

Corporate Law and Sustainability – Justice Strong’s Enduring Influence

Kern Alexander
Kern.alexander@rwi.uzh.ch

Follow this and additional works at: <https://cwldc.widener.edu/wclr>



Part of the [Law Commons](#)

Recommended Citation

Alexander, Kern () "Corporate Law and Sustainability – Justice Strong’s Enduring Influence," *Widener Commonwealth Law Review*. Vol. 35: No. 1, Article 6.

Available at: <https://cwldc.widener.edu/wclr/vol35/iss1/6>

This Article is brought to you for free and open access by Widener Law Commonwealth Digital Commons. It has been accepted for inclusion in Widener Commonwealth Law Review by an authorized editor of Widener Law Commonwealth Digital Commons. For more information, please contact smgiusti@widener.edu.

CORPORATE LAW AND SUSTAINABILITY – JUSTICE STRONG’S ENDURING INFLUENCE

By Kern Alexander*

This article discusses the growing awareness of corporate governance ethics in the context of environmental and social governance (ESG) concerns for corporate boards. It does so by considering the evolution of corporate governance theory since the nineteenth century, involving the balance between shareholder rights and third-party stakeholder interests. The article is based on the lecture entitled the “Justice William Strong Lecture on Ethics and the Business Lawyer: Corporate Law and Sustainability – Justice Strong’s Enduring Influence.”¹ The analysis of corporate governance principles is taken within the context of the ethics espoused by Justice Strong in his jurisprudence. Part I discusses the historical background of Justice Strong’s career and the importance of ethics in his interpretation of the U.S. Constitution. Part II discusses the importance of ethics in the understanding of corporate law and business regulation in the late nineteenth and early twentieth centuries. Part III provides further insight into the influence of ethics and morality on Justice Strong’s legal philosophy and discusses how ethical questions continue to arise in modern business law, particularly as they relate to balancing shareholder rights with the rights of third-party stakeholders.

I. JUSTICE STRONG’S MORAL VALUES

Justice Strong was a U.S. Supreme Court Justice in the second half of the nineteenth century.² Although he was not one of the more

* Professor of Law, Faculty of Law, University of Zurich. Professor Alexander holds the Chair in International Banking and Financial Law at the University of Zurich.

¹ Kern Alexander, Professor, Univ. of Zurich, Justice William Strong Lecture on Ethics and the Business Lawyer, Address at Widener University Commonwealth Law School (Nov. 7, 2023).

² Justice William Strong (1808-1895) served on the Supreme Court from 1870-1880; however, much of the research and academic discussion on the Justice focuses on his fervent religious practices and beliefs as a devout Presbyterian. He

noted or famous constitutional jurists of that time, his decisions and other legal activities reflected a philosophy of jurisprudence that emphasized the importance of moral convictions and ethics in shaping his interpretation of the U.S. Constitution.³

He is often described as a deeply religious man who was concerned with moral values.⁴ One might assume this meant he was a religious extremist or fundamentalist, but in reality, his views reflected a belief in natural law—the idea that morality could be a test in determining the validity of laws. In the nineteenth century, this was a widely accepted legal philosophy. It was only in the twentieth century that legal scholarship shifted toward positivism, emphasizing the separation of law and morality. Strong, however, belonged to a time when legal interpretation often engaged with ethical principles.

Strong grew up in Connecticut, a state with an established religion at the time.⁵ Congregationalism was enshrined in law, businesses were closed on Sundays, and blasphemy was punishable by law.⁶ When Strong attended Yale, its president, Timothy Dwight, enforced strict moral codes, expelling students for blasphemy or moral violations.⁷ This strict Protestant environment influenced Strong’s perspective on law and society.

was a prominent lawyer and judge in Pennsylvania prior to being appointed to the Supreme Court. Unfortunately, it seems he is not as well documented as other historical justices. *See generally* Jon C. Teaford, *Toward a Christian Nation: Religion, Law and Justice Strong*, 54 J. PRESBYTERIAN HIST. 422, 422 (Winter 1976).

³ Conflicting information exists regarding the Justice. Whereas the Teaford biography focuses on his extreme involvement in pushing for a god-inclusive constitution, the Constitutional Law Reporter alternatively states that he never devoted much attention to constitutional matters. Touching on the ethics of office, the Reporter further notes “he chose to retire as an example to several justices who were ill yet refused to give up their seats.” *See William Strong*, CONST. L. REP., <https://constitutionallawreporter.com/previous-supreme-court-justices/william-strong/> (last visited Mar. 11, 2025).

⁴ Teaford, *supra* note 2, at 426, 431.

⁵ *Id.* at 423.

⁶ *Id.* at 423-24.

⁷ *Id.* at 424 (noting that President Timothy Dwight served as the president of Yale College at a time when it was “simmering with religious fervor”).

As a judge and lawyer, he recognized the constitutional need for the separation of church and state but believed that God should not be separate from governance. He felt that a full understanding of the Constitution required engagement with moral principles, particularly those rooted in Christianity. Historian Jonathan Teaford noted that Strong did not advocate for a godless nation but believed that divine recognition should be reflected in the country’s laws.⁸

Before joining the Supreme Court in 1870, Strong was a business lawyer in Reading, Pennsylvania, specializing in patent and admiralty law.⁹ After the Civil War, he led the National Reform Association, which sought to amend the U.S. Constitution so that it would acknowledge God explicitly.¹⁰ He proposed a preamble to the Constitution stating,

We, the people of the United States, humbly acknowledging Almighty God as the source of all authority and power in civil government, the Lord Jesus Christ as the Governor among the nations, and His revealed will as of supreme authority, in order to constitute a Christian government . . . do ordain and establish this Constitution for the United States of America.¹¹

While this amendment was never adopted, it demonstrated Strong’s belief that the Constitution should be morally grounded.

His understanding of constitutional legal principles and his legal advocacy were shaped by his reaction to the Civil War. He was deeply disturbed by the conflict, particularly the differing constitutional interpretations between the North and South. Southern states justified slavery through a states’ rights reading of the Constitution, which Strong opposed. As an abolitionist Democrat, he believed the Constitution should clearly reflect moral principles, particularly those rejecting slavery.

Strong’s legal career followed a path from the Pennsylvania State Legislature to the State Supreme Court. His abolitionist stance

⁸ *See id.* at 423.

⁹ *Id.* at 425-26.

¹⁰ *Id.* at 428.

¹¹ *Id.* at 428-29.

made him popular with Republicans, and in 1869, President Ulysses S. Grant appointed him to the U.S. Supreme Court, where he was confirmed in 1870.¹² While his political and legal philosophy was grounded in morality, his reputation on the Court was primarily as an expert in patent, admiralty, and revenue law, rather than a constitutional innovator.¹³

Despite this, some of his Supreme Court decisions had a significant impact. His opinion in *Strauder v. West Virginia* applied the Fourteenth Amendment to the States to prohibit racial discrimination in jury selection.¹⁴ Justice Strong delivered the opinion of the Court, addressing the issue of racial discrimination in the selection of juries.¹⁵ The defendant, a black man, argued his conviction was unconstitutional, as West Virginia's law excluded African Americans from the jury, violating his rights under the Fourteenth Amendment's Equal Protection Clause.¹⁶ The Court ruled that a state cannot systematically exclude individuals from jury service based on their race or color, as this denies them their rights as citizens and undermines the fairness and integrity of the legal system.¹⁷ Justice Strong's opinion emphasized the need for African Americans to gain full legal and social autonomy, stressing that the law should not subjugate them.¹⁸ Although not directly addressing business ethics, the opinion recognizes the importance of ethics and morality in interpreting the Constitution.

In *Ex parte Lange*,¹⁹ he addressed the principle of double jeopardy, arguing that a party should not be tried twice for the same offense after he has been acquitted or convicted, highlighting the Court's commitment to maintaining equitable proceedings and ensuring a balance between individual rights and societal interests. This commitment to maintaining fairness and protecting individual rights in legal proceedings can be analogized to property rights in

¹² *Id.* at 425.

¹³ *Id.* at 425-26.

¹⁴ *Strauder v. West Virginia*, 100 U.S. 303, 310 (1880).

¹⁵ *Id.* at 304-05.

¹⁶ *Id.* at 304.

¹⁷ *Id.* at 309-10.

¹⁸ *Id.* at 307-08.

¹⁹ *Ex parte Lange*, 85 U.S. 163, 200-02 (1874) (Clifford, J., dissenting). Justice Strong wrote a separate dissenting opinion.

the business law context. Similarly, in *Stockdale v. Insurance Companies*, he ruled against retroactive taxation, emphasizing fairness and equity in contract law as a fundamental principle in the context of the Constitution’s Contract Clause.²⁰

Some of his most influential cases, *The Slaughterhouse Cases* (1873), shaped the interpretation of the Fourteenth Amendment, particularly in economic regulation.²¹ His ruling upheld a Louisiana law granting a monopoly on slaughterhouse operations, reinforcing state power in economic affairs. In *Munn v. Illinois*,²² he supported property rights by opposing government regulation of grain elevator rates to protect the public interest.

In other important cases concerning the power of government to regulate property rights, however, Strong sided with the Court’s majority to back strong state power to diminish property rights if for a public purpose. In the *Legal Tender Cases*, Congress had authorized, under the Legal Tender Act of 1862, United States Notes (greenbacks), which were not backed by gold or silver coin, to be accepted by creditors in repayment of debts, including those debts that predated the Legal Tender Act.²³ In brief, to fund the Civil War, the U.S. government passed the Legal Tender Act, thereby authorizing paper money (U.S. government notes), which were not redeemable in gold or silver, to be tendered to satisfy debt claims.²⁴ But, in *Hepburn v. Griswold* (1869), the Court ruled that Congress lacked the power to authorize paper money (greenbacks) not backed by gold or silver to satisfy debts that arose prior to enactment of the Legal Tender Act, holding that such an act was a violation of the U.S. Constitution’s Fifth Amendment.²⁵

²⁰ *Stockdale v. Ins. Cos.*, 87 U.S. 323, 341 (1874) (Strong, J., dissenting).

²¹ *Slaughter-House Cases*, 83 U.S. 36, 57, 81-83 (1872).

²² *Munn v. Illinois*, 94 U.S. 113 (1877) (Field, J., dissenting). Justice Strong joined in the dissenting opinion.

²³ In the *Legal Tender Cases*, the U.S. federal government had issued paper money known as United States Notes (or greenbacks) during the American Civil War, pursuant to the Legal Tender Act of 1862. *See generally* *Legal Tender Cases*, 79 U.S. 457, 529-30 (1871); *see also* discussion in *Legal Tender Case* (*Julliard v. Greenman*), 110 U.S. 421, 436-38 (1884).

²⁴ *Legal Tender Cases*, 79 U.S. at 529-30.

²⁵ In *Hepburn v. Griswold*, the Court held that parts of the Legal Tender Act violated the Fifth Amendment’s Due Process Clause of the U.S. Constitution.

In its next session, the Court reversed *Hepburn*, with the newly appointed Justices Strong and Bradley (both appointed after the *Hepburn* decision) supporting the 5-4 majority opinions in *Knox v. Lee*²⁶ and *Parker v. Davis*, which asserted the Legal Tender Act²⁷ to be a justifiable use of Congress's power during a national emergency. In both decisions, Strong joined the narrow majority opinions to authorize the issuance of U.S. Government Notes that could "interfere" with contractual rights. Balancing the role of constitutional power and the public good, the Court focused on the Constitution's Necessary and Proper Clause. It stated, in relevant part:

It is also clear that if we hold the acts invalid as applicable to debts incurred, or transactions which have taken place since their enactment, our decision must cause, throughout the country, great business derangement, widespread distress, and the rankest injustice . . . [and that] [t]here must be some relation between the means and the end; some adaptedness or appropriateness of the laws to carry into execution the powers created by the Constitution.²⁸

And in recognizing the power of the government to pursue a constitutional objective, it stated:

As in a state of civil society property of a citizen or subject is ownership, subject to the lawful demands of the sovereign, so contracts must be understood as made in reference to the possible exercise of the rightful authority of the government, and no obligation of a contract can extend to the defeat of legitimate government authority . . .

Writing for the majority, Chief Justice Salmon P. Chase acknowledged that Congress had the power to issue paper money but noted that such paper money (United States Notes) could not be used to satisfy debts that arose before the legal authorization of the notes in the Legal Tender Act. The Supreme Court overruled *Hepburn v. Griswold* in the *Legal Tender Cases*, holding that United States Notes could be used to repay preexisting debts. See *Legal Tender Cases*, 79 U.S. at 553.

²⁶ *Legal Tender Cases*, 79 U.S. at 529.

²⁷ Legal Tender Act of 1862, ch. 33, 12 Stat. 345.

²⁸ *Legal Tender Cases*, 79 U.S. at 529, 543.

. The questions involved are constitutional questions of the most vital importance to the government and to the public at large.²⁹

Throughout all these cases, Strong’s legal reasoning often referenced ethical values. His jurisprudence balanced legal principles with societal interests, particularly in business law, where he recognized the role of government regulation in promoting fairness. His approach remains relevant to corporate law today, especially in debates on corporate governance and the balance between shareholder and stakeholder rights.

II. CORPORATE GOVERNANCE: BALANCING SHAREHOLDER RIGHTS AND THIRD-PARTY STAKEHOLDER INTERESTS

Part II of this article addresses the corporate governance debate. Should corporations exist solely to maximize shareholder profits, or should they have broader responsibilities to employees, communities, and the environment? This is known as the debate over corporate purpose, which dates back to the early twentieth century.

In the early and middle nineteenth century, the typical business unit in the United States was owned by an individual or a small group, was limited in size by the personal wealth of the individuals who controlled it, and was managed either directly by the owners or their agents. In the early twentieth century, however, “[a]s the corporate form of organization grew and a large market in corporate securities was developed, the savings and investments and insurance of the [growing] middle class, and . . . more and more of the power to make the vital economic decisions of society, [was] passed into the hands” of the shareholders, managers, and investment bankers who controlled these corporations.³⁰

The focus on shareholder wealth maximization as the main purpose for a company’s board of directors in fulfilling their

²⁹ *Id.* at 551, 554.

³⁰ RICHARD HOFSTADTER, *THE AGE OF REFORM* 217-18 (Vintage Books 1955) (discussing how the rise of the Progressive movement “owed much of its force to a class of substantial property-owning citizens whose powers of economic decision had been expropriated by the system of corporate organization”).

fiduciary duties was recognized in the 1919 Michigan Supreme Court decision, *Dodge v. Ford Motor Co.*³¹ This case was praised as “an elegantly simple and eminently reasonable application of economic theory” to the problem of agency costs, but has been criticized as lacking precedential value due to the peculiar historical facts surrounding the case and because it is no longer consistent with modern corporate governance theory.³²

In the 1930s, legal scholars Adolf A. Berle and Merrick Dodd debated the duties of the board of directors of corporations to assess whether they should act in the best interest of shareholders (*i.e.*, profit maximization) or take account of other corporate stakeholders, such as employees.³³ Berle argued that corporate managers should act exclusively in the interest of shareholders, while Dodd maintained that corporations should serve multiple constituencies, including employees and the broader public. This debate resurfaced in 1970 when economist Milton Friedman reinforced the shareholder primacy argument by arguing that businesses exist solely to maximize profits for the owners of corporations, the shareholders.³⁴

However, contemporary challenges—climate change, economic inequality, and social sustainability—have reignited discussions on corporate responsibility. The rise of ESG (Environmental, Social, and Governance) considerations reflects a shift toward broader corporate accountability. Institutional investors, such as BlackRock, now advocate for companies to serve social purposes beyond profit-making.³⁵

³¹ *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919).

³² See discussion in Michael J. Vargas, *Dodge v. Ford Motor Co. at 100: The Enduring Legacy of Corporate Law’s Most Controversial Case*, 75 THE BUS. LAW., 2103, 2103 (2020).

³³ A.A. Berle Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (May 1931); E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 44 HARV. L. REV. 1145, 1147-48 (May 1932).

³⁴ Milton Friedman, *A Friedman Doctrine: The Social Responsibility of Business Is to Increase Its Profits*, N.Y. TIMES, Sept. 13, 1970, at 17.

³⁵ Larry Fink, *Larry Fink’s Annual Chairman’s Letter to Investors*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Mar. 17, 2023), <https://corpgov.law.harvard.edu/2023/03/17/larry-finks-annual-chairmans-letter-to-investors/>; see also Larry Fink, *Larry Fink’s 2025 Annual Chairman’s Letter*

The Business Roundtable, which emphasized shareholder primacy in 1997, revised its stance in 2019 by committing to broader stakeholder engagement.³⁶ Legal frameworks have also evolved. The UK Companies Act (2006) requires directors to consider long-term impacts, employee interests, and environmental effects when making decisions.³⁷ Similarly, the European Union’s Corporate Sustainability Reporting Directive now mandates that large companies disclose their ESG impact.³⁸

III. JUSTICE STRONG AND CORPORATE PURPOSE

Justice Strong’s jurisprudence, which integrated moral considerations into legal interpretation, provides a historical foundation for these developments. While he did not conceive of corporate governance as we discuss it today, his belief that law should be interpreted through ethical and moral principles resonates in modern corporate governance debates.

The key questions remain: Should companies have legal obligations to stakeholders beyond shareholders? How should those obligations be enforced? Should corporate boards face legal liability for failing to consider broader social responsibilities? These issues continue to shape corporate law in the U.S., Europe, and many other countries.

Strong’s legacy reminds us that law and morality have long been intertwined. His approach encourages us to reflect on whether businesses should prioritize ethical considerations alongside profit-making.

to *Investors*, BLACKROCK, <https://www.blackrock.com/corporate/investor-relations/larry-fink-annual-chairmans-letter> (last visited Nov. 7, 2025).

³⁶ *Business Roundtable Redefines the Purpose of a Corporation to Promote ‘An Economy That Serves All Americans’*, BUS. ROUNDTABLE (Aug. 19, 2019), <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>.

³⁷ Companies Act 2006, c. 46, § 172 (U.K.).

³⁸ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 Dec. 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as Regards Corporate Sustainability Reporting, 2022 O.J. (L 322) 2.

Justice Strong's emphasis on ethics and morality in his jurisprudence and legal practice has modern implications for understanding the role of corporate lawyers, particularly in helping companies develop more sustainable business models. Do they have a role to play in this regard?

Corporate lawyers play a crucial role in advising boards and senior management on liability issues. Traditionally, legal risk has been more focused on shareholder concerns. A company that prioritizes sustainability over short-term profits may face shareholder lawsuits, particularly in the U.S. and Europe, where shareholders can bring derivative actions on behalf of the company against the board. Corporate lawyers have typically worked to minimize such risks.

However, legal frameworks are evolving. In Europe, new disclosure requirements mandate that companies report their environmental, social, and governance (ESG) impact, as well as how ESG factors affect their operations.³⁹ In the U.S., the Securities and Exchange Commission (SEC) introduced in 2024 proxy rules requiring listed companies to disclose their climate impact, but withdrew these rules in 2025.⁴⁰ This shifting legal terrain suggests that lawyers guide companies in developing compliance strategies, ensuring transparent disclosures, and balancing regulatory obligations with investor and customer expectations.

Another important question relates to Justice Strong's moral values—were they shaped from a young age, or did they develop later in his legal career? His moral outlook was deeply influenced by his upbringing. He was raised in Connecticut at a time when Presbyterian and Methodist traditions shaped social and political life.⁴¹ Yale, where he studied, had a strict Protestant moral code that reinforced these values.⁴² Later, as a practicing lawyer in

³⁹ *Id.*

⁴⁰ *SEC Adopts Rules to Enhance and Standardize Climate-Related Disclosures for Investors*, U.S. SEC. & EXCH. COMM'N (Mar. 6, 2024), <https://www.sec.gov/newsroom/press-releases/2024-31>. In 2025, the SEC withdrew these Guidelines. See *SEC Votes to End Defense of Climate Disclosure Rules*, U.S. SEC. & EXCH. COMM'N (Mar. 27, 2025), <https://www.sec.gov/newsroom/press-releases/2025-58>.

⁴¹ Teaford, *supra* note 2, at 423.

⁴² *Id.* at 424-25.

Pennsylvania, his legal philosophy continued to reflect his belief in natural law and moral principles.

As an abolitionist Democrat, Strong opposed slavery and saw the Constitution as a document that should be interpreted through ethical considerations. He was part of a minority within the Democratic Party, which was largely dominated by pro-slavery factions at the time. After the Civil War, he sought constitutional reform, advocating for explicit recognition of Christian values in the Constitution and in government policy. While today this may seem excessive and a potential threat to the First Amendment’s Establishment Clause, at the time, he saw it as a necessary response to the moral crisis brought about by the Civil War.

Regarding economic regulatory approaches, there are parallels between ESG policies today and environmental laws from the 1970s. The establishment of the Environmental Protection Agency (EPA) under President Nixon marked a period of significant regulatory reform. However, over time, reliance on federal agencies has been challenged, particularly by recent Supreme Court decisions limiting agency discretion. Senator Elizabeth Warren has argued for stronger statutory intervention to mandate corporate responsibility beyond shareholder wealth maximization.⁴³

A related question is whether the ESG movement is driven by social demand, particularly from millennials. Younger generations increasingly expect companies to engage in socially responsible behavior. For example, consumers and investors scrutinize how corporations produce goods, treat workers, and respond to global issues. Companies now face pressure not only from regulators but also from customers who demand ethical transparency. This has made ESG considerations a mainstream business concern.

Millennials are not only influencing consumer behavior but are also shaping employment trends and investment decisions. Many prefer to work for companies that align with their values and invest in businesses committed to sustainability. As a result, companies must address these expectations to remain competitive.

⁴³ Michael Sainato, *Elizabeth Warren Introduces Senate Bill to Hold Capitalism ‘Accountable’*, THE GUARDIAN (Dec. 11, 2024), <https://www.theguardian.com/us-news/2024/dec/11/elizabeth-warren-capitalism-accountable-senate-bill>.

Another important issue concerns corporate governance. For example, in the United Kingdom, the question has arisen about how directors of British companies should balance stakeholder interests under section 174 of the UK Companies Act.⁴⁴ While directors have discretion, their primary duty is to promote the success of the company for the benefit of its shareholders. However, the law also requires them to consider the long-term impact of their decisions on employees, suppliers, customers, and the environment.⁴⁵

This raises questions about prioritization—should companies focus more on customers or employees? The legal framework provides flexibility but lacks clear hierarchies. Courts have generally upheld board discretion, provided decisions are made in good faith and documented through transparent procedures.⁴⁶ As public expectations shift, stakeholder interests will likely become more central to business strategy.

CONCLUSION

Legal professionals must navigate the changing responsibilities of corporations. The future of corporate governance will likely involve greater disclosure and require balancing business objectives with ethical considerations. Justice Strong's emphasis on moral values in law provides a historical foundation for these discussions on corporate governance reform. As a business lawyer, he would have appreciated the relevance of morality and ethics in interpreting corporate law, instead of simply relying on mechanical measures of corporate profitability, to determine whether a company was meeting its purpose. The importance of ESG in corporate governance is transforming the debate over corporate purpose and whether it should be measured simply by looking at company profits or, instead, should also consider other factors related to the business's broader mission and its impact on stakeholders, such as

⁴⁴ Companies Act 2006, c. 46, § 174 (U.K.).

⁴⁵ *Id.* at § 172.

⁴⁶ See *In re Caremark Int'l. Inc. Derivative Litig.*, 698 A.2d 959, 968-69 (Del. Ch. 1996) (analyzing a director's duty of care in the oversight context and raising the question regarding compliance, "what is the board's responsibility with respect to the organization and monitoring of the enterprise to assure that the corporation functions within the law to achieve its purposes?").

employees, suppliers, creditors, and other third parties who are impacted by its activities. As with the debate between Berle and Dodd in 1932, Justice Strong would have recognized the balancing act to be a challenging task, but he also would have viewed it as necessary to give the law a moral dimension.