

# **THE SPIRIT OF THE LAW: Why Corporations are Greedy**

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Thirty-five years ago I was blessed to have been taught by the late David G. Trager, then the Dean of Brooklyn Law School and later a federal judge in the Eastern District of New York. He instilled in me the method of legal analysis that has guided every lawsuit I have litigated.

Cases that go to court rarely involve straightforward applications of clear law. Litigated cases usually require judges to decide if and how laws that arose under different factual circumstances should be applied to your client's unique situation. To win those cases, Judge Trager taught, "don't just tell the court what the law is, tell the court *why* the law is what it is."

That is, explain the underlying social, economic or moral *public policy* behind the law that drove the law into existence in the first place, and then argue from a policy perspective why that law should or shouldn't govern your case. Putting legal principles into their policy context enables judges to apply them in ways that aim toward doing justice in every unique case.

It can be said that while the legal principles are the "letter of the law," their underlying policies are the "spirit of the law." By analogy, most people can recite some of the Ten Commandments or the edict (common to just about every faith) that we should "treat others as we would like to be treated." But we don't often think about *why* those commandments exist.

The society-optimizing policies (*i.e.*, spirit) behind some commandments—like thou shall not murder—are easily discerned. The societal purposes of others—like loving thy neighbor as thyself—require deeper contemplation. But each commandment exists for a policy-based reason, undoubtedly as sound today as when originally inspired.

The same is not necessarily true of policies behind more modern, un-debatably man-made laws. Occasionally, we should re-think such laws if their purpose no longer best serves us. One example may be the foundational laws governing corporations.

A recent *Blue Collar Buzz* column (Joe Maniscalco, July 18, 2017) covered greedy companies that have made American workers “the target of a pernicious and sustained campaign to destroy good middle class jobs in the name of private profit.” To understand why this evil is occurring, it helps to revisit what corporations actually are under the law.

Corporations are greedy because many corporate managers believe and behave as if the law requires them to be. Corporations are not people. They are creatures of statute. Born of old laws that chartered corporations into existence as a means of facilitating commerce among people to serve and benefit people. Corporations, as initially purposed, had great utility because they enabled the accumulation of ownership capital, which gives rise to economies of scale and efficiencies that produce American jobs.

But unlike people, who are taught value systems designed to serve others’ and society’s needs along with their own, many corporations’ sole value system is to generate profit. Under the law, the people running many large corporations have been taught, and therefore believe, that they have a fiduciary duty to maximize profits.

In recent years corporate profit-maximization has become increasingly short-term oriented, driven by the desire to meet quarterly targets and executive compensation schemes tied to doing so. Once companies reach their natural capacity for organic growth, cutting costs—and squeezing labor—become tools of choice for meeting their numbers.

The widespread misconception that the law of corporate fiduciary duty mandates profit-maximization at the cost of every other consideration foments corporate greed and is largely responsible for the war on American workers' wages. Re-thinking the policies behind corporate law and re-educating corporate managers that the law does not require short-term profit maximization would help end the war. How to do that will be the topic of my next two columns.