

WHAT IS THE PURPOSE OF COMPANY LAW?

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Since the last century, there is no doubt that companies have been playing a fundamental role in each developed country's economy, they make a significant contribution to national growth and their activities affect all the aspects of domestic life¹. For that reason, legal academics, social scientists and economists have focused on debates over the purpose and the proper nature of the company law². This essay will explain briefly the literature which has been established regarding the purpose of company law. Specifically, it will mention the views of those who have noticed an accurate and clear purpose of company law. It will also refer to the opinion of the Law Society's Company Law Committee and afterwards, it will note the belief that the present discourse of company law purpose is inadequate and misleading. Finally, it will critically assess the above views and place a general observation.

To start with, there is the belief by Len Sealy and Sarah Worthington that the main role of company law is to enable those involved in commerce to direct their doings in whatever way suits their interests best, with minimum contribution from the state³. This can be correctly justified by the strong belief in the power of market forces and in the principle of freedom of contract⁴. Another point of view supports that there are two positive and simple explanations as to the task of company law⁵. The first one suggests that company law is about producing wealth by creating services and goods at a profit in capitalist markets and the second one that it is introducing a partial set of problematic aspects regarding business organisations⁶. Janice Dean claimed that there is a general acknowledgment that companies need to have three interconnected purposes: to create competitive returns for shareholders, to make their customers satisfied so as to produce their profits and to employ excellent

¹ K. B. Rohatgi, *Company Law* (2005, Indian Legal System) 558

² Stephen M Bainbridge, 'In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green' (1994) 50 Wash & Lee L Rev 1423, 1435

³ Len Sealy and Sarah Worthington, *Sealy & Worthington's Cases and Materials in Company Law* (10th edn, OUP 2013)

⁴ Ibid

⁵ William W, 'Framing a Purpose for Corporate Law' (2014, Bratton University of Pennsylvania Law School) 714

⁶ Ibid (n 5)

staff in order to achieve the two previous goals⁷. It is worth mentioning here that the company directors and secretaries interviewed for Dean's study stated that 'they needed to operate, and to be seen to be operating, in a way that was acceptable to society, not least because, otherwise, there was the threat of yet more legislation'⁸. Two observations are arisen from the aforementioned statement: firstly, that the employees of a company operate in a way acceptable to the public not for being actually in conformity with the society's beliefs but in order not to be 'threaten' by more legislation, so they try to be acceptable only for their own interest and 'security'; secondly, it is obvious that there are conflicting views regarding the purpose of company law as directors' point of view is in contrary with the argument mentioned at the beginning of this paragraph, namely that that company law serve the interest of those involved in commerce.

Moreover, it is indeed interesting to mention the statement of the Law Society's Company Law Committee in May 1999 in its response to the consultation document issued by the Company Law Review Steering Group: 'We are not in favour of using core company law as the proper means to implement what are, in effect, social and cultural changes within society'⁹. Namely, what the aforementioned statement seems to support is that 'employees should be protected by employment legislation, consumers by consumer rights legislation, but company law must presumably be benignly neutral'¹⁰? In the same response and in the context of the 'pluralist' approach that systematically taken, the Committee also stated that company law 'is clearly contrary to entrepreneurial instincts' and that 'the use of the United Kingdom as a favoured jurisdiction for incorporation would be threatened'¹¹. Thus, it can be well argued that, in fact, the Committee does believe that company law has a social and culture purpose and so it is absolutely fake trying to convey to the public the idea that company law should be neutral¹².

A well-built and an in-depth argument of what the company law purpose is has been introduced by George A Moscarly. He admitted that according to most academics, corporations exist to enlarge

⁷ Janice Dean, 'The future of U.K. company law' (2001) 22 Comp L 104

⁸ Ibid

⁹ Law Society's Company Law Committee, 'Company Law Review Steering Group' (May 1999)

¹⁰ Dan Mace, 'The purpose of company law and company lawyers in a global arena' (2000) 21 Comp L 56

¹¹ Ibid (n 9)

¹² Ibid (n10) 57

shareholder wealth or to benefit multiple constituencies but on his own point of view ‘the current discourse of corporate purpose (..) is incomplete and misleading’¹³. According to him, this disarray is the outcome of the inadequate dependence on historical context in analysing the company law ‘under modern theories of corporate governance, and interpreting the “purpose” language in corporate charters and corporation-law statutes’¹⁴. He correctly argued that the modern concepts of corporate governance, and thereby, corporate purpose, have been unsuccessful to take into consideration the very significant historical evolution of the firm as entity and the company law as a subject of matter¹⁵. Importantly, he claimed that company law is examined along too few dimensions and that is neglected ‘to treat the later- stage corporation as a historical entity that inherits characteristics and restrictions, including its purpose, from the time of its founding’¹⁶.

By taking everything into consideration, the overall conclusion to be drawn is that ‘the general business corporation is a multi-faceted, multi-purpose entity, (...) some owners may desire wealth, and purpose their corporations with long-run financial gain’ while some others ‘may believe that the best path to wealth is indirect, via service to others’¹⁷. For that reason, the company law should not enforce ‘either end upon a stockholder who desires another’¹⁸. Undoubtedly, there is not a single and clear purpose of company law. Each institution and each company may give a different notion as to what the company law serves and why. However, a correct suggestion made by the Company Law Review Steering Group is that company law should ‘promote the success of the company for the benefit of the members as a whole’¹⁹ and indeed, despite the complexity and the wideness of company law, there should be a trial to ‘be organized around the solution of a relatively small number of fundamental problems’²⁰.

¹³ George A Mocsary, ‘Freedom of corporate purpose’ (2016) 2016 BYU L Rev 1319, 1320

¹⁴ Ibid

¹⁵ Ibid

¹⁶ Ibid

¹⁷ Ibid 1393

¹⁸ Ibid (n 13) 1394

¹⁹ Company Law Review Steering Group, ‘Modern Company Law for a Competitive Economy: Developing the Framework’ (DTI, March 2000) paras 5.74-5.92.

²⁰ Paul Lyndon Davies, *Introduction to Company Law* (OUP 2010) 2

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