**SPECIAL EDITION**
**DATA DELAWARE: Wednesday, November 13, 2019**
**SUBJECT: Told ya so - insights from Professor Elson**
***(Podcast transcript PART II)***

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Dace: Welcome back to Money and Politics in Delaware, let me tee it up for Charles Elson. The Business Roundtable is a group of 181 companies, many of them are global icons. For instance, Apple, Johnson & Johnson and JP Morgan. Back in August, the Business Roundtable decided, by the way, apparently without their board's approval to create a new, to create a new standard of purpose for of a corporation. Historically, a company's only obligation was to maximize the value for shareholders, shareholders! Those who risk capital. Again, the corporation's sole duty was to generate long term value of shareholders, I believe that's a direct quote. But with fanfare, the Business Roundtable instead rewrote the duties of a corporation. Yeah. The key new catchall term is stakeholders, and with this new philosophical shift by the association, employees and unions and communities were, or would be, instantly elevated to a position equal to arguably above shareholders. Charles Elson in turn went ballistic, ballistic, I mean ballistic. He visited this program multiple times, every media outlet, and the message was clear. This was wrong, wrong, wrong, your turn, Charles, what made it so wrong?

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Charles Elson: Well, what's interesting about it, Dave, is first of all, legally, we've always been a shareholder, primacy jurisdiction, is our all states basically. The idea that shareholders, the obligation is of the company is to its shareholders. That's why you know, frankly, in bankruptcy, shareholders come last in preference. That's why they have fiduciary duties running to them and the vote because otherwise they can't protect themselves. If you don't protect the shareholders, you're never going to get their capital and good things will never happen. This round table, what it did, it was kind of interesting. It's not an, it's not new to suggest that a company's run for the benefit of all the steaks, employees, the community, and having Cheryl is simply one on a long list. Bisson Roundtable had that as its principle for a years. I mean it really up through the early mid 1990's but what happened was that principle, that theory created such terrible corporate results for the investors who happened to be the very stakes who the business Roundtable were talking about Ala employees, and the communities who own, now have their retirement money in public company equities that these companies started to fail. And so the institutions said enough, and they said, you know, we are supporting the retirement of a lot of people. These companies are poorly run. If you're accountable to multiple stakes, then you're accountable to no one. Accountability to everyone equals accountability and no one. It's like saying your watch stops. It's still gets the time right twice a day, no matter how bad it is, unless you've got to do it, unless you got, unless if you've got an analog watch, you got to, you got to one of these Apple things, forget it. But the idea is that that, that, that no matter how bad a decision you make, at some point you're going to get it right for somebody. If you're accountable to multiple stakes, that's the problem.

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Charles Elson: And so this new approach basically is rather self-serving because what they're saying is if I'm accountable to all these different people, I can never make a bad decision. Someone is going to be happy with it and that's not true. A bad decision destroys an organization and makes it miserable for everybody. Additionally, these guys put the shareholders last on the list, call them quote suppliers of capital. It's like calling your parents the genetic suppliers of your existence. They're more than that. Your shareholders are more than that. They invested in you. They, they, they, you owe them their respect. You owe them loyalty and suggest their last is really pretty scary. I questioned whether any of these people frankly talk to their boards before signing on to something like this because the directors are elected by the shareholders. And would you really want to poke the people who let you in the eyes saying, gee, I'm not really responsible to you, I'm responsible everybody else, including you and I, I don't, I don't think that's the case. And I think it ultimately leads to really bad policy and bad results.

Dace: All right, here you go. My friend and I, I'm saying this because Charles can't, and I say it would a big, a big a, a poopy smile and that is, you came on this program and you said there would be repercussions. You weren't clairvoyant, you weren't in a negative spirit with it, but there would be repercussions. And tik tok just days, arguably weeks later, candidate for president Elizabeth Warren came out and called out the business Roundtable for somebody that doesn't follow it every day. Oh, what happened?

Charles Elson: Well she, you know, she came, wrote a letter to Jamie diamond who was running the thing and said, listen, if you're so gung ho about stake holder rights, why don't you come out publicly and support my, my bill did federalize corporate America and require that, that the boards be made up of employees, or bring employee representatives on boards, that there'd be certain actions taken by corporations that benefit the stakes. Basically she kind of threw the gauntlet down to him and that was the consequence. So now so they, the business round table moves away from shareholder value, which where they should have been to quote appease those in the other side and instead of appeasing them, they end up basically being called to task or not wholesale adopting a model, a model that would frankly destroy everyone's retirement. And that's where it's really kind of sad about. It's funny and sad about the whole thing. There were repercussions. You're absolutely right.

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Dace: Charles but there's another voice that says this is, you do your overplaying your hand when shareholders, their business Roundtable didn't do that much communities and feeling good about it. And getting along, which are employees has all part of the model. You're pushing it to the extreme, the Business Roundtable axiom, you have Warren's action to the business Roundtable answers the question. Oh no, you weren't. But answer that voice that says, Oh, you were overdramatic.

Charles Elson: Well, no, not really. I mean, you look a good board, and I've argued this with a business round table. A good board always considers the other stakes. You have to, I mean, you have to have happy employees, happy customers, happy suppliers, otherwise you can't get to long term profitability. That's the whole point. And I think implicit in the shareholder primacy model has always been the notion that the stakes have to be comfortable with you. That's where I think the Business Roundtable, it was a bit disingenuous because they know that. They all know that. What they did was by basically declaring all the stakes equal and eliminating the poll

star of shareholder value in the end is they destroyed any accountability. And that's the real problem here. And legally that's not the rule either. And it hopefully never is the rule because it's so, number one, no one will invest or if they invested, it will be in the form of debt, which means no new great risky business will ever take hold. You can forget the tech industry. You can forget a lot of things that might've, would never have been had it not been for equity capital.

Dace: Charles, only two minutes left in this segment. You were, you've been absolutely clairvoyant through this whole process. What do these CEO's do? They arguably, we don't know it, but our guess is the Nike have board approval now they're trapped by their own words and stocks go up and down. What do these guys and gals do over the next couple of years?

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Charles Elson: Well, I, I had a student in my class who asked that question and he said that in the event of, isn't this thing really an antidote to a recession? In other words, if there's a recession and these companies don't perform very well, then ultimately this gives them the excuse they're looking forward to explain why they had crummy results in a recession. So in other words, this is the statement really was an anticipation of recession rather than a dramatic change in policy. This was really self-protective, if you will. It was a very good comment. I thought actually went to a conference a couple of weeks later, a professor from Northwestern made the same comment. So obviously there must be something good in the water at the University of Delaware as he gets good comments like that.

Dace: All right, you got one minute. What happens though? These guys and gals are trapped.

Charles Elson: Yeah, they're going to, they're going to be how hoisted on their own you know what batar on this one, because if results fail. Then the shareholders are going to say, you know, why did you do it? Or you know, and the, and the other stakes will say, what's going on here? In other words, this was a, this was a real mistake on their part. I mean, look at Johnson and Johnson and the whole opioid things. Ethical is not helpful to the community yet the CEO signed this statement. How will he explain that to, to everyone? That's going to be a tough one for them.

Dace: Charles Elson, the guru of corporate governance and the state of Delaware, and the state is on the hot seat, obviously. Fascinating guy.