* at 378b–c, 388d, 391e. Plato’s discussion of Achilles’ conduct in the *Iliad* provides a good example of his concern:

That Achilles actually did all these things is something we must not believe. We shall reject the charges that he dragged Hector’s body around the tomb of Patroclus and slew living victims on the funeral pyre. We must not suffer our youth to suppose that Achilles, pupil of most wise Chiron—Achilles, son of a goddess and of Peleus, the most chaste of men and grandson of Zeus—could be so at odds with himself as to suffer from two contradictory maladies: greed such as becomes no free man and a brazen arrogance towards both gods and men.

*Id.* at 391b–c.
question of balancing the costs and benefits of following that law against the gains to be made by breaking it.197 For a princely CEO following Machiavelli, the first issue must be whether CSR should, in fact, be followed as corporate policy. The Machiavellian position is clear: the survival of the corporation that is paramount. Thus, while Machiavelli clearly instructs that virtue should not stop the corporation from pursuing its own interests, neither should the absence of virtue condemn it.

Looking to the progressive side of CSR, Machiavelli’s prince would not approve. More than likely, the prince would find such expenditures as wasteful, devoted more to the appearance of propriety rather than actually benefitting the company. If so, then such activities must cease if the current management is to continue. And there are examples that bear this out:

Cummins Engine, one of the pioneers of the corporate social responsibility movement, had to abandon its paternalistic employment policies and its generous contributions to its communities when its investors demanded higher returns. Dayton Hudson, another notably socially responsible company, came close to being swallowed up in a hostile takeover during the 1980s, and has since then paid exclusive attention to its customers and investors. Levi Strauss, also once on everyone’s list of America’s most socially responsible companies in part because of its commitment to source its clothing from domestic manufacturers, faced plummeting sales in the 1990s and had to eliminate its remaining domestic production. Polaroid, another pioneer, filed for bankruptcy in 2001. The shares of Britain’s retailer Marks & Spencer, which had ranked near the top in a survey of worldwide labor standards, performed so poorly the firm attracted a hostile takeover bid in 2004. Both Body Shop International and Ben & Jerry’s had been touted as among the nation’s most socially responsible companies until investor pressure pushed Body Shop founder Anita Roddick into an advisory role and Ben & Jerry’s was taken over by Unilever.198

Furthermore, corporate officers seem to follow Machiavelli’s, and Friedman’s, advice with regard to spending corporate assets. According to Robert Reich:

The only legitimate reason for a corporation to be generous with its shareholders’ money is to burnish its brand image, and such a rationale will go only so far. In Katrina’s aftermath, Wal-Mart’s [CEO] Scott was candid about the limits of his firm’s generosity. “We can’t send three trailer loads of merchandise to every group that asks for it,” he said, turning down a request for two thousand blankets. “We have to, at the end of this, have a viable business.”

197. See supra note 73 and accompanying text.
198. REICH, supra note 4, at 173–74.
Charitable giving by corporations is infinitely small compared to what the public sector dispenses.  

So, when faced with the possibility of failure, corporate officers seemingly appear ready to follow Machiavelli’s advice to do whatever is necessary to ensure their personal survival, which would, arguably, also ensure the survival of their companies. In other words, following the SPN would make Machiavellian sense as well as good business sense.

B. *The Republic*, Progressives, and CSR

Despite the litany of bad results from its practice, noted above, CSR retains vitality within the mindset of those concerned with corporate policy. As Cynthia Williams has noted:

> [M]ajor global companies are increasingly involved in various CSR initiatives that suggest a burgeoning sense of social obligation that goes beyond ‘mere’ law. . . . Thus, over the past five years, initiatives have proliferated that aim to increase social and environmental transparency, accountability and adherence to particularized standards of substantive social and environmental conduct.

What accounts for this continued willingness on the part of corporate officers to engage in activities that take money away from the corporation and its shareholders? A simple explanation would be that it is the right thing to do. For example, the Dutch logistics company TNT sent company resources and people into two dozen natural disasters between 2002 and 2007, including the Asian Tsunami of 2004. When asked why it does this, Luis Oelrich, the Director of TNT’s Moving the World program responded, “People feel this is a company that does more than take care of the bottom line . . . It’s providing a soul to TNT.”

Google, the search engine giant, incorporated the slogan “Don’t be Evil” as part of its corporate identity and backs it up with an open-ended set of employee policies.

It is the Platonic ideal that is at work here. Plato advocated for rulers of high virtue not because such virtues were good in themselves, but because such rulers would see to it that Athens would survive and

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199. Id. at 206.
202. Id.
thrive. More and more corporations are doing good, but part of the motivation is a desire to do well as companies. TNT, mentioned above, partners with one of its most important customers, the United Nations’ World Food Program (“WFP”), in intervening in disasters. This connection allows it to be more efficient in dealing with the WFP in its commercial activities, and it also acts as an incentive to recruit top talent. Coca-Cola, the world’s largest beverage company, has targeted preserving the world’s freshwater supply, something vital to its survival as a company, as well as to the survival of its customers. Seventh Generation is a $150 million maker of environmental household products whose entire corporate purpose is to help its customers buy sustainable goods—yet when the company went public, brokers promoted it because it was a good investment, pure and simple.

Such lofty sentiments as environmental protection also provide opportunities for businesses to save money by reducing waste and being more efficient. Many of these business practices are simple to implement, such as encouraging supermarket customers to bring reusable bags (instead of being supplied with free plastic ones) and turning off computers when leaving for the day to reduce overhead costs. Furthermore, the desire to reduce a company’s carbon footprint, without also reducing profits, has yielded new practices that reduce carbon emissions while increasing efficiency. Even more important, the desire to be environmentally conscious can lead companies to find new products to sell.

It would seem, then, that an impasse has been reached. Machiavelli and Plato’s ideals, applied at the company level, appear to lead to business success equally. This would seem to suggest that whether a company follows all or part of a CSR agenda depends in part on the actual business conditions in which a company finds itself.

204. We acknowledge that in this regard, the shareholder primacy norm proponents could have an equal claim to a Platonic model as actions which help the company survive are in the shareholders’ best interest. See also Stephen M. Bainbridge, Director Primacy: The Means and Ends of Corporate Governance, 97 Nw. U. L. Rev. 547, 550–51 (2003) (referring, under his director primacy norm, which also adopts shareholders’ best interests as an ultimate end goal, to boards of directors as Platonic guardians).

205. Feelgood Factor, supra note 201, at 3.

206. Id.

207. Id.


210. Id.

211. Id.
However, companies do not exist as freestanding entities. They are dependent on people.

C. Machiavellian Corporate Officers and Platonic Corporate Guardians

So far, we have presented corporate managers as the princes of the corporation. But a key component of Machiavelli, especially for those who seek business advice from him, is that he describes the world as he sees it, not as he wishes it to be.\textsuperscript{212} When reviewing the structure of corporate law not at the entity level but at the corporate manager level, a shift occurs—the Platonic model, which we have thus far analogized to Progressive Movement, starts to have more in common with the SPN. As has been noted above, corporate managers owe fiduciary duties to the corporation (and thus its shareholders) to act, not with themselves in mind, but with the corporation’s well-being. In this sense, corporate managers are more akin to Platonic guardians of the corporation. Certainly there are some officers and directors who fulfill this role, but given the ease with which corporate managers can avoid personal liability for their own decisions, be it through operation of the business judgment rule, indemnity provisions in their employment contract, or raincoat provisions, certainly there are some officers and directors who are acting not as Platonic guardians but under some other model—perhaps a Machiavellian model.

With this in mind, are corporate managers Machiavelli’s princes, or are they one of the foreign invaders that Machiavelli so desperately wanted thrown out—invaders who use the country’s resources for the benefit of his own foreign country (or himself)? Consider that the Renaissance prince really did have his life on the line should he lose his throne. At best, a fallen prince faced poverty and exile, much as Machiavelli did. But a CEO is not in this position. Today’s “golden parachutes” generally guarantee a huge financial windfall for a fired CEO. Executive compensation in the forms of salary, bonus, and stock options all come from funds that otherwise would go to company operations or the shareholders. While the prince’s fortunes are directly related to and dependent upon the wealth of his state, the CEO’s or director’s priorities are not always so directly aligned and can at times actually conflict with the corporation’s priorities.

\textsuperscript{212} See, e.g., JAV, supra note 17, at 25 (“I have called this book Management and Machiavelli not because it is based on Machiavelli’s arguments, but because it is based on his method of taking a current problem and then examining it in a practical way in the light of the experiences of others who have faced a similar problem in the past.”).
If corporate managers are actually akin to a foreign power in the Machiavellian sense, then the prescriptions of frugality Machiavelli laid out for the domestic prince do not apply to them. In fact, such managers may be incentivized to use the corporation’s assets for personal purposes, as their compensation is fixed at absurdly high sums regardless of the state of the corporation and risky behavior can only further their personal standing. This view of the CEO or director under the Machiavellian model may more accurately describe what is really going on at the management level. This realization is not altogether surprising. Others have already recognized that the shareholder primacy norm, with regard to corporate governance in general, is not a true reflection of what happens in day-to-day corporate governance.

Indeed, Berle and Means argued (in their famous thesis) that the sharp divide between corporate ownership and control has resulted in management becoming the effective owners of a corporation. The implicit economic problem, as set forth in their thesis, is that corporate managers have the potential to act in their own self-interest or for some purpose other than profit maximization, a notion that would seem to run counter to the SPN. Despite this separation of ownership and control, the shareholder primacy norm continues to remain the dominant theory of corporate governance.

Indeed, corporate law scholars who have acknowledged the flaws in the shareholder primacy norm still maintain this norm as the

213. Recall that Machiavelli saw the prince’s ability to stay in power as a balancing act between doing what was required to stay in power and not doing so much as to be despised for it by his own subjects. When using his subjects’ monies, the prince should act frugally to avoid the ire of his own citizens. See supra Part II.B. and notes 158–161 and accompanying text.

214. Or it may be that such officers simply don’t care enough due to their high compensation. Perhaps Michael Lewis phrases it best when, upon reflecting upon the money made by CEOs (and others) despite the mortgage meltdown they caused, he states, “What are the odds that people will make smart decisions about money if they don’t need to make smart decisions—if they can get rich making dumb decisions? The incentives on Wall Street were all wrong; they’re still all wrong.” Michael Lewis, The Big Short: Inside the Doomsday Machine 257 (1st ed. 2010).

215. Smith, supra note 69, at 279, 290 (noting that evidence suggests the shareholder primacy norm “may not accurately reflect reality”); Usha Rodrigues, From Loyalty to Conflict: Addressing Fiduciary Duty at the Officer Level, 61 Fla. L. Rev. 1, 3 (2009) (asserting that corporate agents put their own interests ahead of the corporation’s).


ultimate goal of other models. For instance, Professor Stephen Bainbridge has proposed a director primacy norm, which, while recognizing that the shareholder owners do not actually control the directors, nonetheless maintains that shareholder wealth maximization is the proper “end” of corporate governance.219

If it is true that corporate officers and directors are in control, which clearly seems to be the case, then is it so surprising that these same managers do not always act in the best interest of the corporation? Be it through ignorance of the duties owed to the corporation or due to more sinister motives, the past decade has provided numerous instances in which self-interest has seemingly been the guiding principle of corporate managers.220 While the Enron debacle of the 2000s was once the most outrageous example of executive abuses, it is not isolated.221 We have since experienced a financial meltdown that has directly affected millions globally, but the officers and directors of many of the responsible institutions have suffered little consequence, and in some instances, continue to reap large bonuses.222

219. Bainbridge, supra note 205, at 572. Bainbridge describes two axes: an “ends” axis which describes the interests a corporation should serve and a “means” axis which describes who has the decision-making authority. Id. at 547–50. Bainbridge lists shareholder wealth maximization at one end of the “ends” axis and a stakeholder model at the other. Id. at 549. The “means” axis is polarized by a managerial primacy model and a shareholder primacy model. Id. at 547–49. Bainbridge’s model accepts shareholder wealth maximization as a proper end but he believes that neither manager nor shareholder primacy get the “means” right and advocates for a director primacy model somewhere in between. Id. at 550 (“The director primacy model, on the other hand, splits the baby rather differently. As to the means axis, director primacy asserts that neither end of the spectrum gets it right. Neither shareholders nor managers control corporations—boards of directors do. As to the ends axis, director primacy claims that shareholders are the appropriate beneficiaries of director fiduciary duties. Hence, director accountability for maximizing shareholder wealth remains an important component of director primacy.”).

220. See Rodrigues, supra note 216, at 3 (“Even as the Enron and WorldCom frauds gave way to fresher tales of options backdating, corporate looting, insider trading, and more recently out-sized golden parachutes, the common denominator remained the fact that corporate agents put their own interests above those of the corporation.”).

221. For a review of some of the major scandals of the early 2000s, see Robert W. Hamilton & Jonathan R. Macey, Cases and Material on Corporations Including Partnerships and Limited Liability Companies 571–78 (10th ed. 2007); see also BP and Golden Parachutes: The Wages of Failure, Economist, July 31–Aug. 6, 2010, at 51. (“The financial crisis revealed that top bankers were fabulously remunerated for doing what turned out to be a lousy job.”).

Accepting that corporate managers are foreign powers rather than princes, under the Machiavellian model, these managers will place their own interests ahead of those of the corporation. But what does this mean for CSR and its applications? In many instances, little difference may be noticed between the Machiavellian model and the SPN. This is due largely to the often convergent interests of the corporation and the officer or director. Generally speaking, actions that benefit the corporation likewise benefit management. Shareholder wealth maximization offers job stability, and because the officers and directors are often shareholders themselves, it is in their own self-interest to pursue shareholder wealth maximization. For instance, in light of the *Citizens United* decision, corporations may very well have even greater influence over the political process and greater ability to use this influence to elect candidates who may favor limiting the liability of corporations and their officers. While it is possible that corporate managers will use this influence to promote their own self-interests, in many cases those interests will dovetail with those of the corporation, and thus the Machiavellian model will more or less disguise itself under the SPN model. However, there remain areas where the interests of the corporation and the interests of its managers diverge. In these instances, the Machiavellian model sometimes takes on the guise of a progressive point of view.

For instance, one area in which shareholder interests and management interests may diverge is within the context of a hostile takeover. In a takeover, the offering price per share may very well exceed the trading price, sometimes quite significantly. Such a takeover bid would appear to be in the best interests of the shareholders; however, the officers and directors may well be resistant to such a takeover, as it has the very real potential to negatively impact their own employment or continued membership on the board. Thus, corporate management may take actions such as adopting a “poison pill” strategy, making it much more difficult, and expensive, to complete the takeover. Though such actions would seem to be directly in conflict

223. See, e.g., Marks & Rapoport, supra note 3, at 1270 (describing the corporate buyout of Anheuser-Busch Company by InBev, SA in which the tender offer of $65 per share was 30% higher than the price at which the stock was trading on the open market at the time).
225. See A *HANDBOOK OF BUSINESS LAW TERMS* 459 (Bryan A. Garner, ed., 1999) ("[Poison pill:] A corporation’s defense against an unwanted takeover bid whereby shareholders are granted the right to acquire equity or debt securities at a favorable price in order to increase the bidder’s acquisition costs.").
with the shareholders’ interests, the corporate laws of many states are rather accommodating to such decisions, either respecting them under the business judgment rule\textsuperscript{226} or adopting so-called “other constituency” statutes which allow for corporate managers to take into account the interests of other stakeholders beyond just the shareholders.\textsuperscript{227}

At first blush, such statutes appear to be a nod to the progressive stakeholder model of corporate governance. However, these statutes have the potential to be used to justify self-interested decisions by directors.\textsuperscript{228} Though two-thirds of the states have adopted some form of “other constituency” statute, concern over abuse has prompted some commentators and states to reject such proposed statutes. As the Corporations Committee of the State Bar of California noted in its condemnation of a proposal to adopt such a statute:

Instead of promoting corporate social responsibility, the Committee believes that the [proposed other constituency statute] would lead to less director accountability, less responsive corporate governance and, ultimately, less socially responsible corporate behavior, for the following reasons:

\textsuperscript{226} See, e.g., Unocal Corp. v. Mesa Petroleum Co., 493 A.2d 946, 949 (Del. 1985). In upholding the board’s decision to reject a tender offer which it deemed too low, the Delaware Supreme Court stated:

A further aspect [of the business judgment rule] is the element of balance. If a defensive measure is to come within the ambit of the business judgment rule, it must be reasonable in relation to the threat posed. This entails an analysis by the directors of the nature of the takeover bid and its effect on the corporate enterprise. Examples of such concerns may include: inadequacy of the price offered, nature and timing of the offer, questions of illegality, the impact on “constituencies” other than shareholders (i.e., creditors, customers, employees, and perhaps even the community generally), the risk of nonconsummation, and the quality of securities being offered in the exchange.

\textsuperscript{Id. at 955.}

\textsuperscript{227} See Jack B. Jacobs, The Reach of State Corporate Law Beyond State Borders: Reflections Upon Federalism, 84 N.Y.U. L. Rev. 1149, 1167–68 (2009) (“By way of example, beginning in the 1980s, thirty-one states, including Pennsylvania, Virginia, and Rhode Island, adopted so-called ‘other constituency’ statutes. These statutes did two things. First, they relieved target company boards from any obligation, in responding to a takeover bid, to treat the interests of shareholders as paramount over all others. Second, they permitted those boards to consider the effects of a hostile takeover on other constituency groups, such as employees, suppliers, customers, creditors, and local communities.”).

\textsuperscript{228} Lynda J. Oswald, Shareholders v. Stakeholders: Evaluating Corporate Constituency Statutes Under the Takings Clause, 24 J. Corp. L. 1, 2 (1998) (“These statutes turn the well-ordered world of corporate ownership and management responsibility on its head. By permitting . . . managers to consider the interests of non-shareholder ‘stakeholders’ in the corporation . . . these constituency statutes blur the lines of corporate control and ownership and create a class of managers whose decisions are utterly discretionary and unfettered by the normal (albeit weak) controls imposed by traditional corporate law doctrine.”).
• The Bill would undermine director accountability to shareholders without effectively promoting interests of non-shareholder constituents.
• The Bill is unnecessary because current law is not an impediment to responsible corporate behavior and there are less intrusive means of protecting the interest of non-shareholder constituents.
• The Bill has the potential for causing significant economic harm to shareholders and the public generally.229

Thus, in states where constituency statutes have passed, it can be argued that this is one area in which the self-interest of management has not only prevailed, but has done so with the aid of state legislatures under a progressive guise.

Another area where the Machiavellian model has the potential to diverge from the SPN is in the area of legal compliance. To illustrate, we return to the ABC Corporation hypothetical from Part I, supra. Under SPN, the corporate managers should be motivated by what is in the best interests of the corporation. Easterbrook and Fischel would argue that this requires a balancing of the fines imposed by legal non-compliance and the risk of getting caught.230 However, under the Machiavellian model, the corporate manager will worry more about the personal impact of compliance or non-compliance rather than its impact on the corporation. If there is little chance of personal civil or criminal liability, and legal noncompliance could lead to higher profits, then the officer will be less diligent about ensuring legal compliance or may be more willing to engage in activities that operate in a legal “gray” area.

From a progressive standpoint, such behavior is offensive as it ignores the stakeholders who are adversely affected. Though such conduct may potentially reap benefits for the shareholders, SPN proponents should be equally offended as a proper balancing of risks versus benefits has not taken place; the process has been skewed by the self-interest of the corporate managers. While it is true that shareholders have the ability to sue for breaches of fiduciary duties, given the difficulties of bringing a derivative suit and the deference afforded management under the business judgment rule, the protections offered by the prospect of such a suit will likely only be effective in the

230. See supra note 73 and accompanying text.
most egregious of cases.\textsuperscript{231} This is not to say, however, that such self-interest is the norm; we lack empirical data to stoutly support such a claim. But given the events of the past decade, it seems entirely plausible that a Machiavellian model is at work within the ranks of corporate management.

Conclusion

While \textit{The Prince} was Machiavelli’s attempt to secure the good graces of the Medici family, it was not necessarily a description of the ideal method of governance.\textsuperscript{232} \textit{The Prince} should be seen as a descriptive work in which Machiavelli was merely recognizing what he saw around him, not a work of advocacy.\textsuperscript{233}

Conversely, Plato was very much aware that he was not describing the current state of affairs in Athens. He was specifically challenged in Book II to explain how the current state of affairs was not just.\textsuperscript{234} His republic was a creation to be compared with the unjust state.

Current legal academic debate over CSR and its proper role in the company has more in common with Plato in that it has reflected less of what is actually happening and more of an ideal. Shareholder primacy proponents have advocated that the proper “end” is to maximize shareholder wealth. While those within this camp might quibble

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\textsuperscript{231}. See Robert J. Rhee, \textit{Fiduciary Exemption for Public Necessity: Shareholder Profit, Public Good, and the Hobson’s Choice During a National Crisis}, 17 Geo. Mason L. Rev. 661, 697–98 (2008) (“Courts could invoke the elision that a board’s decision to assume an enormous financial loss may have some abstract ‘long-term’ benefit, a Potemkin explanation routinely invoked to shield business judgment from active scrutiny of the merits of ill-advised, stupid, or erroneous decisions in furtherance of legitimate jurisprudential reasons.”); Stephen M. Bainbridge, \textit{The Business Judgment Rule as Abstention Doctrine}, 57 Vand. L. Rev. 85, 87 (2004) (arguing that the business judgment rule “is better understood as a doctrine of abstention pursuant to which courts in fact refrain from reviewing board decisions unless exacting preconditions for review are satisfied.”).

\textsuperscript{232}. \textit{The Essential Writings of Machiavelli}, at xix (Peter Constantine ed. & trans., 2007) (“It is widely believed that \textit{The Discourses on Livy} corresponds to his fundamental beliefs: he interprets the great Roman historian’s \textit{History of Rome} as offering viable models to be emulated in his own time. \textit{The Prince}, on the other hand, is seen as offering viable classical models to a single ruler.”). As was discussed in note 145, \textit{supra}, important commentators on Machiavelli feel that \textit{The Discourses} is the better expression of his own views. See \textit{supra} note 145 and accompanying text.

\textsuperscript{233}. See e.g., Jav, \textit{supra} note 17, at 25.

\textsuperscript{234}. \textit{The Republic}, \textit{supra} note 24, at 358a (“Justice belongs in the most valuable category. It is the good that the happy man loves both for its own sake and for the effects in produces. But the multitude does not think so. Most people consider the practice of justice a burdensome affair. They think it a task to be avoided, if possible, and performed only if necessary to maintain one’s reputation for propriety—and to collect whatever rewards such a reputation may be worth.”).
to varying degrees over the means to this end, the focus is undoubt-
edly on the “owners” of the corporation, i.e., the shareholders. In re-
sponse to this school of thought, progressives have advocated a
broader stakeholder model that takes into account the interests of all
those affected by the corporation.

While each of these schools of thought have attractive features,
both fail to reflect, at least to some degree, the true state of things.
Just as *The Prince* described a model of governance perceived by
Machiavelli, this model more aptly describes the governance model of
corporate management, at least in some corporations and amongst
some officers and directors. This realization is not a purely academic
exercise, though such a label is tempting, particularly when relying
upon such classic works. Instead, the realization and acceptance that
corporate management is operating under such a model is an impor-
tant first step in crafting laws and policies geared to achieve what we
believe is the proper role of corporate management, be it to maximize
shareholder wealth or to more broadly use corporate wealth to do
good, while also doing well. Indeed, it is an important first step in
achieving a broader goal—the same goal that Google has claimed as
its own corporate creed—“Don’t be Evil.”235

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investor.google.com/corporate/code-of-conduct.html (last updated Apr. 8, 2009).