ESSAY

THE PROBLEM OF PURPOSE IN CORPORATE LAW

Grant M. Hayden[*] *& Matthew T. Bodie*[**]

ABSTRACT

For the last half century, shareholder primacy has reigned as the dominant definition of corporate purpose, as to both the purpose of individual companies and corporate law more generally. Recently, however, the Business Roundtable, the American Law Institute's Restatement of the Law: Corporate Governance, and many business and legal academics have developed new answers to explain why we have corporations, and the ends to which their massive economic powers should be directed. This Essay endeavors to reframe the focus of the debate beyond purpose itself into the realm of actual governing power. In order to be meaningful, purpose needs governance. While an expansion of corporate purpose to consider the interests of

* Richard R. Lee Jr. Endowed Professor, SMU-Dedman School of Law.

** Robins Kaplan Professor, University of Minnesota Law School. This Essay is part of a project originally titled *Democratic Participation as Corporate Purpose*. The project also includes *A Democratic Participation Theory of Corporate Governance*, 109 MINN. L. REV. (forthcoming 2025). For their comments on this project, the Authors would like to thank Jim An, Kevin Douglas, Brett McDonnell, Elizabeth Pollman, and Christina Sautter; participants at the 2024 meeting of the Association of American Law Schools (AALS), including section chairs Mira Ganor and Cathy Hwang, as well as fellow panelists Miriam Baer, Itai Fiegenbaum, Jill Fisch, Geeyoung Min, and Jeff Schwartz; participants at the Berkeley Law ESG Paper Award Workshop, including host Stavros Gadnis and workshop participants Atinuke Adediran, Emilie Aguirre, Aneil Kovvali, Joshua Macey, Amelia Miazad, Yaron Nili, Michael Ohlrogge, Kish Parella, Jeff Schwartz, Roy Shapira, Greg Shill, Natalya Shnitser, and Lécia Vicente; participants at the National Business Law Scholars Conference, including Christopher Havasy; and participants at the annual meeting of the Law and Society Association, including Anat Alon-Beck, Joan Heminway, Ewan McGaughey, and Dana Brakman Reiser. Thanks as well to the SMU-Dedman School of Law and the University of Minnesota Law School for their research support.

corporate stakeholders would be a positive development, that change will not make a difference unless governance is also restructured to accommodate those stakeholders. We need to undertake the complicated but ultimately rewarding work of restructuring corporate governance if we want to replace shareholder wealth maximization as our orienting economic principle.

TABLE OF CONTENTS

I. INTRODUCTION 612

II. THE CHANGING CONCEPTION OF CORPORATE PURPOSE 615

III. THE FRAUGHT RELATIONSHIP BETWEEN PURPOSE AND GOVERNANCE 625

IV. PURPOSE IS GOVERNANCE AND GOVERNANCE IS PURPOSE 629

V. CONCLUSION 633

I. INTRODUCTION

The modern corporation needs purpose. It's de rigueur for today's business leviathans to have a mission, a calling, higher aims to which to aspire. Starbucks Coffee Company states its mission in these terms: "With every *cup*, with every *conversation*, with every *community*—we nurture the limitless possibilities of human connection."[1] On its investor relations page, Meta states that its mission is "to give people the power to build community and bring the world closer together."[2] And Southwest Airlines' purpose is to "connect People to what's important in their lives through friendly, reliable, and low-cost air travel."[3] Even the relatively staid Walmart is in on the purpose movement, stating: "We aim to build a better

1. *Mission & Values*, STARBUCKS CAREERS, https://careers.starbucks.com/culture/mission-and-values/ [https://perma.cc/V9Q2-V88R] (last visited Sept. 19, 2024).

2. *FAQs*, META INV. RELS., https://investor.atmeta.com/resources/default.aspx [https://perma.cc/KY36-7YMZ] (last visited Sept. 11, 2024); *see also About Meta*, META, https://about.meta.com/company-info/ [https://perma.cc/V264-86LB] (last visited Sept. 11, 2024).

3. *About Southwest Airlines*, SOUTHWEST, https://www.southwest.com/about-southwest [https://perma.cc/SLL8-CH6C] (last visited Sept. 10, 2024).

world—helping people live better and renew the planet while building thriving, resilient communities."[4]

These individual examples—among innumerable others—illustrate an important change in the culture of corporate governance: a decisive move away from shareholder primacy as governing norm. Over the last decade, companies and corporate governance institutions have indicated an interest in finding corporate purpose beyond shareholder profits.[5] BlackRock's Larry Fink penned his 2018 annual letter asking companies to "not only deliver financial performance, but also show how it makes a positive contribution to society."[6] A year later, the CEOs of 181 influential American companies joined the Business Roundtable as it issued its "Statement on the Purpose of a Corporation," which was essentially a rejection of the shareholder primacy norm in favor of broader societal purposes.[7] A wealth of trade titles like *Conscious Capitalism* and *The Purpose Economy* have spelled out the ways in which business leaders are finding and developing meaning in their organizations.[8] This new approach has sufficient cultural significance that counter-attackers claim that businesses have gotten too "woke."[9]

---

4. *Purpose*, WALMART, https://corporate.walmart.com/purpose [https://perma.cc/26KM-YXTU] (last visited Sept. 10, 2024).

5. Jill E. Fisch & Steven Davidoff Solomon, *Should Corporations Have A Purpose?*, 99 TEX. L. REV. 1309, 1309 (2021) ("Purpose is the hot topic in corporate governance. Not only are commentators demanding that corporations formally articulate a purpose, they are insisting that corporate purpose encompass the interests of nonshareholder stakeholders or society more generally.").

6. Larry Fink, *A Sense of Purpose*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Jan. 17, 2018), https://corpgov.law.harvard.edu/2018/01/17/a-sense-of-purpose/ [https://perma.cc/MH8E-VZNS].

7. *Statement on the Purpose of a Corporation*, BUS. ROUNDTABLE, https://opportunity.businessroundtable.org/ourcommitment [https://perma.cc/9ALD-DVHG] (last visited Sept. 9, 2024); *see Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy that Serves All Americans,'* BUS. ROUNDTABLE (Aug. 19, 2019) [hereinafter *Business Roundtable*], https://opportunity.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans [https://perma.cc/HF72-N2NN].

8. *See, e.g.*, JOHN MACKEY & RAJ SISODIA, CONSCIOUS CAPITALISM: LIBERATING THE HEROIC SPIRIT OF BUSINESS 48 (2013) ("A higher purpose gives great energy and relevance to a company and its brand."); AARON HURST, THE PURPOSE ECONOMY 21 (2d ed. 2016) ("The emergence of purpose as the new organizing principle in our economy is a product of our current moment in time."); ROY M. SPENCE, JR. & HALEY RUSHING, IT'S NOT WHAT YOU SELL, IT'S WHAT YOU STAND FOR: WHY EVERY EXTRAORDINARY BUSINESS IS DRIVEN BY PURPOSE (2009). *See generally* SIMON SINEK, DAVID MEAD & PETER DOCKER, FIND YOUR WHY: A PRACTICAL GUIDE FOR DISCOVERING PURPOSE FOR YOU AND YOUR TEAM (2017).

9. *See, e.g.*, VIVEK RAMASWAMY, WOKE, INC.: INSIDE CORPORATE AMERICA'S SOCIAL JUSTICE SCAM 4 (2021) ("Wokeness has remade American capitalism in its own image."); *see also* STEPHEN M. BAINBRIDGE, THE PROFIT MOTIVE: DEFENDING SHAREHOLDER WEALTH

The notion of corporate purpose beyond shareholder primacy is certainly a positive development, and after years of celebrating rapacious profitmaking, these new perspectives on corporate purpose may begin to reorient corporate policies toward the common good.[10] But we think the issue of corporate purpose must be resolved more directly, as a matter of corporate law. The purpose of the corporation is expressed through its leadership and by those who choose that leadership, so efforts to mold purpose without changes in governance will succeed or fail depending on the will of that electorate. To put it simply: purpose must be tied to governance. If reformers truly want to change the corporation's purpose, they must contemplate structural changes to the actual mechanisms of corporate governance. All else is ephemeral.

In this Essay, we argue that the answer to the current corporate purpose dilemma is fairly straightforward. A corporation's purpose should be developed over time, in its words and actions, through governance. And the key to changing its purpose is changing its electorate. Corporate governance norms have moved beyond the idea of shareholder wealth maximization by recognizing that shareholders are people who care about more than accumulating profits at the expense of the climate, the environment, global stability, and social justice. But we now need to take the next step and recognize that corporations are more than just shareholders. Stakeholders need to express their ideas about the corporation's purpose—its mission, its function, its way of life—through structural systems engineered to engage them in governance. Otherwise, the corporate purpose debate will remain a meaningless theatrical performance on the stage of shareholder primacy.

MAXIMIZATION 6 (2023) [hereinafter BAINBRIDGE, THE PROFIT MOTIVE] (arguing against the move towards stakeholder capitalism and using the 2019 Business Roundtable statement as "one of my principal foils").

10. Efforts to diversify corporate directors, particularly as to the inclusion of women, have had some effect. *See* David A. Bell & Ron. C. Llewellyn, *2022 Corporate Governance Trends in Silicon Valley and at Large Companies Nationwide*, HARV. L. SCH. F. ON CORP. GOVERNANCE (Feb. 19, 2023), https://corpgov.law.harvard.edu/2023/ 02/19/2022-corporate-governance-trends-in-silicon-valley-and-at-large-companies-nationwide/ [https://perma.cc/HF9B-ZRZS] (finding that the percentage of women serving on boards of Silicon Valley (SV) 150 companies significantly increased to 32.5% in 2022 from 25.7% in 2021 and increased on boards of S&P 100 companies from 28.7% in 2021 to 32.3% in 2022).

II. THE CHANGING CONCEPTION OF CORPORATE PURPOSE

While "corporate purpose" has recently become a buzz-worthy term, it actually signifies a disparate but related set of concerns and ideas.[11] An individual corporation's purpose, often called a mission statement, is generated by management aiming to inspire and guide the business in a certain direction.[12] Mission statements have become ensconced in the firmament of corporate culture but play at best a mildly hortatory role in corporate governance. There was a time, however, when corporate law required an individual corporate purpose to be expressed in the corporate charter, which constrained organizational discretion.[13] And a brief review of these individualized charter provisions is informative as to the importance of corporate purpose today. But the modern debate over corporate purpose also extends to the collective purpose of corporations and the law that creates them. This inquiry over collective purpose covers both the broader question of why corporations exist at all and the more particularized inquiry of what corporations have been designed to accomplish.[14] The concept of the economic firm has provided one source of inspiration for the idea of organizational law, as it explains the interest in providing a governance solution to a collective enterprise.[15] But the larger question of purpose within corporate law

---

11. *See, e.g.*, Elizabeth Pollman, *The History and Revival of the Corporate Purpose Clause*, 99 TEX. L. REV. 1423, 1424 (2021) ("A great assortment of meanings has come to attach to the term 'corporate purpose.'"). For a taxonomy of these debates, see Edward B. Rock, *Business Purpose and the Objective of the Corporation*, *in* RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD 27, 28 (Elizabeth Pollman & Robert B. Thompson eds., 2021) (arguing that the debate over corporate purpose "is really four different debates: a legal debate over the properties of the corporate form; a finance debate over how to model firms and what to measure; a management debate over how to build great firms; and a political debate over the social role and obligations of large enterprises").

12. *See* Pollman, *supra* note 11, at 1444 (describing mission statements as products of business strategy that express the organization's fundamental purpose).

13. *Id.* at 1426, 1428–29.

14. Both of these ideas are encompassed by the question "why corporations?" *See, e.g.*, Eric C. Chaffee, *The Origins of Corporate Social Responsibility*, 85 U. CIN. L. REV. 353, 355 (2017) ("The question of *why* a corporation exists should be part of formulating any essentialist theory of the corporation because the development of corporations is well documented, and because understanding *why* corporations exist goes to their essential nature."). *See generally* Larry E. Ribstein, *Why Corporations?*, 1 BERKELEY BUS. L.J. 183 (2004).

15. *See* Kent Greenfield, *The Place of Workers in Corporate Law*, 39 B.C. L. REV. 283, 286 (1998) ("In many ways, the theory of the firm—explaining why corporations exist at all—depends centrally on certain notions about workers."). For the foundational pieces on the economic theory of the firm, see R. H. Coase, *The Nature of the Firm*, 4 ECONOMICA 386, 386–87 (1937) (arguing that firms exist to avoid transaction costs by allowing the parties to organize in a hierarchical manner without the need for markets, prices, or specific contracts); Armen A. Alchian & Harold Demsetz, *Production, Information Costs, and Economic Organization*, 62 AM. ECON. REV. 777, 777 (1972) (contending that firms exist to coordinate production in the midst of a variety of inputs).

pits the justification based on shareholder primacy against one based on stakeholder theory.[16] For at least the last thirty years, law and economics theory has supplied the efficiency-based justification for a shareholder-oriented version of corporate law. Only recently have we seen a resurgence of the longstanding stakeholder alternative.

The question of an individual corporation's purpose was not always devoid of legal import. As part of the process of forming a corporate entity, the law has long required a specific purpose to be included in the corporate charter.[17] Prior to the twentieth century, that purpose had to be specifically defined with a limited purview for the business.[18] The first American corporations were authorized for a prescribed type of activity—for example, starting a university or creating a canal—and often had a public or quasi-public purpose.[19] As the corporate form became more widespread across businesses, state legislatures were wary of extending the power that incorporation provided.[20] Requiring a specific purpose as part of the chartering documents limited the scope of corporate control.[21] This limitation was

16. Pollman, *supra* note 11, at 1424 (discussing how the question of corporate purpose "invokes the longstanding corporate law debate about whether directors should manage the corporation to maximize shareholders' economic interests or whether directors instead ought to consider other social aims").

17. *Id.* at 1431–34.

18. Louis K. Liggett Co. v. Lee, 288 U.S. 517, 554–55 (1933) (Brandeis, J., dissenting) ("At first, corporations could be formed under the general laws only for a limited number of purposes . . . ."); Henry Hansmann & Mariana Pargendler, *The Evolution of Shareholder Voting Rights: Separation of Ownership and Consumption*, 123 YALE L.J. 948, 987 (2014) ("Nineteenth-century business corporations typically listed in their charters a relatively narrow and specific set of corporate purposes.").

19. Pollman, *supra* note 11, at 1434 ("The vast majority of business corporations chartered before 1800 concerned activity that we now traditionally associate with government infrastructure, such as transportation companies (canals, turnpikes, bridges, aqueducts) and others that provided local public services."); Lyman Johnson, *Law and Legal Theory in the History of Corporate Responsibility: Corporate Personhood*, 35 SEATTLE U. L. REV. 1135, 1145 (2012) (noting that "colleges, guilds, and municipalities were often organized as corporations, as were such public-serving transportation ventures as canals or turnpikes"). It is no accident that *Trustees of Dartmouth College v. Woodward*, 17 U.S. 518, 520, 636–37, 642 (1819), the Supreme Court case establishing the legal personhood of a corporation, involved a university charter.

20. *Cf. Liggett Co.*, 288 U.S. at 554–55 (Brandeis, J., dissenting) ("Limitations upon the scope of a business corporation's powers and activity were also long universal. . . . The powers which the corporation might exercise in carrying out its purposes were sparingly conferred and strictly construed.").

21. *See* Beaty v. Lessee of A. Knowler, 29 U.S. (4 Pet.) 152, 168 (1830) ("The exercise of the corporate franchise, being restrictive of individual rights, cannot be extended beyond the letter and spirit of the act of incorporation."); Edward H. Warren, *Executory Ultra Vires Transactions*, 24 HARV. L. REV. 534, 534–35 (1911) ("But American legislatures in granting the corporate privilege, either by special charter or pursuant to the provisions of a general law, always have been, and still are, accustomed to incorporate any given body of associates for some, and not for all, purposes.").

justified by the power that the state had provided to the corporation to exist in the first place.[22]

The purpose requirement in early American corporate law came from practices dating back to ancient Rome, medieval European chartering systems for churches and universities, and early English incorporation law.[23] Because charters were special privileges to be granted for a specific commercial endeavor, a statement as to the endeavor's purpose was important to delineate the charter's scope of authority.[24] But there was another benefit as well. By circumscribing the organization's activities, the purpose clause provided an important internal governance function. As described by Elizabeth Pollman, "the stated purpose or purposes . . . in the charter also served as a coordinating mechanism for long-term ventures and associations."[25] The purpose clause identified the mission behind the enterprise and constrained managerial discretion in an era when other investor protections were largely absent.[26]

Along with the purpose requirement came legal mechanisms for enforcement. The primary method was a legal action alleging that a particular action by the corporation was *ultra vires*, or "beyond the power" of the entity.[27] Shareholders could bring an *ultra vires* claim if the corporation went beyond the scope of its purpose as established in the charter.[28] These actions could result in damages paid by the corporate officers who acted beyond their authority, or the court could enjoin corporate actions outside the appropriate scope.[29] Other claims were available as well for

22. *See* Kent Greenfield, *Ultra Vires Lives! A Stakeholder Analysis of Corporate Illegality (with Notes on How Corporate Law Could Reinforce International Law Norms)*, 87 VA. L. REV. 1279, 1302 (2001) (finding that the *ultra vires* doctrine was "an important tool to protect the state's interest in restricting the power and size of corporations and to protect the shareholders from managerial overreaching").

23. Pollman, *supra* note 11, at 1426–28.

24. *See id.* at 1426 ("Under this system of special chartering, corporate charters were granted one by one, and each charter was tailored to the specific activity contemplated by the corporation's organizers. Particular corporate powers and privileges were explicitly enumerated in the charter.").

25. *Id.* at 1429.

26. *Id.* at 1429–30; *see also* Greenfield, *supra* note 22, at 1304 ("It was assumed that shareholders cared which activities the firm engaged in, and if the firm went beyond the activities specified in the corporate charter it was a violation of the firm's contractual duty to the shareholders.").

27. Greenfield, *supra* note 22, at 1281–82.

28. *Id.* at 1282.

29. *See* Adam J. Sulkowski & Kent Greenfield, *A Bridle, a Prod, and a Big Stick: An Evaluation of Class Actions, Shareholder Proposals, and the Ultra Vires Doctrine as Methods for Controlling Corporate Behavior*, 79 ST. JOHN'S L. REV. 929, 930, 932, 945–47 (2005) ("The ultra vires doctrine historically allowed a shareholder to sue to prevent a company from engaging in an activity outside of the specific parameters of its corporate charter.").

corporations straying beyond their charters. As that fell outside of a corporation's corporate purpose, it could even be rendered void if the other party was aware of it.[30] And when a corporation failed to live up to its intended purpose, states could bring a *quo warranto* action to revoke the corporate charter.[31] The purpose clause not only framed the organization's ongoing activity for its private participants but also justified its creations as a collaboration between public and private authority.[32]

As corporations transformed from individually approved creatures of the legislature into commonplace legal vehicles for commerce, the purpose clause slipped into irrelevance.[33] For many larger business entities, such as the railroads, the idea of a particular purpose became a nuisance, requiring either a generous interpretation of the clause or constant legislative amendment.[34] By the time New Jersey and later Delaware transformed the legal landscape with their open routes to incorporation, many states had already begun allowing businesses to incorporate to conduct "any lawful business."[35] As a result, corporations simply provided for this simple limitation in their charters, and the purpose clause no longer limited managerial discretion.[36] Today, even though corporations are allowed to have specific purposes, for-profit companies generally follow specific language: the corporation is

30. *See* Recent Cases, *Corporations—Ultra Vires—Continuing Contract Made for an Unauthorized Purpose*, 27 HARV. L. REV. 680, 680 (1914) (finding a contract for the sale of coal to a railroad for resale was void if the seller was chargeable with knowledge of the railroad's unlawful purpose—namely, to resell the coal outside of its scope as a common carrier).

31. *See* Herbert Hovenkamp, *The Classical Corporation in American Legal Thought*, 76 GEO. L.J. 1593, 1660 (1988); Pollman, *supra* note 11, at 1433; Ki Lee O'Brien, Note, *The Ultra Vires Doctrine: Evaluating Quo Warranto Proceedings and the Power of State Attorneys General*, 66 WAYNE L. REV. 699, 699 (2021).

32. Pollman, *supra* note 11, at 1429.

33. Hovenkamp, *supra* note 31, at 1636 (noting that the general incorporation acts of the mid-1800s "rested on the premise that the corporation was no longer a 'prerogative of the crown'").

34. Pollman, *supra* note 11, at 1439 ("According to one source, state legislatures could not keep up with railroad corporations' demands for legislative amendments to special charters as routes changed and companies merged.").

35. *Id.* at 1435 ("Although the corporate law literature often focuses on the late nineteenth-century liberalization of state corporate law resulting in the famous race to the top or the bottom, the move to allowing corporations to state their purpose as 'any lawful business' started earlier through incremental changes in regulatory and chartering practices."); *see, e.g.*, DEL. CODE ANN. tit. 8, § 101(b) (2024) ("A corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes, except as may otherwise be provided by the Constitution or other law of this State.").

36. *See, e.g.*, Recent Cases, *Corporations—Ultra Vires: What Acts Are Ultra Vires—Ill-Defined Objects of Incorporation*, 32 HARV. L. REV. 285, 290 (1919) (discussing a corporate purpose "enabling the company to carry on almost every conceivable kind of business which such an organization could adopt"). *Ultra vires* prohibitions remain on the books in almost every state. *See* Sulkowski & Greenfield, *supra* note 29, at 945.

formed to conduct and transact all lawful business activities allowed under the laws of the state.[37]

As meaningful limitations on individual corporate purpose were disappearing from corporate charters, the shareholder primacy norm started becoming more important within the law. In *Dodge v. Ford Motor Co.*,[38] the Michigan Supreme Court emphasized the responsibility of management to run the company in the interests of the shareholders.[39] Through a suit brought against the corporation, minority shareholders were able to force the controlling shareholder to provide a substantial dividend.[40] (The plaintiffs had also brought a claim of *ultra vires*, but it was dismissed by the court.[41]) Soon thereafter, influential commentators set forth a structural theory of shareholder rights to blunt the effects of managerial opportunism.[42] Over time, the idea waxed and waned in its influence. But for the past thirty years (if not more), the shareholder wealth maximization norm has dominated both the academic literature and the boardrooms.[43]

That does not mean that individual corporate purpose has become irrelevant. In keeping with organizational theory and management strategy, many companies have adopted purpose or mission statements as part of their corporate outreach.[44] These statements reflect "an operational need for an articulated purpose around which corporate participants can coordinate their

37. Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 SEATTLE U. L. REV. 611, 618 (2017) ("[F]or-profit corporations, including social enterprises organized as corporations, usually take advantage of the full breadth of the permitted purposes for which a corporation can be organized and operated under the applicable state law.").

38. Dodge v. Ford Motor Co., 170 N.W. 668 (Mich. 1919).

39. *Id.* at 684 ("A business corporation is organized and carried on primarily for the profit of the stockholders. The powers of the directors are to be employed for that end. The discretion of directors is to be exercised in the choice of means to attain that end, and does not extend to a change in the end itself, to the reduction of profits, or to the nondistribution of profits among stockholders in order to devote them to other purposes."); D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277, 319–23 (1998) (persuasively arguing that *Dodge* is actually about horizontal equity—the need to run the business in the interest of *all* shareholders and not just the controlling ones).

40. *Dodge*, 170 N.W. at 685.

41. *Id.* at 681.

42. ADOLF A. BERLE, JR. & GARDINER C. MEANS, THE MODERN CORPORATION AND PRIVATE PROPERTY 280–81 (reprt. 1933).

43. *Cf.* Lynn A. Stout, *The Toxic Side Effects of Shareholder Primacy*, 161 U. PA. L. REV. 2003, 2004 (2013) ("Many, and possibly most, public companies now embrace a shareholder-centered vision of good corporate governance that emphasizes 'maximizing shareholder value' (typically measured by share price) over all other corporate goals.").

44. Pollman, *supra* note 11, at 1444 ("By the 1980s, mission statements became widely used in corporations as part of the strategic management process.").

activity."[45] We shouldn't place too much theoretical weight on these statements, which can often seem like little more than vague platitudes.[46] But there has been a shift in sentiment away from the seemingly crass pursuit of profit. Younger workers desire a purpose or a sense of mission on the job as part of their employment package.[47] They have fought for political causes in the workplace, leading to walkouts over police violence against Black citizens, legislation singling out LGBTQ+ citizens, and sexual harassment by executives.[48] No longer can a business be content simply to make its widgets and move on; businesses are expected to be key players within political and cultural life.[49] One popular business title even claims that we have moved beyond the Information Economy to the "Purpose Economy."[50]

45. *Id.* at 1445.

46. Barbara Bartkus, Myron Glassman & R. Bruce McAfee, *Mission Statements: Are They Smoke and Mirrors?*, BUS. HORIZONS, Nov.–Dec. 2000, at 23, 23 ("In practice, mission statements often reflect vague generalities rather than the specifics suggested by these different viewpoints."); Lance Leuthesser & Chiranjeev Kohli, *Corporate Identity: The Role of Mission Statements*, BUS. HORIZONS, May–June 1997, at 59, 65 (conducting a study of these statements and finding them "[r]life with clichés").

47. THOUGHTEXCHANGE, GEN Z AT WORK: DEFINING WORKPLACE EXPECTATIONS OF THE WORLD'S MOST POPULOUS GENERATION 2, 5 (2022), https://thoughtexchange.com/news/thoughtexchange-releases-gen-z-at-work-research-report/ [https://perma.cc/547Q-BA87] (finding that 85% of Gen Z respondents valued "working at a company with a mission that makes their work feel important"); *How to Create a Strengths-Based Company Culture*, GALLUP, https://www.gallup.com/cliftonstrengths/en/290903/how-to-create-strengths-based-company-culture.aspx [https://perma.cc/32MF-PMCY] (finding that "a sense of purpose" was "a particularly strong driver of retention for millennials") (last visited Dec. 26, 2024); Bassam Kaado, *A Positive Company Culture Is a Top Priority for Job Seekers*, BUS. NEWS DAILY, https://www.businessnewsdaily.com/15206-company-culture-matters-to-workers.html [https://perma.cc/R3U2-TN2S] (last updated Oct. 20, 2023) (noting that a Glassdoor survey showed that "66 percent of respondents said a clear mission is important for staying engaged at work").

48. *See, e.g.*, Hibaq Farah, *Workplace Inclusion Drives Have Almost Trebled Since BLM Protests, Survey Shows*, GUARDIAN (Apr. 17, 2022, 6:43 AM), https://www.theguardian.com/money/2022/apr/17/workplace-inclusion-drives-have-almost-trebled-since-blm-protests-survey-shows [https://perma.cc/AFS4-ZWL4]; Gene Maddaus & Pat Saperstein, *Disney Employees Rally to Protest Fallout from 'Don't Say Gay' Bill: 'It's Been Really Painful and Soul-Crushing*,*'* VARIETY (Mar. 22, 2022, 9:17 AM), https://variety.com/2022/film/news/disney-lgbtq-employees-walkouts-dont-say-gay-1235211082/ [https://perma.cc/VUF3-XXVV]; Daisuke Wakabayashi, Erin Griffith, Amie Tsang & Kate Conger, *Google Walkout: Employees Stage Protest over Handling of Sexual Harassment*, N.Y. TIMES (Nov. 1, 2018), https://www.nytimes.com/2018/11/01/technology/google-walkout-sexual-harassment.html [https://perma.cc/L9PZ-KYPQ].

49. TOM C.W. LIN, THE CAPITALIST AND THE ACTIVIST: CORPORATE SOCIAL ACTIVISM AND THE NEW BUSINESS OF CHANGE 4 (2022) ("The days when activists focused on moral fights over social issues while businesses concentrated on the amoral pursuit of commercial profit are gone.").

50. HURST, *supra* note 8, at 4.

Within the broader economic ecosystem, a set of managerial theories place even more significant weight on the development of corporate purpose. For example, under the participatory management theory of holacracy, which enjoyed some buzz in the last decade due to its affiliation with Zappos, each organization must develop its purpose and then organize its governance structures around this purpose.[51] The company's leadership is conceived as stewards "for expressing the organization's purpose."[52] When conflict arises within the company, potential resolutions are judged by the relation to the corporate purpose.[53] Other systems of participatory management—sometimes referred to as self-managed or evolutionary management—also emphasize the importance of orienting the organization around a particular purpose.[54]

The idea of purpose is perhaps the critical driver behind the creation of benefit corporations under state corporate law.[55] These types of business entities must identify a purpose to the organization as part of its operating charter, and that purpose must aim for some greater societal good.[56] Benefit corporations have now been adopted in forty states and the District of Columbia, including the "public benefit corporation" form in Delaware.[57] Some have questioned whether these new forms actually pursue interests beyond profits or have expressed skepticism about the validity of the purposes themselves.[58] But their existence speaks to the desire to bake a

---

51. *See* BRIAN J. ROBERTSON, HOLACRACY: THE NEW MANAGEMENT SYSTEM FOR A RAPIDLY CHANGING WORLD 31–34 (2015); *see also* Ethan Bernstein, John Bunch, Niko Canner & Michael Lee, *Beyond the Holacracy Hype*, HARV. BUS. REV., July–Aug. 2016, at 38, 39–40.

52. ROBERTSON, *supra* note 51, at 166.

53. *Id.* at 49 (discussing the role of supervisors in relation to purpose); *id.* at 116 (explaining how internal objections must "describe how the proposal would diminish that role's capacity to express its purpose").

54. FREDERIC LALOUX, REINVENTING ORGANIZATIONS: A GUIDE TO CREATING ORGANIZATIONS INSPIRED BY THE NEXT STAGE OF HUMAN CONSCIOUSNESS 56 (2014).

55. Dana Brakman Reiser, *Benefit Corporations—A Sustainable Form of Organization?*, 46 WAKE FOREST L. REV. 591, 597 (2011) ("The main thrust of benefit corporation statutes is to require these entities to pursue purposes beyond profit-making.").

56. Heminway, *supra* note 37, at 618–19 ("[T]o be organized as a benefit corporation, a firm must expressly set forth in its charter a general or specific public benefit purpose—a purpose to benefit society or the environment.").

57. GRUNIN CTR. FOR L. & SOC. ENTREPRENEURSHIP, THE STATE OF SOCIAL ENTERPRISE AND THE LAW 4, 7 (2021–2022), https://socentlawtracker.org/ [https://perma.cc/D888-SJ27] (including the public benefit corporation (PBC), the social purpose corporation (SPC), the low-profit limited liability company (L3C), the benefit limited liability company (BLLC), and the statutory public benefit limited partnership (SPBLP)).

58. *See, e.g.*, Michael B. Dorff, James Hicks & Steven Davidoff Solomon, *The Future or Fancy? An Empirical Study of Public Benefit Corporations*, 11 HARV. BUS. L. REV. 113, 117 (2021) ("We argue that, based on our results, PBC status remains a secondary driver

mission beyond profit maximization into the bones of the organization itself.

One tension within the proliferation of benefit corporation statutes is the extent to which they are necessary at all. For those who believe that shareholder primacy is a core component of corporate law, the benefit corporation is necessary to disentangle a purpose other than shareholder primacy from the corporate form.[59] For those with a less-fixed understanding of shareholder primacy's role, however, benefit corporations muddy the waters by making the standard corporation seem more wedded to shareholder wealth maximization than the law actually requires.[60] It's uncertain whether various versions of state corporate law would permit a corporation with a specified purpose in its charter or a shareholders' agreement that differed from the standard "lawful activity" line.[61] Corporations should be able to deviate from shareholder wealth maximization in their founding documents unless a jurisdiction has adopted that norm as a mandatory, nonwaivable requirement. Whether that is in fact the case remains unclear. Delaware is the state most likely to mandate shareholder primacy, as its decisions have indicated that the

---

of early-stage investment and, by proxy, more widespread for-profit investment. VCs and other investors appear willing to tolerate the PBC's wider purpose, but want to ensure some for-profit motive . . . .").

59. *See* David G. Yosifon, *Opting Out of Shareholder Primacy: Is the Public Benefit Corporation Trivial?*, 41 DEL. J. CORP. L. 461, 504 (2017) ("Among the principle justifications that activists have given in urging legislatures to adopt PBC provisions into their corporate codes has been the uncertainty regarding the permissibility of altering the standard corporate form to achieve deviation from shareholder primacy in corporate governance." (emphasis omitted)).

60. *See* J. Haskell Murray, *Choose Your Own Master: Social Enterprise, Certifications, and Benefit Corporation Statutes*, 2 AM. U. BUS. L. REV. 1, 16 (2012) ("[C]ertain social enterprise proponents may have overstated the need for benefit corporation statutes, as existing corporate law—whether through the business judgment rule, constituency statutes, or express provisions in the corporate law of states outside of Delaware—already provides significant protection to directors who choose to favor or consider non-shareholder stakeholders in their decisions.").

61. RESTATEMENT OF CORP. GOVERNANCE § 2.01 reporter's n.8 (AM. L. INST. Tentative Draft No. 1, Apr. 2022) ("Section 2.01 does not address the question of when a corporation organized under a business-corporation law may restrict the general profit-making objective by a shareholders' agreement or charter provision. This is a complex question as to which there is substantial legal uncertainty." (emphasis omitted)); Joan MacLeod Heminway, *Shareholder Wealth Maximization as a Function of Statutes, Decisional Law, and Organic Documents*, 74 WASH. & LEE L. REV. 939, 966 (2017) ("The accumulated evidence is at best unclear about whether a public or private firm incorporated in or outside Delaware can engage in private ordering in its charter to include a corporate purpose that may be interpreted in a manner inconsistent with the shareholder wealth maximization norm.").

standard corporate form must pursue profits for its shareholders.[62] This result would seem somewhat discordant with recent Delaware decisions emphasizing the contractual nature of the corporate form.[63] Regardless, other states would seem more open to purposes beyond shareholder wealth maximization for corporations charted in their states.[64]

So where are we now with regard to the legal ramifications of corporate purpose? Suffice to say—things are not clear. The current state of affairs is perhaps best illustrated by the recent tentative draft of the *Restatement of the Law: Corporate Governance*. Section 2.01 of the draft, titled "The Objective of the Corporation," endeavors to establish the appropriate purpose of the corporation under law:

> (a) The objective of a corporation is to enhance the economic value of the corporation, within the boundaries of the law;
>
> (1) in common-law jurisdictions: for the benefit of the corporation's shareholders. In doing so, a corporation may consider:
>
> (a) the interests of the corporation's employees;

62. *See* eBay Domestic Holdings, Inc. v. Newmark, 16 A.3d 1, 34 (Del. Ch. 2010) ("Having chosen a for-profit corporate form, the craigslist directors are bound by the fiduciary duties and standards that accompany that form. Those standards include acting to promote the value of the corporation for the benefit of its stockholders."). *But see* Heminway, *supra* note 61, at 960 ("Observers may wonder whether these words from the Chancellor in and about the *eBay* opinion can be taken or may be used to mean that a Delaware corporation must adopt any corporate policy or initiative that contravenes the shareholder wealth maximization norm *ab initio* or with unanimous shareholder approval.").

63. Airgas, Inc. v. Air Prods. & Chems., Inc., 8 A.3d 1182, 1188 (Del. 2010) ("Corporate charters and bylaws are contracts among a corporation's shareholders; therefore, our rules of contract interpretation apply."); Boilermakers Loc. 154 Ret. Fund v. Chevron Corp., 73 A.3d 934, 939 (Del. Ch. 2013) ("As our Supreme Court has made clear, the bylaws of a Delaware corporation constitute part of a binding broader contract among the directors, officers, and stockholders formed within the statutory framework of the DGCL. This contract is, by design, flexible and subject to change . . . ." (footnote omitted)); Jill E. Fisch, *Governance by Contract: The Implications for Corporate Bylaws*, 106 CALIF. L. REV. 373, 375 (2018) ("The contractual approach has become particularly influential in supporting deference to the participants' agreed-upon governance terms on both autonomy and efficiency grounds.").

64. *See, e.g.*, Brett McDonnell, *Purpose in Business Association Statutes: Much Ado About Something (But Not Much)*, *in* RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD, *supra* note 11, at 148, 164 ("[F]or public companies incorporated in Delaware there is a presumptive shareholder wealth maximization norm that constrains the most aggressive pursuits of social goals over profits. However, outside of Delaware public corporations, the law imposes little if any constraint on businesses that choose to pursue social goals, even at the expense of profits.").

> (b) the desirability of fostering the corporation's business relationships with suppliers, customers, and others;
>
> (c) the impact of the corporation's operations on the community and the environment; and
>
> (d) ethical considerations related to the responsible conduct of business;
>
> (2) in stakeholder jurisdictions: for the benefit of the corporation's shareholders and/or, to the extent permitted by state law, for the benefit of employees, suppliers, customers, communities, or any other constituencies.[65]

The *Restatement*'s approach may well reflect the current state of the law, but it nevertheless (or perhaps therefore) is incoherent. It is internally inconsistent: it describes "common-law" jurisdictions as those whose "objective is to enhance the value of the corporation for the benefit of shareholders," despite the fact that these jurisdictions "do not explicitly define the objective of the corporation."[66] The commentary does maintain that "[i]n all jurisdictions, the core objective of a corporation is to enhance the economic value of the corporation."[67] But the nature of that enhancement, and its ultimate aims, are left undefined.

All of which is to say that the many layers of corporate purpose are in a state of flux. Individual corporations now appear to be more concerned that the mission they communicate to workers, customers, and communities reflects a commitment to the common good. The Business Roundtable has declared that the more general purpose of corporations has to extend beyond shareholder enrichment.[68] The European Corporate Governance Institute, long a stalwart of the shareholder primacy approach, has created a new "Responsible Capitalism" Initiative, recognizing that "[t]he issues of sustainability, inequality and exclusion create new challenges for capitalism and

65. RESTATEMENT OF CORP. GOVERNANCE § 2.01(a) (AM. L. INST. Tentative Draft No. 1, Apr. 2022).

66. *Id.* § 2.01 cmt. c. It is also somewhat puzzling that the one example of a "common-law" jurisdiction is Delaware, whose statutory corporate law is undoubtedly the most cited and well-known of the states. *See id.* (defining the "common-law approach" as capable of being "traced back to the 19th-century origins of the corporate form").

67. *Id.* § 2.01 cmt. b.

68. *See Business Roundtable*, *supra* note 7.

corporate governance."[69] And even former Delaware Supreme Court justices are asking: "Isn't it time for all societally important business entities—not just public companies, but large private companies and money management firms as well—to have to use their power in a socially responsible manner?"[70]

III. THE FRAUGHT RELATIONSHIP BETWEEN PURPOSE AND GOVERNANCE

The stakes of the debate over corporate purpose seem at once to be gossamer-thin and yet utterly foundational. The quandary stems in part from the structural role of purpose within governance and its potential to play a larger role. As discussed earlier, corporate purpose refers to two distinct but related ideas: the purpose of a particular corporation as well as the purpose of corporate law and the corporations that the law creates.[71] We noted above that individualized corporate purposes may be important to corporate culture, but they have relatively little legal effect. Corporate charters used to list a corporate purpose that meaningfully restricted the businesses' operations.[72] Shareholders were entitled to sue corporate officers and enjoin their actions if they fell outside the authorized purpose.[73] Now, however, charters generally state that the business can engage in all lawful business activity as an open-ended authorization.[74] The one exception is the benefit corporation, which was introduced to require companies using that entity form to declare a public purpose.[75] It is possible to conceive of a reinvigoration of individual purpose as a meaningful constraint,

69. *Responsible Capitalism*, EUR. CORP. GOVERNANCE INST., https://www.ecgi.global/projects/responsible-capitalism [https://perma.cc/HGN2-CQU2] (last visited Sept. 23, 2024); *see also* George Dallas, *Who Cares About Corporate Purpose?*, EUR. CORP. GOVERNANCE INST. (Aug. 10, 2023), https://www.ecgi.global/publications/blog/who-cares-about-corporate-purpose [https://perma.cc/J7Q8-MUR9].

70. Leo E. Strine, Jr., *Restoration: The Role Stakeholder Governance Must Play in Recreating a Fair and Sustainable American Economy: A Reply to Professor Rock*, 76 BUS. LAW. 397, 399 (2021).

71. *See* Rock, *supra* note 11, at 45 (discussing the difference between the business purpose or mission of a particular company and the objective of the corporate form itself).

72. Greenfield, *supra* note 22, at 1302–03 (describing *ultra vires* claims).

73. Sulkowski & Greenfield, *supra* note 29, at 930.

74. *See* Heminway, *supra* note 37, at 618. There is some sense that the purpose of "lawful activities" does restrict corporations from engaging in unlawful actions, even if they might be justified on a cost-benefit basis. *See* O'Brien, *supra* note 31, at 711–12.

75. *See* Jill E. Fisch & Steven Davidoff Solomon, *The "Value" of a Public Benefit Corporation*, *in* RESEARCH HANDBOOK ON CORPORATE PURPOSE AND PERSONHOOD, *supra* note 11, at 68, 68 ("The public benefit corporation ('PBC') is a new corporate form that allows the corporation to identify its objectives in terms of broader social or environmental responsibility rather than focusing exclusively on profit maximization.").

either by a return to specific purpose requirements in corporate charters or through a robust blend of investor expectations, stakeholder contracts, tangible metrics, and private enforcement.[76] But that world does not exist at present.

As to the purpose of corporate law more generally, academics have debated whether the law compels shareholder primacy as a descriptive matter. Stakeholder advocates, arguing that corporate law does not require shareholder wealth maximization, have pointed to the broad discretion granted to directors and officers in carrying out their duties.[77] To the extent that the fiduciary duty of care might require a level of concern for business success, the business judgment rule protects decisions made in good faith with a rational basis against subsequent scrutiny.[78] The duties of loyalty and good faith provide fairly circumscribed restrictions to prevent self-dealing and chicanery—restrictions that would be in place no matter what the corporation's "purpose" would be.[79] As a result, corporate leaders have a fair amount of discretion to make everyday business decisions free of scrutiny as to their ultimate aims.[80]

Despite the relative freedom provided to directors and officers, there is little question that the current structure of corporate governance decisively favors shareholder primacy. As Edward Rock, the reporter for the American Law Institute's *Restatement of the Law, Corporate Governance* project, recently wrote:

> While there is no provision of the Delaware corporation law that explicitly states this, there are at least three main arguments for why this "shareholder primacy" principle is the best description of the characteristics of the corporate form in

76. For an argument that corporate purpose can be used internally as a coordinating device for stakeholders, see Fisch & Solomon, *supra* note 5, at 1340–45.

77. *See, e.g.*, Lynn A. Stout, *Why We Should Stop Teaching* Dodge v. Ford, 3 VA. L. & BUS. REV. 163, 166–68 (2008) (discussing how the case overstates the legal foundations for shareholder primacy).

78. For discussions of Delaware's version of the rule, see Cede & Co. v. Technicolor, Inc., 634 A.2d 345, 360–61 (Del. 1993); Aronson v. Lewis, 473 A.2d 805, 812–13 (Del. 1984). *See also* MODEL BUS. CORP. ACT § 8.31 (AM. BAR ASS'N 2024); LYNN M. LOPUCKI & ANDREW VERSTEIN, BUSINESS ASSOCIATIONS: A SYSTEMS APPROACH 334–35 (2021).

79. *See* Julian Velasco, *The Diminishing Duty of Loyalty*, 75 WASH. & LEE L. REV. 1035, 1038 (2018) (arguing that "the duty of loyalty is not enforced as rigorously as is commonly believed"); Hillary A. Sale, *Delaware's Good Faith*, 89 CORNELL L. REV. 456, 488 (2004) ("Good faith based liability, then, moves the bar from negligent behavior to deliberately indifferent, egregious, subversive, or knowing behavior, and thereby raises issues related to the motives of the actors.").

80. Fisch & Solomon, *supra* note 5, at 1312 ("[U]nder existing law, both the mutability of the corporate charter and the flexibility of the business judgment rule give corporate managers ample discretion to consider stakeholder and societal interests irrespective of a broad reformulation of corporate purpose.").

> traditional jurisdictions: the statutory structure; the case law; and the history of reform efforts in and out of Delaware.[81]

The statutory structure alone is sufficient to swing the playing field decisively in shareholders' favor. Under state corporate law statutes, shareholders vote; no one else does.[82] Shareholders vote to determine the board of directors, which is the ultimate seat of power within the corporation.[83] Although states allow terms of up to three years under a corporation's charter, the default term for corporate directors is one year, and shareholders can call a special meeting to select new directors under some circumstances.[84] Shareholders and only shareholders also have the additional mechanism of holding the board accountable for violating their fiduciary duties through filing derivative suits.[85]

Shareholder power extends beyond the board. Shareholders have a vote on amendments to the corporate charter,[86] as well as transformative corporate decisions such as mergers, certain acquisitions, and dissolution.[87] Under Delaware law, the board has a duty to get shareholders the best price for the corporation when it is being sold.[88] Federal law requires publicly-traded companies to allow shareholders the right to include nonbinding proposals on the board's proxy ballot.[89] Many states do have "corporate constituency" statutes that allow the board to take the interests of

---

81. Rock, *supra* note 11, at 33.

82. Leo E. Strine, Jr., *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV. 135, 153 (2012) ("In the corporate republic, only stockholders get to vote and only stockholders get to sue to enforce directors' fiduciary duties.").

83. *See, e.g.*, DEL. CODE ANN. tit. 8, § 211 (2024). State corporate statutes require these meetings to be held at least once a year, but additional meetings can be called under special circumstances that vary by state. STEPHEN M. BAINBRIDGE, CORPORATE LAW 233 (2d ed. 2009) [hereinafter BAINBRIDGE, CORPORATE LAW]. In Delaware, only the board can call a special meeting, while other states allow a specified percentage of shareholders to call a meeting without board consent. *Id.*

84. *See* BAINBRIDGE, CORPORATE LAW, *supra* note 83, at 238–39.

85. DEL. CODE ANN. tit. 8, § 327 (2024).

86. Generally, the board of directors must first propose an amendment to the charter, and then the shareholders must approve the amendment. *See, e.g.*, MODEL BUS. CORP. ACT § 10.03 (AM. BAR ASS'N 2016). In Delaware, the amendment must be approved by a majority of all shares outstanding, rather than just a majority of shares voting. DEL. CODE ANN. tit. 8, § 242(b)(1) (2024).

87. WILLIAM A. KLEIN, JOHN C. COFFEE, JR. & FRANK PARTNOY, BUSINESS ORGANIZATION AND FINANCE 222–25 (11th ed. 2010) (describing different types of mergers and acquisitions).

88. Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc., 506 A.2d 173, 185 (Del. 1986).

89. 17 C.F.R. § 240.14a–8 (2017).

other stakeholders into account when making certain decisions.[90] But constituency statutes merely authorize directors to consider these broader interests; there is no requirement that directors affirmatively look beyond shareholder interests.[91]

Shareholder primacy has become so "enmeshed in our cultural and institutional understanding of good governance" that it is now "difficult to move to another paradigm—one that gives power to other stakeholders."[92] Surprisingly, this shareholder centeredness is true even for public benefit corporations—the type of business entity designed to slip the discomfiting bonds of shareholder wealth maximization. Rather than providing some power to nonshareholder stakeholders, public benefit corporation (PBC) statutes instead "retain the identical role for shareholders as in the traditional publicly-traded corporation."[93] Accountability for upholding the purpose of the corporation is also lacking, as the PBC statutes permit vague and aspirational purposes that are difficult to meaningfully measure.[94] Yes, the PBC is permitted to look to a higher purpose beyond maximizing shareholder returns. But PBC shareholders still elect the directors and retain the right to bring derivative litigation, and directors owe no fiduciary duties to stakeholders.[95]

Corporate law scholars, by and large, have gone along for the shareholder primacy ride. Most are committed to primacy as both a descriptive and normative principle.[96] And while other scholars are at least sympathetic to the notion that corporations should serve stakeholder interests, most have concluded—for one reason

90. BAINBRIDGE, THE PROFIT MOTIVE, *supra* note 9, at 70 (reporting that thirty states have constituency statutes). Some constituency statutes apply only to change-in-control transactions, while others apply more broadly to all board decisions. New York, for example, provides that when considering a change or potential change in the control of the corporation, a director "shall be entitled to consider" the effects that the corporation's actions may have upon the corporation's various stakeholders, including current employees, retired employees, customers, creditors, and the communities in which it does business. N.Y. BUS. CORP. LAW § 717(b) (2024).

91. *See, e.g.*, N.Y. BUS. CORP. LAW § 717(b) ("Nothing in this paragraph shall create any duties owed by any director to any person or entity to consider or afford any particular weight to any of the foregoing or abrogate any duty of the directors, either statutory or recognized by common law or court decisions."); Katherine Van Wezel Stone, *Employees as Stakeholders Under State Nonshareholder Constituency Statutes*, 21 STETSON L. REV. 45, 70 (1991) (noting that constituency statutes provide "very little" actual protection to employees and other constituents).

92. Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563, 2630–31 (2021).

93. Fisch & Solomon, *supra* note 75, at 74.

94. *Id.* at 77–80.

95. BAINBRIDGE, THE PROFIT MOTIVE, *supra* note 9, at 81.

96. *See, e.g.*, *id.*

or another—that we should not tinker with the basic features of corporate governance to effectuate that end.[97] Even stakeholder theorists, then, find themselves unable to commit to the basic changes in corporate governance that would allow a corporation to serve the interests of other stakeholders.[98] This approach, however, is ultimately self-defeating, because purpose must be meaningfully connected to governance.

IV. PURPOSE IS GOVERNANCE AND GOVERNANCE IS PURPOSE

In a world governed by the shareholder primacy norm, purpose and governance have a clean and compelling synchronicity. The close fit between governance and purpose may help explain the intellectual success of our shareholder-driven system.[99] More variegated approaches to purpose and governance are bound to be messier. But such approaches will also more appropriately manage the interests of a cross-section of corporate participants, rather than simply taking one group and giving them all the power.

Any conceivable corporate purpose involves the pursuit of the interests of one or more of its constituents. This is true whether we're talking about an individual corporation's mission or the collective purpose of corporations. When Southwest Airlines says it wants to "connect People to what's important in their lives through friendly, reliable, and low-cost air travel,"[100] the people they're referring to are their customers. When corporate scholars assume that the central aim of all corporations should be to maximize shareholder wealth, they're concerned, primarily, with shareholders. Ultimately, the purpose of a corporation is to serve the interests of one or more of its constituents.[101] And this should make sense given that corporations exist to facilitate economic production by coordinating the activities of a range of constituents—shareholders, employees, suppliers,

97. *See, e.g.*, Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247, 314 (1999).

98. *See id.* at 320 (arguing that shareholders elect the board, but that directors will act as mediating hierarchs for everyone's interests).

99. David H. Webber, *The Humanities Strike Back: (E)ESG and Justice Strine Challenge Gamer Shareholder Primacy*, 24 U. PA. J. BUS. L. 875, 876–77 (2022) ("[O]ne underappreciated aspect of shareholder primacy's appeal is that it creates a competition with a single endpoint, basically a game . . . .").

100. *See About Southwest Airlines*, *supra* note 3.

101. *See* GRANT M. HAYDEN & MATTHEW T. BODIE, RECONSTRUCTING THE CORPORATION: FROM SHAREHOLDER PRIMACY TO SHARED GOVERNANCE 8 (2020).

creditors, and customers.[102] The question then becomes how corporations can best assess the interests of these constituents and ensure that their preferences are reflected in firm decision-making.

According to the dictates of shareholder primacy, the best way to do so is to capture the preferences of shareholders through voting (for board members, or significant corporate changes) and handle the preferences of the remaining constituents through contract.[103] But this approach clearly leaves control of the corporation in the hands of one constituency, leaving all others to fend for themselves as outsiders. The current revolt against shareholder wealth maximization—even from the likes of the Business Roundtable—is a result of the predictable failures of that ideology to enhance social welfare.[104] Corporate profits have enjoyed much higher growth during primacy's theoretical hegemony than have real wages.[105] Climate change doesn't fit into shareholder primacy's matrix; it's an externality, despite the fact that many actual, living and breathing shareholders care about their planet and would be willing to trade some wealth for a livable ecosphere.[106] The calls from across the academic and corporate world to revamp corporate purpose in a way that attends to the

---

102. *See, e.g.*, COLIN MAYER, PROSPERITY: BETTER BUSINESS MAKES THE GREATER GOOD 109 (2018) ("The purpose of companies is to produce solutions to problems of people and planet and in the process to produce profits, but profits are not per se the purpose of companies. They are derivative from purpose rather than fundamental in their own right.").

103. The theoretical foundations for this position were most prominently articulated by Frank Easterbrook and Daniel Fischel. *See generally* FRANK H. EASTERBROOK & DANIEL R. FISCHEL, THE ECONOMIC STRUCTURE OF CORPORATE LAW (1991). A more modern defense of the basic position may be found in Stephen Bainbridge's recent book. *See generally* BAINBRIDGE, THE PROFIT MOTIVE, *supra* note 9.

104. *Business Roundtable*, *supra* note 7 ("America's economic model, which is based on freedom, liberty and other enduring principles of our democracy, has raised standards of living for generations, while promoting competition, consumer choice and innovation. . . . Yet we know that many Americans are struggling. . . . If companies fail to recognize that the success of our system is dependent on inclusive long-term growth, many will raise legitimate questions about the role of large employers in our society.").

105. Emmanuel Saez & Gabriel Zucman, *Wealth Inequality in the United States Since 1913: Evidence from Capitalized Income Tax Data*, 131 Q.J. ECON. 519, 573 (2016) (discussing diverging income inequality); Josh Bivens & Lawrence Mishel, *Understanding the Historic Divergence Between Productivity and a Typical Worker's Pay*, ECON. POL'Y INST. (Sept. 2, 2015), https://www.epi.org/publication/understanding-the-historic-divergence-between-productivity-and-a-typical-workers-pay-why-it-matters-and-why-its-real/ [https://perma.cc/K4F8-KTNS].

106. Climate change also matters for traditional shareholder-primacy purposes, as it presents a threat to wealth generation. Madison Condon, *Market Myopia's Climate Bubble*, 2022 UTAH L. REV. 63, 65, 125 (2022) ("A growing number of financial experts at institutions ranging from BlackRock, to McKinsey, to the U.S. Commodities Futures Trading Commission, have reached the conclusion that markets are not accurately assessing and pricing climate change-related risks.").

interests of other constituents should be no surprise—if anything, they've been unduly delayed.

In other work, we have argued in favor of extending voting rights to additional constituent groups in order to more directly incorporate them into corporate governance. Our theory of democratic participation argues for extending voting rights to any group with accurate and manageable markers of their interest in firm decision-making, which would usually include shareholders and employees but may, in certain situations, include workers for internet platform firms such as Uber, certain types of customers, and social media users.[107] This theoretical argument militates in favor of expanding real governance rights as a matter of first principles, not as a backup plan that depends upon contractual failure. The fact that existing contractual regimes aren't up to the task of capturing the interests of employees, customers, or social media users is important, but governance principles themselves require inclusion.

Given that the basic purpose of corporations revolves around the interests of one or more of their groups of constituents, and that it's possible (in fact advantageous) to extend real governance rights to some of those groups, it should be no surprise that there are real benefits to connecting purpose to governance. Stakeholders should be able to (1) define their own interests and (2) have a mechanism to ensure that the corporation pursues those interests. Connecting purpose to governance achieves these two goals and transforms the concept of corporate purpose into something more than empty rhetoric.[108]

As currently constituted, the corporation serves the shareholders because they control the levers of power.[109] Directors may have flexibility within the business judgment rule to pursue corporate objectives, but they know that shareholders can vote them out if they neglect shareholder concerns. An expansion of the electorate would expand the scope of directors' concern. Take, for example, a corporation dedicated to the principle that its purpose

---

107. *See* Grant M. Hayden & Matthew T. Bodie, *A Democratic Participation Model for Corporate Governance*, 109 MINN. L. REV. (forthcoming 2025); Grant M. Hayden & Matthew T. Bodie, *Corporate Governance for Platform Workers*, 99 CHI.-KENT L. REV. (forthcoming 2024).

108. *See* Brett McDonnell, *Stakeholder Governance as Governance by Stakeholders*, 47 SEATTLE U. L. REV. 511, 533 (2024) ("Stakeholder advocates should move beyond pleading to shareholders or to the directors elected by shareholders. To protect stakeholders and the public interest, we should give real power to at least some other stakeholders beyond shareholders.").

109. *See* Strine, *supra* note 82, at 155 (stating that "corporate law requires directors, as a matter of their duty of loyalty, to pursue a good faith strategy to maximize profits for the stockholders").

includes serving the interests of its employees, not merely as a means to securing additional profits but as an end in itself.[110] How are the leaders of that corporation supposed to assess the interests of its employees? They might guess, quite reasonably, that employees want higher wages—an assumption generally made by corporations competing for workers in a tight labor market. But at least some evidence suggests that this guess is incomplete. When employees have more bargaining power, like when they join a union, they usually bargain for some form of job security. Similarly, when employees are given direct access to the structures of corporate governance, as they are under the German system of codetermination, they often use that power to enhance job security rather than raise their wages.[111] This kind of tradeoff is at the core of the German system of *Kurzarbeit* that temporarily reduces the working hours (and salaries) of employees in times of economic hardship.[112] It's a system that helps avoid painful layoffs and allows companies to retain their core workforces,[113] and was viewed as a key to Germany's ability to rebound so quickly from the 2008 Global Economic Crisis.[114]

The point here is that access to the levers of corporate governance allows employee preferences to be brought to management from the bottom-up rather than dictated by management from the top-down. And this gives the employees—or whatever constituent group we're talking about—the power to define their own interests rather than having information about their

110. Brett H. McDonnell, *Employee Primacy, or Economics Meets Civic Republicanism at Work*, 13 STAN. J.L., BUS. & FIN. 334, 335 (2008) (challenging "shareholder primacy as the appropriate model for corporate law" and "arguing instead for employee primacy in corporate decision-making").

111. A recent study for example, found that employees at full-parity codetermined firms were better protected against layoffs during industry downturns than their counterparts. E. Han Kim, Ernst Maug & Christoph Scheider, *Labor Representation in Governance as an Insurance Mechanism*, 22 REV. FIN. 1251, 1286 (2018). That job security, though, came at the price of significantly lower wages, as the employees at codetermined firms paid a premium equal to 3.3% of their wages for this employment insurance. *Id.* at 1279, 1286. (And, importantly, this swap of wages for job security had no effect on shareholders one way or the other) *Id.* at 1286.

112. *See* Otto Sandrock, *German and International Perspectives of the German Model of Codetermination*, 26 EUR. BUS. L. REV. 129, 134 (2015); Otto Sandrock & Jean J. du Plessis, *The German System of Supervisory Codetermination by Employees*, *in* GERMAN CORPORATE GOVERNANCE IN INTERNATIONAL AND EUROPEAN CONTEXT 167, 188–89, 193 (Jean J. du Plessis et al. eds., 3d ed. 2017).

113. *See* Lutz Bellman, Hans-Dieter Gerner & Marie-Christine Laible, *The German Labour Market Puzzle in the Great Recession*, *in* PRODUCTIVITY PUZZLES ACROSS EUROPE 187, 187–88 (Philippe Askenazy et al. eds., 2016); Sandrock, *supra* note 112, at 134; Sandrock & du Plessis, *supra* note 112, at 188, 193.

114. *See* Bellman, Gerner & Laible, *supra* note 113, at 228–30.

preferences filtered through the lens of shareholder-elected representatives and offered on a take-it-or-leave-it contractual basis.

Governance rights not only give additional stakeholder groups a more effective way to define their collective interests, but also provide a mechanism to ensure that the corporation pursues those interests. And that mechanism is the political accountability that comes with being able to elect (and reject) corporate board members. Without this kind structural change in governance, it's difficult to see how the newfound shift to broaden corporate purpose beyond mere profitability will ever result in more than lip service. Superimposing a broader corporate purpose on a system of shareholder governance may produce some cosmetic changes, but it will never effectively change corporate purpose.

V. CONCLUSION

Purpose without power is window dressing. But purpose with power enables meaningful, coordinated change. Efforts to reform our conceptions of corporate purpose are important intellectual and rhetorical exercises, but they are only that if there's no accompanying effort to change governance structure. We hope that calls to expand upon the mission and direction of our most important economic entities will include a reexamination of their internal allocation of rights and responsibilities.