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Eric Franklin Amarante

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Commentary to Professor Murray's Presentation

Eric Franklin Amarante, *University of Tennessee College of Law*



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COMMENTARY TO PROFESSOR MURRAY'S PRESENTATION

*Eric Amarante**

Amarante: Professor Murray identified three broad categories of reaction to the Business Roundtable's statement: optimistic praise, supportive pessimism, and blunt opposition. While I agree that Professor Murray capably identified the three main reactions, I would like to suggest a fourth: *Who Cares?* Honestly, this reflects how I feel about the Business Roundtable's statement, and I don't think I'm alone. As Nell Minow, the Vice Chair of ValueEdge Advisors, wrote in the Harvard Corporate Governance Blog: "We've seen this before" and "[i]t does not really mean anything."¹ David Bahnson, a managing partner of a wealth management firm, wrote an article for the National Review entitled "Business Roundtable Pretends to Redefine What a Corporation Does."² These authors back up my suspicion that the statement is meaningless. To illustrate this, I would like to play a game called "Bernie Sanders, Elizabeth Warren, or the Business Roundtable?"

I'm going to show you a quote, and you're going to guess who said it: Bernie Sanders, Elizabeth Warren, or the Business Roundtable.

Volunteer: Okay.

Amarante: Who said the following:

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¹ Nell Minow, *Six Reasons We Don't Trust the New "Stakeholder" Promise from the Business Roundtable*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Sept. 2, 2019), <https://corpgov.law.harvard.edu/2019/09/02/six-reasons-we-dont-trust-the-new-stakeholder-promise-from-the-business-roundtable/>.

² David L. Bahnson, *Business Roundtable Pretends to Redefine What a Corporation Does*, NAT'L REV. (Aug. 26, 2019, 11:27 AM), <https://www.nationalreview.com/2019/08/business-roundtable-pretends-to-redefine-what-a-corporation-does/>.

We need to use “all the tools we have to boost American workers and American industries so they have the best opportunity to compete internationally.”³

Was it Bernie Sanders, Elizabeth Warren, or the Business Roundtable?

Volunteer: Warren?

Amarante: Correct! Well done.

Okay, how about this: “Many Americans are struggling. Too often hard work is not rewarded, and not enough is being done for workers to adjust to the rapid pace of change in the economy.”⁴

Volunteer: Bernie.

Amarante: Good guess, but it was actually the Business Roundtable. But it is certainly very Bernie-esque, right? It’s not every day that you hear a group of CEOs worrying about workers struggling to adjust to economic changes.

How about: “Good environmental policy is good economic policy.”⁵

Volunteer: Warren.

Amarante: Another good guess, but that was Bernie. Ok, just a few more.

³ John DiStaso, *Warren Unveils ‘Economic Patriotism’ Principles Focusing on American Workers, Industry* (June 4, 2019), <https://www.wmur.com/article/warren-unveils-economic-patriotism-principles-focusing-on-american-workers-industry/27706031#>.

⁴ Patricia Cohen, *Lots of Job Hunting, But No Job, Despite Low Unemployment*, N.Y. TIMES (Nov. 1, 2019), <https://www.nytimes.com/2019/10/31/business/economy/long-term-unemployed.html>.

⁵ Bernie Sanders, *Sanders Op-Ed: Good Environmental Policy is Good Economic Policy* (Nov. 16, 2009), <https://www.sanders.senate.gov/newsroom/must-read/sanders-op-ed-good-environmental-policy-is-good-economic-policy>.

Who said the following: “Americans deserve an economy that allows each person to succeed through hard work and creativity and to lead a life of meaning and dignity.”⁶

Volunteer: Warren.

Amarante: Actually, that was Business Roundtable!

The point of this exercise is that no reasonable person can tell the difference among Elizabeth Warren and Bernie Sanders, two of the more liberal presidential candidates, and a joint statement from 181 CEOs. This reflects precisely what Professor Murray was talking about. The political winds are moving in a such a way that if corporations don't respond, they're going to be in the regulatory crosshairs. Thus, out of self-preservation, corporations are starting to mimic some of this more progressive and liberal rhetoric.

It's important to note that I didn't point out the similarities among these statements to argue that they agree with one another. Rather, I think the Business Roundtable made this statement because, ironically, doing so serves their bottom-line. In effect, a joint statement that appears to be against shareholder wealth maximization serves the purpose of forwarding shareholder wealth maximization.

To illustrate this point, I would like to talk briefly about millennials. According to the Brookings Institute, 83% of millennials think too much power is concentrated in the hands of a few large companies.⁷ Why does this matter? Well, millennials are the customers of the present and future, and they increasingly buy products and services only from companies that prioritize social causes. As a result, corporations are starting to cater to millennials in their rhetoric. By 2025, millennials will make up 75% of

⁶ *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE (Sept. 6, 2019), <https://opportunity.businessroundtable.org/wp-content/uploads/2019/09/BRT-Statement-on-the-Purpose-of-a-Corporation-with-Signatures-1.pdf>.

⁷ Fred Dews, *Facts About the Millennial Generation*, BROOKINGS INST. (June 2, 2014), <https://www.brookings.edu/blog/brookings-now/2014/06/02/11-facts-about-the-millennial-generation/>.

the workforce in the United States.⁸ Further, 76% of millennials consider a prospective employer's social or environmental commitment before agreeing to work there⁹ and 64% claim that they won't accept a job from an employer that doesn't have strong corporate responsibilities and practices.¹⁰

This is the environment in which the Business Roundtable issued this statement. The employees and consumers of the future are asking more from corporations.

The point is that the Business Roundtable's statement isn't a shift away from shareholder primacy; rather, the statement is a recognition of what shareholder primacy means today. A corporation cannot maximize shareholder value unless it recognizes how the market is changing.

In light of that, until corporations take concrete steps—along the lines of what Professor Murray suggests—we are left with little more than empty promises. And until some concrete steps are taken, I think we should stop pretending that these statements have any real meaning.

⁸ *Id.*

⁹ Peggie Pelosi, *Millennials Want Workplaces with Social Purpose. How Does Your Company Measure Up?*, CHIEF LEARNING OFFICER (Feb. 20, 2018), <https://www.chieflearningofficer.com/2018/02/20/millennials-want-workplaces-social-purpose-company-measure/>.

¹⁰ Dews, *supra* note 3.