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Joshua Daniels

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## Book Note

### FIRM COMMITMENT: WHY THE CORPORATION IS FAILING US AND HOW TO RESTORE IT, by Colin Mayer<sup>1</sup>

JOSHUA DANIELS

PROFESSIONALS AND ACADEMICS ALIKE often view the corporation as a significant building block of the modern world. However, the financial crisis of 2008 swiftly exposed flaws in the conceptual nature of the corporation and failures in its governance and ownership structures. In recent years, these issues have thrust themselves to the forefront of business and legal scholarship and have markedly impacted corporate regulatory schemes.<sup>2</sup>

Colin Mayer, former Dean of Oxford University's Saïd Business School and co-founder of European economics consultancy Oxera, is one of many sharp critics of the modern corporation and the current market and regulatory frameworks that surround it. Mayer's *Firm Commitment* combines theory with pragmatic commercial application in a wide-ranging critique of the commercial corporation. Mayer's analysis is a unique fusion of anthropology, economics, law, philosophy, politics, and sociology, making it accessible to any class of reader. Throughout the book, Mayer promotes and expounds a theme of "commitment"—the notion that the corporation should be viewed as, and should act as, a mechanism for providing commitments to its various stakeholders. Mayer skillfully advances this theme in each chapter of the book in order to prime the reader for a striking and novel blueprint for change.

The book is neatly arranged into three sections: part one outlines the failings of the modern corporation from a regulatory, reputational, and social perspective; part two describes why such failings are so pervasive today; and part three offers targeted measures to achieve Mayer's vision of commitment. In part one, before

1. (Oxford: Oxford University Press, 2013) 320 pages.
2. See e.g. *Dodd-Frank Wall Street Reform and Consumer Protection Act*, Pub L No 111-203, 124 Stat 1376 (2010) (a sweeping corporate regulatory framework signed into US law in mid-2010).

launching a determined and well-researched assault on the modern corporation, Mayer celebrates its merits—that of prosperity, employment, savings, and consumption. He then presents an impassioned analysis of the corporation’s “avaricious”<sup>3</sup> objectives and examines its detrimental impact on wealth, social cohesion, and the environment. In particular, Mayer discusses the realities of dispersed ownership and how it leads to the dangerous and oft-exploited separation between ownership and control. He then concludes part one by identifying common fallacies ingrained in reputational and regulatory checks on corporate behaviour, such as hostile takeovers and shareholder activism.

In part two, Mayer targets the deleterious consequences of corporate governance and shareholder ownership. Mayer begins this section by tracing the evolution of the Anglo-American phenomenon of dispersed corporate ownership. He examines how this model is conducive to abuse at the hands of those with short-term market objectives (or what Mayer terms “short-termism”<sup>4</sup>). Mayer then introduces the concept of “representation without commitment”<sup>5</sup> and uses the infamous Kraft-Cadbury takeover to highlight the potential conflicts that markets for corporate control often create with non-shareholder stakeholders. He then details a story of two distinct twentieth-century European lending institutions in order to highlight the merits of financial commitment and the pursuit of “long-term preservation of capital value.”<sup>6</sup> Mayer then harnesses these narratives into powerful critiques of the financial systems of the UK and the United States.

In part three, Mayer discusses his theory of corporations as a “commitment mechanism” as opposed to a “control device.”<sup>7</sup> In doing so, he moves away from conventional economic theory and exposes the reader to a normatively charged vision of corporate success. Finally, Mayer introduces novel solutions to the core issue identified throughout the book—the corporation’s failure to build “long-termism” into its fabric. Mayer helpfully uses modern success stories (for example, Germany’s ThyssenKrupp and India’s Tata Group) to demonstrate what long-term commitment means in practice. Mayer then advances three concrete, non-regulatory solutions to be adopted voluntarily by progressive corporate leaders. These measures are unique, well-justified, and intend to alleviate the

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3. *Supra* note 1 at 1.

4. *Ibid* at 211-12, 252.

5. *Ibid* at 209. This term is coined by Mayer and, by inference, refers to the prevailing attitude of many short-term investors who are not genuinely “committed” to the long-term prosperity of the corporation but may be able to exact control over it by way of voting control.

6. *Ibid* at 227.

7. *Ibid* at 151.

commitment problems ingrained in today's corporate governance and ownership structures. Mayer bolsters these proposals by providing comprehensive technical detail in an attached appendix.

Although Canada's model of shareholder primacy<sup>8</sup> is less rigid than that of the United States, the critiques in this book should resonate with Canadian business leaders, policymakers, and shareholders. In this multi-layered commentary on the modern corporation, Mayer demonstrates that ownership commitment issues are intensifying due to current market and regulatory mechanisms—a troubling reality for any business-focused reader.

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8. That is, the notion that directors of a corporation, in fulfilling their responsibility for the management of the business and affairs of the corporation are obliged to act with a view to the “best interests of the corporation” (which encompasses the interests of shareholders as a whole, among other constituencies and stakeholder groups). See *Canada Business Corporations Act*, RSC 1985, c C-44, s 122(1)(a). See also *BCE Inc v 1976 Debentureholders*, 2008 SCC 69.

