

Speech

Markets, Morality, and Mobsters: Remarks at the 18th Annual Corporate Governance Conference



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Thank you Jessica [Magee]. It is a particular honor to be introduced by an SEC alumna. Although I had hoped this could be an in-person event, I am grateful that we nevertheless can spend some time together virtually. Before I begin, I have to remind you that the views I represent are my own and not necessarily those of the Securities and Exchange Commission or my fellow Commissioners.

We are here today to talk about excellence in corporate governance. As with other pursuits in life, governing a corporation well requires a solid set of core values. These values are often rooted in childhood lessons, so I will offer a cautionary tale. A friend of mine—over his wife’s objection—taught his toddler son to answer “Money!” when asked “What is the most important thing in the world?” Their son was an eager pupil and, two years later—over both of his parents’ objections—he will still emphatically tell you that money is the most important thing in the world. He does not just talk the talk; he collects bills from all over the world, places them with precision in his toy cash register, releases them only to demand their immediate return, and accurately matches the names of historical figures with the bills on which they appear.

I hope that one of the bills that eventually finds its way into his collection is Japan’s new 10,000 yen note—roughly equivalent to \$100 at current exchange rates—scheduled for release in 2024.^[1] That is a higher-value bill than is appropriate for a child’s collection, but I want my friend’s son to have it not for its value, but for the value lesson it conveys. The bill will feature a gentleman named Shibusawa Eiichi, who is known as “the father of Japanese capitalism.”

Some people might wonder why I think that it would be good for a boy already obsessed with money to be introduced to one of capitalism’s fathers. After all, much of the developed world seems to be turning against capitalism, which they view as a system designed for the benefit of the few, at the expense of the many.

Shibusawa, however, understood that capitalism—in which private individuals come together voluntarily to build profit-making enterprises—can elevate hardworking, talented people of good character; spread prosperity; and benefit society. Shibusawa’s role in creating the modern Japanese economy is hard to overstate, but he has much to offer our nation as well.

For some context, let me tell you a little bit about Shibusawa and the challenges Japan faced when he embarked on his career in the second half of the 19th century. When Shibusawa was born in 1840, Japan was still a feudal society.^[2] Although a vibrant commercial culture had developed under the Tokugawa shogunate, the dominant neo-Confucian ethics had little to say about commerce, and what it did have to say was certainly not positive.^[3] A man's highest calling was service to the state; commerce was seen as the realm of those who sought profit without adherence to any code of honor or morality.^[4] Perhaps partly for this reason, commercial success in Tokugawa Japan was denigrated and, as Shibusawa himself put it when he left government service for the private sector, it was generally accepted that it was a shameful thing to become a merchant.^[5]

The arrival of Commodore Perry off Japan's Pacific coast in 1853 forced Japan to open its doors to the outside world for the first time in two centuries and plunged the feudal hierarchy into chaos. Japan's political leadership struggled to maintain domestic stability and to avoid colonization. Shibusawa, the son of a prosperous farmer, initially joined up with bands of samurai seeking to expel the foreigners.^[6] He eventually found himself in the service of the last shogun.^[7] During an extended trip to Europe in 1867-68 as part of an official study delegation, Shibusawa learned that much of the European powers' strength derived from the value that they placed on commerce and the market technologies on which commerce relied.^[8] It was also during this trip that Shibusawa learned, to his astonishment, that, in much of Europe, men engaged in commerce were seen as equals to military men,^[9] and he was stunned when, during an audience with the king of Belgium, the king himself touted the high quality of Belgian steel to the Japanese mission.^[10] If the monarch thought promoting commerce was not beneath him, it was no surprise that his subjects also treated commerce as a worthwhile pursuit.^[11]

Shibusawa concluded that Japan's economic development would require a transformation of values: disdain for commerce would need to give way to a respect for commercial enterprise. This transformation would be impossible without convincing his fellow countrymen that commerce was itself a moral endeavor.^[12] The prevailing "revere officials and despise the people" attitude emphasized the role of government in society and encouraged people to look to government as the guarantor of national prosperity. This unhealthy attitude also had to give way to a respect for the role that ordinary people from all classes could play in building the economy and the broader society, economically of course, but also ethically.^[13]

Shibusawa's insight is one that is often overlooked, but it is important. Voluntary commercial activity both requires and cultivates a heightened moral sensitivity in those who engage in commerce, and according value to those who engage in this activity helps build healthy societies. Others have made the same point. The most famous, of course, is Adam Smith, but consider economist Deirdre McCloskey, who argues that "[t]he growth of the market . . . promotes virtue, not vice." She repeatedly directs our attention to the ways that commercial activity forces us to attend to each other, to understand what each other wants or needs, and to find ways to satisfy those wants and needs.^[14] She notes that "[a] person in business depends on an imaginative engagement with the customers and suppliers, to see the witness in them. . . . An alert businesswoman 'subjects herself to every neighbor.' She listens and learns from other people and from the world."^[15] By pushing us to listen, to engage with each other, commercial activity encourages us to be better neighbors, to treat others with civility and tolerance. The French philosopher Voltaire observed this same thing when he visited the London Exchange in the early 18th century and beheld people of all different religions dealing with each other as equals as they traded with one another.^[16]

As an important companion to his efforts at reshaping perspectives on commerce, Shibusawa played a central role in introducing to Japan the central financial technologies of modern capitalism, including the joint-stock company, double-entry accounting, and modern banking.^[17] His embrace of the joint-stock company was rooted in part in a belief that this corporate form was an ideal way to draw on the capital and efforts of people all across society.^[18] As one Shibusawa biographer notes, once he concluded that the key to national prosperity was not in the state but in the people, the question was how to marshal these resources and talents to empower the people to achieve a broad-based prosperity.^[19]

In his view, the joint-stock company was a tool uniquely suited to this task. This form of business organization could offer opportunity to anybody, regardless of social class. Anyone with investable funds could own shares in a joint-stock company, and one's influence as an investor was determined by how many shares he owned, not by his

social class.[20] It made it possible to pool the financial resources of the wealthy with the talents of the poor.[21] Importantly, the organizing force of these companies was voluntary cooperation in the pursuit of a common purpose, not government coercion. In a pamphlet he wrote when he was an official in the Ministry of Finance, he explained that “[t]he formation of a company begins with private rights, in a meeting of the minds and a decision to join forces.”[22]

Shibusawa helped establish, and mentored the leaders of, dozens of national banks throughout Japan, but he had a vision for the transformative power of capitalism—and the joint-stock corporation—across the entire economy. Shibusawa himself guided the establishment of the First National Bank of Japan, which was the first modern bank and one of the first joint-stock companies in the country. He was involved in establishing between 400 and 500 corporate entities that were part of the financial, physical, and logistical infrastructure that Japan needed to participate as an equal in the modern global economy.[23] The firms he helped launch or lead over his career read like a Who’s Who of corporate Japan: They include Mizuho Bank (which traces its lineage back to the First National Bank), Tokyo Marine, Tokyo Electric Power Company, Tokyo Gas, The Imperial Hotel, Sapporo Beer, Japan Rail, and the Tokyo Stock Exchange.[24] He served many of these firms, often as an executive officer or as a member of the board.[25] He was a gifted mentor,[26] and his reputation for integrity made him a valuable catch for entrepreneurs seeking to raise funds.[27]

Integrity was key to the capitalist society Shibusawa championed. Profit-seeking was not a selfish pursuit.[28] Indeed, Shibusawa became a very wealthy man, but he wanted to see others become wealthy as well. Being a part of a profit-making business, however, did not free one from the need to be guided by moral commitments. He commended hard work for the purpose of building an enterprise, but recognized the danger of self-interested managers. One of his most pointed warnings to managers appears in his best-known work, *The Analects and the Abacus*, which was his attempt to articulate ethical principles (which he drew largely from the Analects of Confucius) for the commercial world (represented by the abacus). In this passage, which really needs to be quoted in full, he describes well the temptation of corporate managers to confuse their own interests for those of the company they manage and of its shareholders. He writes:

It is a laudable thing for a businessman to work ceaselessly to make his company or bank successful. And it is a good thing to work faithfully for the profit of shareholders. However, if your desire to devote yourself to your company or your bank is motivated by a selfish scheming for personal benefit, or your decision to increase a dividend payment is driven by the fact that you yourself are a shareholder and want to enrich yourself, that’s a problem. If [you have that mindset and] the bank or the company encounters difficulty and you realize that you can benefit yourself by forcing the company into bankruptcy and inflicting harm on the company’s shareholders, I doubt whether you will be able to resist that temptation.[29]

Shibusawa wraps up this discussion by noting that it was precisely this kind of temptation that the Confucian philosopher Mencius was warning about when he said, “If you do not think of others and instead think only of your own gain, you will come to a point where you will not be satisfied until you steal what you want from others.”[30] Much of his mentorship activity appears to have been devoted to instilling in younger corporate managers the importance of looking beyond one’s own personal interests in managing a corporate enterprise.

Shibusawa spent much of his life selling capitalism to his country. He also was tireless in his efforts to foster better US-Japan relations.[31] Now, more than a century later, he can help his American friends to remember why capitalism is worth keeping. First, he can remind us that the goal of a corporation is to join people together in a cooperative enterprise that draws on their capital and talent to make products and services that people want, and the very reason that a corporate enterprise generates profits is because—as another Shibusawa biographer explains—it “removes financial worries from people’s lives and makes them prosperous.”[32] Second, a corporation is a private endeavor, not something that requires government direction; indeed government involvement will almost certainly always lead to either compulsion or rent-seeking.[33] Third, working in private enterprise to meet the needs of other people is honorable work and doing this work well is morally exemplary; members of the private sector ought not think themselves inferior to “public servants.”[34] Fourth, the people running the company have to remember that they work for the shareholders, not for themselves.

Many people from within and without corporate America are undermining the corporation rather than harnessing its power to address society's problems. Intricately thick regulatory barriers to the formation and financing of companies make it harder to start a corporation and take it public. For example, entrepreneurs must navigate a complex web of exempt offering rules under our federal securities laws in order to raise capital. Compliance does not come cheaply: legal fees associated with raising very early stage capital can cost between \$5,000 to \$20,000, while a venture capital raise for more mature companies can cost between \$20,000 to \$40,000 in compliance costs.[35]

The existing exempt offering framework not only imposes burdensome compliance costs on startups, but also ties their hands when it comes to tapping into their networks in order to raise capital. Specifically, the most commonly used exemptions from registration generally limit participation to accredited investors—individuals with a net worth exceeding \$1 million, income in excess of \$200,000, or as of yesterday, individuals holding a Series 7, 65, or 82 license. For startups not located near or connected to angel investor and venture capital networks in major coastal cities, the accredited investor definition severely limits their pool of potential investors. Regulatory barriers are surmountable by the wealthy, well-connected, and entrenched, but the people who could benefit the most by joining forces with friends and neighbors to build a profit-making enterprise that serves their communities have a much more difficult time. Shibusawa championed shareholder capitalism not for its ability to make the rich richer, but for its ability to spread wealth and prosperity: “A single wealthy individual does not make the country more prosperous. To elevate the low status of people engaged in commerce and industry, we must make improvements to the whole by helping the joint-stock company organizations take root.”[36]

Large, incumbent firms often use regulatory barriers to entry to their advantage. Shibusawa objected when firms threw around their weight at the expense of competitors and consumers. For example, although the most successful business magnates of pre-war Japan typically sought to establish zaibatsu—conglomerates of related firms—which could dominate significant segments of the Japanese economy—Shibusawa never sought to do so. A famous anecdote highlights his distinct vision for the Japanese economy. In 1878, he received a dinner invitation from Iwasaki Yatarō, the president of Mitsubishi, one of the great zaibatsu of the pre-war era.[37] Over dinner, Iwasaki turned the conversation to the Japanese economy, pointing out that if Shibusawa and he joined forces, they could dominate Japan's still undeveloped economy. The conversation turned heated when Shibusawa immediately objected to the suggestion that the two of them monopolize the economy for their own benefit. Shibusawa argued that his own approach—leveraging the joint-stock company model to gather resources and people from across the country—was better suited to bringing wealth to the Japanese people and thus to the nation as a whole. Iwasaki retorted that Shibusawa's approach would lead to disaster.[38] When he saw that he was getting nowhere with Iwasaki, Shibusawa left the dinner in disgust. The two men went on to become fierce competitors in the marine transport industry.

Iwasaki's suggestion that the market is something for the powerful to carve up for their own benefit suggests a view of capitalism similar to that of Al Capone, who is alleged to have said: “Capitalists believe they can take everything at the table as belonging to them. Capitalism is the legitimate racket of the ruling class.”[39] The idea that markets can be divvied up arbitrarily by a tiny elite is the mentality of a mobster, not the mentality of a principled capitalist like Shibusawa.

Shibusawa recognized that corporations should be formed and directed by private citizens interacting with one another voluntarily to serve the needs of their fellow citizens. Ironically, a highly regulated environment, which minutely prescribes what companies can and cannot do, undermines the integrity that Shibusawa understood to be key to capitalism. Rather than pleasing customers and generating wealth for shareholders, a company that gets overly entangled with government becomes more focused on pleasing regulators and using its relationship with those regulators to extract rents that do not contribute to anybody's prosperity except that of the rent-seeker. As Niall Ferguson explained, “The question that gets asked in highly regulated markets is not: ‘Are we doing the right thing?’ but ‘Can we get away with this?’”[40] Is it any wonder that, in a corporate world increasingly characterized by rent-seeking, a world of compliance checklists and of self-interested moral posturing, Shibusawa's vision of commercial enterprise as a fundamentally moral enterprise that ennobles the men and women who engage in commerce is increasingly thought laughable? Shibusawa himself would not have been surprised by this

unfortunate development, born as he was in an era where the most successful businesses achieved that success through government-sanctioned concessions obtained through connections and corruption. These bad habits too easily replace the qualities that make a business enterprise truly successful.[41]

The pressure to develop these habits is particularly strong in public corporations, which are under increasing regulatory and societal pressure to focus on objectives other than profit-making. Managers and boards, rather than standing against this pressure, are too often embracing it. As a consequence, companies are losing their singular focus on maximizing the value of the company—the focus that forces companies to innovate and improve, and thus to generate the products and services that not only create profits for shareholders but also make each of us—and our society as a whole—more prosperous. The irony of current corporate responsibility movements, which encourage corporations to do things other than focus on profit-making, is that the diverted focus will undermine corporations' ability to improve people's lives. Objectives like clean air and water, good education and healthcare, and poverty reduction are better achieved by profit-focused corporations than corporations encouraged to pursue these objectives directly. Shibusawa recognized that the ability of corporations to play a leading role in improving people's lives depended on them being permitted to be profit-seeking entities.

Managers themselves have reason to favor multiple objectives because the resulting confusion allows them to pursue their own objectives. As Shibusawa predicted, the manager who places her own interests ahead of shareholder interests, loses her way. Self-dealing may come in the form of an excessive executive compensation package, but it also may come less directly; many executives today seek to signal their own virtue by committing company resources to causes that will earn them societal brownie points, which gives the executives' social circle a greater say in corporate policies and priorities than shareholders. This shift of focus away from shareholders entirely upends the proper focus of corporate governance. It is no different for a corporate executive to claim to be virtuous by spending shareholder money than it is for a politician to signal her generosity by spending taxpayer money. Managers' misappropriation of corporate assets for their own benefit—whether pecuniary or reputational—might not get punished, particularly if the thieving managers cloak themselves in rhetoric that accords with that being used by outside groups trying to refocus corporations.

These are not merely theoretical concerns. We can observe some of the negative consequences of this shift in corporate focus away from the maximization of shareholder value in current events. Last year, 181 CEOs signed on to the Business Roundtable's new Statement on the Purpose of a Corporation to great fanfare. Explicitly rejecting shareholder primacy, the statement committed the CEOs to lead their companies for the benefit of all stakeholders, specifically identifying customers, employees, suppliers, communities, and notably last: shareholders, who merely "provide the capital."

Some have argued that this statement is nothing but a public-relations move and does not reflect a fundamental shift in the way these businesses will operate. For example, a forthcoming study reaches this conclusion by finding that the corporate guidelines for the signatory companies continue to demonstrate a commitment to shareholder primacy and that only one company whose CEO signed the statement received board approval to do so.[42] If this is the accurate interpretation, then the deceitfulness displayed by C-suites across the nation reveals a deep moral failure that will only further damage the reputation of capitalism and corporate America.

Let's take a more generous view and assume that the CEOs actually believe in a stakeholder model of capitalism and are actively working to implement such a vision. There is evidence that suggests such a model does not benefit investors or stakeholders. Despite the commitment to deliver value to all of these stakeholders, research demonstrates that the signatory companies have not historically delivered on those promises for any of the identified constituencies.[43] As Matt Levine caustically summarized the findings: "[c]ompanies that signed on to the Business Roundtable's statement do worse for shareholders, sure, but they also do worse for employees and the environment. They pay their CEOs more, though, which is perhaps the real point." [44]

Moreover, the statement's dilution of the role of shareholders in corporate governance reduces management's accountability for their actions. Success is no longer measured solely by shareholder value, but instead is defined, at least in part, by the good intentions of management with respect to favored stakeholders. Indeed, Business Roundtable President and CEO Joshua Bolten recently defended his thesis that this has been "a good year for

stakeholder capitalism,” by noting that CEOs advocated for policy makers to increase the federal minimum wage, paid family medical leave, and pandemic relief.^[45] Measuring the value of companies by the loudness with which they call for government mandates portends a bleak future for American capitalism. Companies add value to society by seeking to be profitable for their shareholders. To do so, they make things people need. In the process, they enrich their workers, business partners, and communities.

By shifting their focus to stakeholders rather than investors, CEOs may be attempting to distance themselves from their fiduciary duties to shareholders—fiduciary duties that are underpinned by moral principles. Former Chief Justice of the Delaware Supreme Court Myron Steele argues that the morality imbued in Delaware corporate law’s fiduciary duties “holds corporate actors to a higher standard, discourages distasteful or unsavory conduct in blind pursuit of individual interests, and reflects the manner in which those same actors might interact in other, similar, but non-business contexts.”^[46] No such higher standard of conduct applies to the relationships between stakeholders and corporate officers and directors, so it is not surprising that those relationships are being used to justify certain business decisions.

Shibusawa again serves as an example of a better way. He devoted his own time and resources to philanthropy. He was an early supporter of one of Japan’s first institutions dedicated to the care of orphans, the elderly, and the disabled.^[47] He helped found the Japanese Red Cross, several of Japan’s leading educational institutions (including at least two institutions of higher education for women), and hospitals.^[48] He was known for never turning down a request for a meeting from an entrepreneur or a younger corporate manager and mentored hundreds of younger businessmen.^[49] It is wonderful when people earn money and spend it for good causes, but shareholders and corporate executives should earn the money first and only then give it away. True, this is the harder road, as it requires each of us as individuals to give of our own time and resources and to give sacrificially, rather than letting shareholders foot the bill, but none of our great moral teachers ever said the path to virtue was an easy one.

As a federal securities regulator, my reach into state corporate law is, and should be, limited. Relations among corporate boards of directors, managers, and shareholders are appropriately governed by state law. Nevertheless, discussions about corporate purpose and governance affect discussions about disclosure requirements for public companies. If the objective of a company is no longer to maximize value, then the company’s disclosures become as unfocused as the company’s management team. That is not a good result for investors.

I hope that my friends’ son’s youthful obsession with money will mature into an appreciation of the values that the father of Japanese capitalism championed. And I hope that he and the rest of his generation will reap the benefit of corporate enterprises singularly, but ethically, focused on making profits by serving society’s needs.

[1] Eiraku Maiko, “Japanese Banknotes Get a Makeover,” NHK World, Apr. 9, 2019, available at <https://www3.nhk.or.jp/nhkworld/en/news/backstories/430/> (last visited Aug. 27, 2020).

[2] John Sagers, “Shibusawa Eiichi and the Merger of Confucianism and Capitalism in Modern Japan,” *Education about Asia*, Winter 2014, at 30, 30, available at <https://www.asianstudies.org/wp-content/uploads/shibusawa-eiichi-and-the-merger-of-confucianism-and-capitalism-in-modern-japan.pdf> (last visited Aug. 26, 2020).

[3] See, e.g., Shibusawa Eiichi, *Shougyou to Doutoku* [Commerce and Morality] at loc. 63, 90; Tanaka Kazuhiro, “Harmony between Morality and Economy,” in Patrick Fridenson and Kikkawa Takeo, ed., *Ethical Capitalism: Shibusawa Eiichi and Business Leadership in Global Perspective* 43 (2017). I owe a deep debt of gratitude to my counsel, Richard Gabbert, for his research and Japanese to English translations for this speech.

[4] Shibusawa, *supra* note 3, at loc. 90.

[5] Miyamoto Matao, ed., *Shibusawa Eiichi: Nihon Kindai no Tobira wo Aita Zaikai Riidaa* [Shibusawa Eiichi: The Financial Leader Who Opened the Door to Modern Japan] 227-228 (2016) (quoting Shibusawa statement).

[6] Sagers, *supra* note 2, at 30.

[7] *Id.* at 30-31.

[8] Moriya Atsushi, “Biographical Sketch” in Shibusawa Eiichi, *Gendaigoyaku: Rongo to Soroban* [The Analects and the Abacus: A Contemporary Language Edition] loc. 2468 (2014) (“What he took away from this experience was that economic development required improving the status of merchants.”); Sagers, *supra* note 2, at 31.

[9] Miyamoto, *supra* note 5, at 171; Moriya, *supra* note 8, at loc. 2465 (“Shibusawa was also astonished at the differences from Japan’s class-bound society, particularly at the sight of merchants and military men engaging with each other as equals.”).

[10] Miyamoto, *supra* note 5, at 171.

[11] *Id.*

[12] See Moriya, *supra* note 8, at loc. 2468.

[13] John Sagers, “Shibusawa Eiichi, Dai Ichi Bank, and the Spirit of Japanese Capitalism, 1860-1930,” *Shashi: The Journal of Japanese Business and Company History*, 2014, at 1, 4 (“Shibusawa became further convinced of the need to mobilize people of all social classes to build Japan’s national prosperity and strength.”), available at https://digitalcommons.linfield.edu/cgi/viewcontent.cgi?article=1000&context=histfac_pubs (last visited Aug. 26, 2020).

[14] Deirdre McCloskey, “Bourgeois Virtue,” *American Scholar*, Spring 1994, at 177, 181, available at https://www.deirdremccloskey.com/docs/pdf/Article_249.pdf (last visited Aug. 25, 2020) See also Art Carden and Deirdre McCloskey, “If We Keep Our Ethical Wits, We Can See Over Into a Great Enrichment,” *The Independent Review* (Winter 2016) 353, 354, available at https://www.independent.org/pdf/tir/tir_20_03_05_carden-mccloskey.pdf (last visited Aug. 25, 2020) (arguing that “[p]eople got richer not because of empire or investment or exploitation or institutional change, but because they changed their ethics and how they talked about betterment and competition and cooperation in trade-tested betterment. If people welcome betterment and competition and the amiable cooperation that both require, it turns out that they live longer and mightily prosper in body and soul”).

[15] Deirdre McCloskey, *Bourgeois Virtue* 191 (2006).

[16] See Alan Charles Kors, “Voltaire’s England,” *The American Interest*, July 2007, available at <https://www.the-american-interest.com/2007/07/01/voltaires-england/> (quoting Voltaire’s *Lettres Philosophiques*) (last visited Aug. 26, 2020).

[17] *Shibusawa Eiichi*, Wikipedia, https://en.wikipedia.org/wiki/Shibusawa_Eiichi (last visited Aug. 26, 2020). Shibusawa accomplished this initially through his involvement in the First National Bank of Japan, which was modeled on the recently implemented system of national banks in the United States. The First National Bank was one of the first joint-stock companies in Japan and, unlike the traditional merchant houses and trading firms, it was legally required to disclose details about its finances and operations to the government. In an effort to ensure that investors understood their responsibilities as shareholders, Shibusawa sought to provide similar disclosures to them and “worked to adopt Western-style accounting as a way to manage the bank along modern principles by identifying the source of all income and expenses.” Miyamoto, *supra* note 5, at 66.

[18] See Shimada Masakazu, “Tensions between the Open Market Model and the Closed *Zaibatsu* Model,” in Fridenson and Kikkawa, ed., *Ethical Capitalism: Shibusawa Eiichi and Business Leadership in Global Perspective* at 30 (quoting Shibusawa on the importance of the joint-stock corporation to elevating the status of those engaged in commerce). Shimada goes on to quote a radio address in which Shibusawa explained his belief that “[t]o make the nation truly prosperous, we must enrich the country; to enrich the country, we must make scientific progress and help commerce and industry thrive; to help commerce and industry thrive, we must establish joint-stock corporate organizations that draw on the investment contributions of many different individuals; and to operate companies under the joint-stock system, managers must conform to steadfast reason and logic.” *Id.*

- [19] Kimura Gokyu, *Shibusawa Eiichi to Sono Jidai: Dainibu – Funtohen* [Shibusawa and His Era, Vol. 2: Struggle] at loc. 2739 (2019).
- [20] Miyamoto, *supra* note 5, at 171.
- [21] *Id.*
- [22] *Id.* at 179 (quoting Shibusawa-authored Ministry of Finance publication on how to start a corporate enterprise).
- [23] See, e.g., Kikkawa Takeo “Introduction,” in Fridenson and Takeo, ed., *Ethical Capitalism: Shibusawa Eiichi and Business Leadership in Global Perspective* at 8.
- [24] See Shimada, *supra* note 18, at 20. The Shibusawa Eiichi Memorial Foundation website provides a sense of the scope of Shibusawa’s corporate activities across a number of industries. See Shibusawa Eiichi Memorial Foundation, “Name Change Charts of Companies and Organizations Related to Shibusawa Eiichi,” July 30, 2020, available at <https://eiichi.shibusawa.or.jp/namechangecharts/en/> (last visited Aug. 26, 2020).
- [25] See, e.g., Shimada, *supra* note 18, at 15.
- [26] See Kimura Masato, *Shibusawa Eiichi’s Thoughts on Banking from Public and Private Perspectives*, 6 *J. of Cultural Interaction in East Asia* 47 (2015).
- [27] See Miyamoto Matao, “Capitalism by the ‘Visible Hand’: The Joint-Stock Company System, Business Leaders (Zaikaijin), and Shibusawa Eiichi,” in Fridenson and Kikkawa, ed., *Ethical Capitalism: Shibusawa Eiichi and Business Leadership in Global Perspective*, at 80-90.
- [28] See Miyamoto, *supra* note 5, at 227. Miyamoto explains that Shibusawa believed that people engaged in commercial enterprise profited precisely because their activity brings material and other benefits to those around them. See *id.* at 226.
- [29] Shibusawa Eiichi, *supra* note 8, at loc. 1878.
- [30] *Id.*
- [31] Sagers, *supra* note 2, at 33.
- [32] See Miyamoto, *supra* note 5, at 226-227.
- [33] *Id.* at 179 (describing concerns raised about government entanglements with commercial enterprises in a Shibusawa-authored Ministry of Finance publication on how to start a corporate enterprise).
- [34] When he left government in 1873, Shibusawa wrote that “the urgent task of our nation today is . . . to raise the status of merchants, and to spur on the talented and direct them toward the commercial world, to recognize commercial enterprises as the most honorable positions in our society, and to reach a point where we treat merchants as our exemplars of virtue and to make our exemplar of virtue the merchant.” *Id.* at 227-228.
- [35] Office of the Advocate for Small Business Capital Formation, Securities and Exchange Commission, *Annual Report for Fiscal Year 2019* at 20, available at https://www.sec.gov/files/2019_OASB_Annual%20Report.pdf.
- [36] Shimada, *supra* note 18, at 30.
- [37] This account is taken primarily from Moriya, *supra* note 8, at loc. 2518-2529 and Kimura, *supra* note 19, at loc. 1279.
- [38] According to Moriya, Iwasaki’s retort was a Japanese proverb that literally means “a boat with many captains will be driven up a mountain.” Moriya, *supra* note 8, at 2527.
- [39] Al Capone Quotes, Goodreads, available at https://www.goodreads.com/author/quotes/3412336.Al_Capone (last visited Aug. 26, 2020).

[40] Niall Ferguson, "To Do 'God's Work', Bankers Need Morals," *The Telegraph*, July 5, 2010, available at <https://www.telegraph.co.uk/finance/newsbysector/banksandfinance/7871781/To-do-Gods-work-bankers-need-morals.html> (last visited Aug. 26, 2020).

[41] Shibusawa expressed frustration with the overly deferential attitude of the great merchant families to government officials when he himself was still working at the Ministry of Finance. Recalling one visit to Osaka on official business, he said these merchants "still had not swept away the old-fashioned atmosphere of servility, so when they met with government officials they did nothing but prostrate themselves and then kept bowing throughout our meeting. They had neither learning nor spirit, and notions of pursuing new inventions or material improvements seemed to be foreign concepts to them." Kimura Gokyu, *Shibusawa Eiichi to Sono Jidai: Daiichibu – Seiunhen* [Shibusawa and His Era, Vol 1: Ambitions] (2019), at loc 1740.

[42] See Lucian A. Bebchuck and Roberto Tallarita, "'Stakeholder' Capitalism Seems Mostly for Show," *Wall Street Journal* (August 6, 2020); Lucian A. Bebchuck and Roberto Tallarita, "The Illusory Promise of Corporate Governance," *Cornell Law Review* (forthcoming December 2020), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544978 (last visited Aug. 26, 2020).

[43] Aneesh Raghunandan and Shiva Rajgopal, "Do the Socially Responsible Walk the Talk?," (Feb. 28, 2020), available at https://www.bus.miami.edu/_assets/pdfs/thought-leadership/academic-departments/accounting/seminars/raghunandan-rajgopal-.pdf (last visited Aug. 26, 2020).

[44] Matt Levine, *MoneyStuff*, April 14, 2020.

[45] Joshua Bolten, "A Good Year for Stakeholder Capitalism" (Aug. 18, 2020), available at <https://www.wsj.com/articles/a-good-year-for-stakeholder-capitalism-11597792536> (last visited Aug. 26, 2020).

[46] Myron T. Steele, "The Moral Underpinnings of Delaware's Modern Corporate Fiduciary Duties," 26 *Notre Dame J.L. Ethics & Pub. Pol'y* 3 (2012).

[47] See, e.g., Shimada Masakazu, *The Entrepreneur Who Built Modern Japan: Shibusawa Eiichi* 140-141 (2017).

[48] See, e.g., Mimura Akio, "Shibusawa Eiichi's principle of 'The Analects and the Abacus' will save the Japanese economy," *Japan Foreign Policy Forum* (July 11, 2019), available at <https://www.japanpolicyforum.jp/economy/pt20190711230502.html> (last visited Aug. 26, 2020); Miyamoto, *supra* note 5, at 150.

[49] See Shibusawa, *supra* note 8, at loc. 710 ("I make a point of always meeting with anybody who requests a meeting with me. Whoever they are, if I have time, I will meet with them and listen to their requests for help and to their dreams. And if I think what my visitor wants is ethical, I find a way to help, regardless of what kind of person he is.").