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It's Time for Accountable Capitalism

A new bill from Senator Elizabeth Warren proposes changing corporate governance law so that the interests of employees and customers are considered just as important as the wealth of shareholders.

by [Lenore Palladino]

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AP Photo/Pablo Martinez Monsivais

Corporations are making record profits and shareholder wealth is exploding, while wages for typical workers are falling. Why? Because business leaders believe that the purpose of corporations is to maximize shareholder wealth.

Progressives challenge corporate power in many ways: We work to reverse *Citizens United* and end the dominance of corporate money in politics; we organize in support of the Fight for $15 and the right to form a union; we make antitrust "hip" again.

But changing both *how* decisions are made within corporations and *who* has the power to make them should be center to the progressive agenda. We must put the interests of employees, customers, and society on par with the interests of shareholders. A new bill from Senator Elizabeth Warren, the Accountable Capitalism Act, proposes just that.

Corporations are a special kind of business, given legal permission to operate by the government, with privileges of perpetual existence and limited liability that distinguish them from sole proprietorships and partnerships. Along with these privileges granted by society should come responsibilities to society.

Decades of neoliberal thinking have driven corporations to operate solely with the goal of making money for their shareholders (this ideology is called "shareholder primacy"). That's why corporate executives at scandal-plagued Wells Fargo can justify firing 26,500 employees while spending $24.5 billion on stock buybacks. That's why Wall Street rewards corporations that lay off employees, even though those employees were key to their company's long-term growth. While it's contested whether shareholder primacy is the best way to read corporate law, it's surely the way that corporate lawyers and executives understand what should drive their decision-making.

A "stakeholder governance" model—in which corporations are run by, and accountable to, multiple groups of stakeholders—is necessary to rebalance bargaining power within our large corporations. Stakeholder governance is at the heart of Senator Warren's bill, introduced in August. It's the first piece of legislation to combine several key elements of stakeholder governance that must work together: affirming that corporations should have a positive impact on society, mandating that employees have a meaningful voice in corporate governance, and ensuring that the directors of a corporation must take all groups of stakeholders into account when making big decisions about the business. A new paper from the Roosevelt Institute outlines each element of stakeholder governance in more depth.

Remaking corporate governance is good policy—and good politics.

Recent polling by Data for Progress showed that a majority of likely voters of *both parties* supported employee representation on corporate boards of directors. The policy got more across-the-board support than paid family leave and tuition-free college. In practice, stakeholder governance is both a major change and a very incremental one.

How does "stakeholder corporate governance" actually work? First, employees would actually have a voice in board meetings. Warren's bill requires that employees at corporations with more than $1 billion in annual revenue vote for two out of every five corporate directors; other models propose that employees elect 50 percent of directors. That kind of representation in the board room would change whose ideas, interests, and opinions were heard.

Second, representation must be accompanied by a change in who directors are accountable to. This is known as their "fiduciary duty"—and right now it's only to shareholders. The Accountable Capitalism Act calls for federal charters that require boards to take into account the impact of their decisions on multiple groups of stakeholders. This would mean that when directors make decisions about merging with another company, authorizing billions on stock buybacks (which benefit them personally), or raising executive pay, they would be required to consider the impact on employees and customers, not just whether their actions would make money for shareholders. Directors wouldn't be able to hide mass layoffs and billions spent on buybacks behind an argument that they can't take workers into account—that their only job is to squeeze as much money as possible out of the company to benefit shareholders.

Third, a corporation has to state its "purpose" when it files its incorporation paperwork. Today, that purpose is generally to conduct any activity that is lawful for corporations. The Accountable Capitalism Act requires that corporations have a materially beneficial impact on society. How this would be interpreted in practice is a big question, but it's safe to say that directors would be forced to think about the impacts of their decisions on their supply chain and on the climate.

Finally, Warren's bill brings incorporation into the 21st century and moves approval of corporate charters for large corporations to the federal level. Because the current "internal affairs" doctrine allows corporations to use the governance rules from whatever state stamped their incorporation paperwork, without federal regulation, corporations choose whatever state offers the most shareholder-friendly laws. Currently Delaware, a small state of 800,000, drives corporate law because the majority of large corporations incorporate there. This is not only undemocratic, italso means that practically speaking, there's no chance of reforming corporate governance without taking it out of the hands of Delaware.

What Warren's legislation proposes is simply to rebalance the ability of different stakeholders to have power within corporations. Corporations would still be profit-maximizing entities with plenty of leeway to make business decisions. But instead of all corporate prosperity automatically going to the shareholder class, which is disproportionately white and wealthy, there'd be a better chance for workers and society to receive some of the value they create.

Stakeholder corporate governance is a common model in Europe, and is the model used by public benefit corporations in the United States. Given that large corporations govern so many aspects of our lives, and that we often feel so powerless when up against their magnitude, it's no wonder that these proposals are so popular. Progressives should make reforming corporate governance part of our plan for challenging corporate power.

If the Accountable Capitalism Act became law, it's not that corporations would suddenly become benevolent. It's that they would finally be held responsible for more than making money.

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