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From primacy to purpose commitment: How emerging profit-with-purpose corporations open new corporate governance avenues

Submission to the *European Management Journal* special issue
“Challenging neo-liberalism with governance of complexity”

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Abstract

This paper aims at contributing to corporate governance theory by developing a model of governance that takes into account a recent legal innovation: the introduction of purpose-driven legal business forms in the corporate law of several countries. Current debates in such theory oppose models that grant “primacy” (i.e., ultimate control rights) to different constituencies. The resulting uncertainty proves problematic in the face of new, urgent social and environmental stakes that are difficult to represent in traditional governance bodies. Newly adopted profit-with-purpose corporate forms’ introduction of a “purpose” in corporate contracts renews these debates. We show that through the “purpose commitment” model it enables, the distribution of control rights in the governance system is decoupled from the objectives assigned to the corporation. This new approach renews the formal role of management, and corporations’ accountability to society. We explore the theoretical, practical, and political consequences of this new model.

Keywords: profit-with-purpose corporations, benefit corporation, corporate governance, corporate purpose

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1. Introduction

There is growing consensus in management sciences that the “grand challenges” of our time (George, Howard-Grenville, Joshi, & Tihanyi, 2016; Reid et al., 2010)—including climate change, soaring economic inequalities, and the consequences of environmental scandals—call for questioning typical corporate governance models and practices. Expectations are increasing for corporations, as powerful socioeconomic actors in society, to lead the innovative transformations required to attain sustainability (Scherer & Voegtlin, 2018). Despite this, numerous studies also warn of the difficulty of current governance systems taking into account the systemic nature of corporations’ financial risks and the short-termism pertaining to neoliberal economic thought, (e.g., Ahrens, Filatotchev, & Thomsen, 2011; Deakin, 2011; Ingley, Mueller, & Cocks, 2011), the fragility of corporations’ innovation capabilities (e.g., Lazonick, 2014; O’Sullivan, 2000; Pitelis & Teece, 2009), and corporations’ impact on society at large (Canals, 2011; Kemper & Martin, 2010), social welfare (Mitchell, Weaver, Agle, Bailey, & Carlson, 2016), and social issues (Margolis & Walsh, 2003).

In the current search for more-sustainable corporate governance models and practices, several countries have introduced creation of “profit-with-purpose” corporate forms (Prior, Cohen, & Fox, 2014) as an innovation in their corporate law. These new legal forms do not target social enterprises or charities transitioning to a commercial model, but rather they address

conventional for-profit companies that seek to ensure their commitment toward social and environmental sustainability. In the United States, three new legal forms of corporation (*benefit corporation*, *social purpose corporation*, and *public benefit corporation*) have been introduced since 2010. Italy joined in 2017 with the *Società Benefit* statute, and France passed a bill in 2019 to introduce the similar *Société à Mission*. These corporations' core principle is to require introducing a social or environmental objective into their articles of incorporation, which thus becomes a true legal commitment for shareholders and directors.

Promoters of these new legal forms see them as a cornerstone of a renewed governance system that will not only achieve better long-term financial performance but also take into account the harmful impacts of current practices on society and the environment. The aim is to enable corporations to offset the conforming pressure of short-term profitability, which is regularly accused of shrinking the strategic horizon of top executives (see e.g. Clarke, 2014). Another goal is to protect corporations' abilities and long-term engagement for developing responsible conduct and innovation toward a broader group of constituencies, including the environment and society. These new forms can therefore pave the way to a deep renewal of corporate governance practice.

Are such claims grounded? A limited amount of academic literature in legal studies, management studies, and corporate governance is emerging to study the practical implications of these new statutes for judges, entrepreneurs, and business leaders (André, 2015; see, for instance, Ebrahim, Battilana, & Mair, 2014; Kurland, 2017; Rawhouser, Cummings, & Crane, 2015; Yosifon, 2016). The present study aims to address the theoretical implications of the change in the legal framework incurred by profit-with-purpose forms for the available corporate governance

models. We show that they suggest a shift in the model of “good” corporate governance, which current theory cannot sufficiently describe.

Through a brief review of the main current corporate governance theories, we first show that all approaches aiming at criticizing the dominant agency theory framework, whether shareholder or stakeholder-oriented, all rely on a pivotal hypothesis: to avoid the risk of opportunism in corporate control, corporate governance must separate the constituencies who hold the ultimate control rights over the corporation from the interests or beneficiaries toward which this control is exerted. Other than in the shareholder-centric agency framework, in which shareholders hold both positions (ultimate control as residual claimants and beneficiaries through the shareholder maximization norm), every model allocates control to directors, the corporation, or CEOs on one side, and pursued interests to shareholders, stakeholders, or society at large on the other.

We show that this hypothesis, while pivotal for contemplating models of governance that combine limited risks of opportunism and social welfare maximization, is highly fragile in traditional legal frameworks. The profit-with-purpose approach, however, revisits a fundamental tenet of governance theory: that governance systems can be thought of as a power repartition device independently from the specifics of corporations’ activities. We show that instead of focusing exclusively on the repartitioning of control rights and power between corporate constituencies, i.e. “who controls the corporation, and for whom,” profit-with-purpose corporations (PPCs) focus on “which objectives the corporation assigns to itself,” i.e., the purpose of its activities. We stress that, to make this shift effective, PPCs require three legal innovations at the core of a new governance model: (1) the definition of a purpose in a document of legal nature, (2) the requirement that both shareholders and directors acknowledge the

corporation's commitment to this purpose to neutralize the bias toward their own private interests, and (3) the creation of specific accountability mechanisms to ensure the credibility of such a commitment. In doing so, this model, which we call the "purpose commitment" model, enables decoupling between the corporation's control and purpose.

This model holds several interesting properties for renewing corporate governance theory and practice, which we explore in the discussion. First, it enables and protects firm-specific engagements, which supplement existing approaches based on stakeholder representation, to deal with corporate activities' social and environmental impacts. Second, it provides a space for sustainability-oriented management by embedding the mandate management is entrusted with in the corporate contract. Third, it embodies, through the stated purpose, an elicitation of the corporate interests as different from the shareholders', which increasingly appears as a condition for developing more-responsible corporate governance. Finally, we discuss the consequences of such a model for policymakers, who currently design the future landscape of corporate governance. We highlight some limitations of current instantiations of PPC forms, and conclude by pointing out some new research perspectives that our model pinpoints for the very near future.

2. The decoupling hypothesis: a common limitation of current corporate governance models

2.1. Who controls the corporation and for whom? A diversity of corporate governance models

“For whom should the corporation be run?” As old as this question might be, it is still at the center of a raging debate in contemporary corporate governance theory. This decades-old debate is conventionally depicted as opposing the upholders of a shareholder-centric agency view of corporate governance to the advocates of a broader “stakeholderist” or “team production” view. To sum up very roughly, the former argue that both economic efficiency and social welfare require directors be seen as agents of the shareholders seen as “residual claimants,” and therefore dedicated to serving their interests (Alchian & Demsetz, 1972; Jensen & Meckling, 1976). On the contrary, the latter contend that a firm’s good functioning requires the engagement of all value-creating constituencies and, therefore, that interests should be carefully balanced between these constituencies and entrusted to a knowledgeable third party (Blair & Stout, 1999; Rajan & Zingales, 1998).

As widespread as these two main interpretations may be in scholarly work, the debates they induce should not conceal the wide variety of models attempting to better describe the reality of corporate law and corporations’ actual functioning. These two views of corporate governance indeed obviously lead to different conclusions regarding the corporation’s purpose and the board of directors’ role in the corporate setting, while they both claim to be consistent with a careful reading of code and case US corporate law. Faced with such apparently irreconcilable theoretical positions, several corporate governance scholars in the management and law fields have attempted to carefully reexamine the literature.

The variety of induced models rely on a differentiation, suggested by Bainbridge (2002), between the “ends” and “means” of corporate governance. The former designate *the stakeholder group for which the corporation should be run*, while the latter refer to *who holds the ultimate control rights over the corporate decisions*. In practice, some constituencies may therefore hold these rights, but be legally bound to exert their control power for the benefit of other constituencies, much like in a trust where trustees and beneficiaries are distinct parties.

As a result, a number of combinations of the answers to these two questions can be suggested. For instance, Bainbridge’s model argues directors hold the ultimate control rights, but they exert them for shareholders’ interests. He calls this the “director primacy” model (Bainbridge, 2002) to contrast it with the classical “shareholder primacy” pertaining to the agency theory model. In this view, directors enjoy large autonomy in exercising their power and are not, as such, “agents” to the shareholders¹. However, their duty remains that of maximizing shareholder wealth, with their autonomy being interpreted as the best means of pursuing the interests of the shareholders as a group; better so than by giving control to the shareholders themselves. Lan and Heracleous (2010), however, suggested directors have such decision powers only because they are spokespersons for the *corporation* itself, which exists as a legal entity. In such a model, the corporation’s interests as an entity must be separated from its shareholders’ interests, and the power granted to directors is only to be exerted in the interests of the corporation itself.

¹ Several legal arguments support this view: “the vast majority of decisions [...] are made by the directors alone” (Bainbridge, 2002); directors are given the power to hire and dismiss the corporation’s top managers while being protected by entrenchment practices such as staggered boards and poison pills (Bebchuk, 2005); they are protected by the “Business Judgment Rule”; and they benefit from shareholders’ limitations when they pass thresholds in the level of control they are susceptible to exerting over the corporation (Bainbridge, 2002).

To other authors, it is definitely not directors, nor shareholders or the corporation, but rather it is CEOs who hold the ultimate control rights. They exert them either for their own interests—*managerialism* as criticized by Dent (2007)—or for the interests of certain stakeholders (see, for example, *stewardship theory* [Davis, Schoorman, & Donaldson, 1997]). This last model therefore advocates for CEOs’ ultimate control without further monitoring, while the corporate purpose remains compatible with the interests of a broad number of stakeholders. One might even consider a “double-layer agency” model, as Raelin and Bondy (2013) proposed, wherein the traditional shareholder–director principal–agent model is embedded in a second principal–agent relationship in which shareholders are themselves agents serving society at large. In this reading, shareholder primacy would therefore be compatible with general social welfare; however, it is the practice of governance that is regularly flawed, hence its harmful impacts. Table 1 summarizes the main models of corporate governance suggested by existing literature. The table shows that almost every conceivable configuration is suggested by one of these theoretical models.

– INSERT TABLE 1 ABOUT HERE –

2.2. An untenable hypothesis: decoupling between control rights and corporate interests

The present very-brief review shows that numerous models have been built to provide alternatives to the dominant model of shareholder-centric agency theory, now heavily criticized both for its flawed interpretation of actual corporate functioning, and for its harmful long-term social, economic, and environmental impacts. The abundance of alternatives, though, each

pretending to build on a careful reading of the same initial legal texts, reveals the confusion and triggers suspicion over the actual applicability of their conclusions.

Table 1 shows that all of these alternative models share a common hypothesis: they rely on a separation between the “ends” and “means” of corporate governance; i.e., between those who holds the ultimate control rights and those for whom the corporation should be run. The logical soundness of agency theory relies on demonstrating that economic efficiency requires a single objective—namely, shareholder wealth maximization—and alignment mechanisms to ensure that decision and control rights are directed toward this single objective (Jensen, 2001; Sundaram & Inkpen, 2004). On the contrary, the separation of control and objective appears to be fundamental for contemplating a model wherein control could still accrue in a specific group of constituencies to ensure reduced risks of opportunism (shareholders, directors, etc.) without hindering pursuit of broader social welfare; or the collective interest of all value-creating constituencies. However, is this decoupling between the behavior of the holders of ultimate control rights and their own interests credible?

Several authors have demonstrated the multifaceted nature of “control” and thus questioned the sustainability of such decoupling. Kaufman and Englander (2005) questioned directors’ true discretion when recalling, for instance, that they are elected and dismissed only by shareholders. Gelter (2009) coined the term “shareholder influence” to explore the different legal and extralegal means shareholders dispose of to exert influence on, if not control of, the directors’ and managers’ decisions². In the same way, Sandberg (2011) questioned the capacity for executives

² This includes “explicit shareholder influence,” which relates to shareholders’ direct intervention in management affairs mainly occurring in situations of concentrated ownership, and “implicit shareholder influence,”

to follow strategies that would consistently diverge from shareholders' financial interests, especially in the case of responsible investment. All of those biases have been described as a fundamental "asymmetry" in law (Segrestin & Hatchuel, 2011).

This bias is not specific to shareholder primacy. For Bebchuk (2007), empirical studies demonstrate that in numerous US corporations, shareholders have, in contrast, very limited power over directors' decisions. This imbalance creates the risk that companies are run for the interests of entrenched directors, being the holders of ultimate control—a view similar to Dent's (2007). The same issue therefore remains as how to resolve the bias created by handing over control rights to certain groups of constituencies.

While seemingly old, this question remains at the heart of recent articles investigating innovative appropriate governance principles for fostering social welfare. Recent discussions include, for example, the proposal to foster an "intracorporate marketplace" between various stakeholders to enable them to advocate for their own interests and therefore settle a "multi-objective" view of the corporation (Mitchell et al., 2016). Another is the proposal to differentiate between market value and "shareholder welfare" (Hart & Zingales, 2017), the latter being presented as encompassing much more than financial interests, as shareholders are also citizens in the society in which the corporation operates.

Ultimately, attempts to build a governance theory limiting bias toward private interests at the expense of social welfare therefore seems to rely on two main mechanisms: resorting to spreading control over the broadest possible variety of stakeholders, in line with the seminal Hill

referring to "incentives created by the institutional framework that might force managers to act as if shareholders were directing business" (Gelter, 2009, p. 147).

and Jones article on “stakeholder agency theory” (1992), or assuming that constituencies holding ultimate control have themselves interest in paying attention to broader impacts, in line with the “enlightened shareholder value” view, in which shareholders’ interests suppose satisfying the interests of a broader set of constituencies (Ho, 2010; Jensen, 2001). Arguments against these two approaches are, however, well known: in the former case, can one ensure social welfare (including, for instance, the environment and future generations) will adequately be “voiced” by a finite number of specific stakeholders (e.g., Orts & Strudler, 2010)? In the latter, what is the sustainability of a firm’s attention to its social responsibility if it remains subordinated to the interests of one particular group of constituencies?

2.3. Beyond “primacy”: a need for legal change

The lasting inconclusiveness in corporate governance theory, we argue, is due to the specific epistemological lens pertaining to the classical economic approach on which the bulk of theoretical works in corporate governance are built. As demonstrated in legal studies by Thompson (2016), the assumption that control rights inevitably and ultimately accrue among certain stakeholder groups (generally shareholders or directors), which he calls “primacy,” is a legacy of economic thought, but is incompatible with a careful reading of corporate law.

In contrast, corporate law organizes a series of nested bundles of rights and obligations for the various constituencies of corporate governance. Once the corporation has come into existence, the incorporators or directors shall adopt bylaws that define—with great discretion—the repartition of powers between the different constituencies of corporate law; namely, shareholders, directors, and corporate officers. Depending on the distribution chosen, control rights might therefore foster a strong director primacy, or conversely protect shareholders’ means

of action for enforcing their interests. Governance mechanisms may include strong alignment mechanisms between directors' and shareholders' interests in some companies, or they may not in others. Boards might include representatives of non-shareholder stakeholders, or they might not. Founders might hold class shares with specific voting rights, or they might not. The ownership structure might grant a controlling majority to a single shareholder, or it might not. Consequently, there is no universal answer as to who holds the ultimate control in every business corporation.

The variety of models in corporate governance literature would therefore prove it is misleading to interpret corporate law as a monolithic block leading to unambiguous conclusions on how the corporation should be governed, and what should be the main beneficiaries of its activities. However, this great flexibility helps generate doubt over the corporate law's capacity to protect, in practice, certain orientations that rely on socially innovative initiatives, on the part of business leaders who fear shareholders' imprecise influence (Mac Cormac & Haney, 2012; Sjøfjell, Johnston, Anker-Sørensen, & Millon, 2015). Adding to this confusion, the recent transformation of the typical figure of shareholders in large companies, with the emergence of institutional investors, and their activist version, for instance in the form of hedge funds (Cheffins & Armour, 2011; Coffee & Palia, 2016; Kahan & Rock, 2007), has contributed to the tensions. Corporate law also increasingly appears ill-equipped for facing this transformation; thus reinforcing the apparent weight of the shareholder value maximization doctrine (Sjøfjell et al., 2015; Thompson, 2016).

This legal insecurity, as well as increasing criticism by public opinion and by a considerably rising number of entrepreneurs and business leaders advocating for sustainable business of the

perceived functioning of corporate governance, is what motivated a change in corporate law in several countries, with the hope this change would trigger a deep revision of the dominant representations and theories of corporate governance (Clark & Babson, 2012; Clark & Vranka, 2013; Mac Cormac & Haney, 2012).

3. Profit-with-purpose corporations: a purpose-driven model of corporate governance

Since 2010, several countries have engaged in similar transformations of corporate law to promote more-sustainable business conduct. This change is occurring at the international level, but can be traced back to the adoption of two new forms of corporation in the United States between 2010 and 2012: the “benefit corporation,” first adopted in Maryland in 2010, and the “social purpose corporation” (initially, “flexible purpose”) first adopted in California in 2012 (Alexander, 2017; Clark & Babson, 2012; Hiller, 2013; Rawhouser et al., 2015; Reiser, 2012). As awareness grew at the international level that the attractiveness of such a new class of corporate forms could justify its generalization in a number of countries, the generic term, “profit-with-purpose corporation,” was coined following a study published by a working group of the G7 in 2014 (Prior et al., 2014). Since then, it has indeed spread both in the US (more than 30 states having adopted a form of PPC), notably with the “public benefit corporation” statute in Delaware, and in Europe with the *Società Benefit* adopted in 2017 in Italy and the *Société à mission* introduced in a French bill in 2018. Several other countries are considering introducing a similar form (including Australia, Brazil, and the United Kingdom).

3.1. *The rationale behind new PPC forms: purpose*

A PPC is a new optional legal form geared toward entrepreneurs and business leaders concerned with the social and environmental consequences of their firm's activities. It aims at providing a set of governance rules to protect their engagement toward broader concerns than the company's economic results and financial performance. To do so, PPC forms' main differentiating feature is the requirement that an additional purpose of a social or environmental nature be introduced in the articles of incorporation alongside the usual profit-making motive. Depending on the actual form (e.g., *benefit* or *social purpose* corporation), this purpose can be as broad as minimizing the negative impacts of the company's activities on various stakeholders, or as specific as a charitable purpose targeting a particular beneficiary population.

Companies that have switched to this new model have profiles as various as Patagonia, a California-based outdoor clothing and equipment company, and which has been recognized for decades for its engagement in environmental concerns; Purism, a computer technology company founded in 2014 providing hardware and software solutions to protect users' data against privacy infringement, such as in laptops and smartphones; and Danonewave, a subsidiary of Danone gathering all Danone Group activities on US soil, established in the state of Delaware in 2015 for producing healthful dairy products, developing diet-conscious behavior, and promoting sustainable agriculture. Even if they vary in size and ambition, these companies share the common trait that they rely on their legal form to ensure the credibility of their engagement toward their own social or environmental objectives, and to protect these objectives over the long term from the pressures, for instance, from activist shareholders demanding higher financial returns even at the sake of overlooking their impacts on broader constituencies. It should be

noted, however, that although the requirement that the corporation pursue a social or environmental purpose might resemble the defining characteristic of a social enterprise, the PPC forms impose no limitation on the distribution of profit, and require no specific voting rules for shareholders, such as the cooperative “one person one vote” principle. They do not benefit from specific tax regimes either.

Practically, this entails a radical change in writing the corporate contract, wherein most current corporations are formed for “any lawful purpose” and define in their articles of incorporation the distribution of rights between governance actors, who might in turn reflect the content in the company’s activities and objectives. PPCs require in the corporate articles the initial inclusion of a definition of “*which objectives the corporation assigns to itself*”; i.e. the purpose of its activities.

3.2. Three legal innovations to secure a purpose-driven engagement

PPCs rely on three legal innovations at the core of a new governance model to make this shift effective: the definition of a purpose in a document of legal nature, the requirement that both shareholders and directors legally commit to this purpose to neutralize bias toward their own private interests, and creation of specific accountability mechanisms to ensure such a commitment’s credibility (self-citation).

3.2.1. Defining a legal purpose beyond profit maximization

The first innovation PPCs introduced is required formulation of a corporate purpose not reducible to profit maximization or the financial interests of the shareholders. Numerous corporations already follow a strategic purpose, or mission statement, publicized in places such as

their websites; however, the peculiarity of a PPC's purpose is that it is explicitly given a legal nature, through its inscription within the company charter. As such, it has numerous juridical effects. It becomes publicly available in a stable form for every party interested in knowing the company's purpose through the publicity of its articles, be they shareholder, employee, customer, or any member of civil society. Additionally, to turn a company into a PPC, the company's shareholders must accept the change in the articles of incorporation with a positive vote of two-thirds of each class of shares. Afterwards, a two-thirds majority is again required for changing or deleting the purpose, for example if reverting back to a more conventional corporation.

The purpose resultantly remains stable over time and requires official action for any subsequent change. This holds true in a change of control situation, as long as the acquirer does not buy two-thirds of each class of shares. This device is designed to deter takeovers organized by investors mostly interested in financial returns, and who would deem the company undervalued precisely because of its social and environmental engagements.

Depending on the legal form, this purpose can be left widely open for the corporation to decide; for instance, social purpose corporations accept any kind of purpose, broad or highly specific, as long as it does not directly relate to profitability. Alternatively, it can be strongly prescribed, as in a benefit corporation, which imposes pursuit of a "general public benefit" defined as the commitment to create a "material positive impact" on society and the environment at large, and that can be measured and evaluated against comprehensive social responsibility criteria.

3.2.2. Committing directors and shareholders to the purpose

The second innovation introduced by PPCs is the fact that as long as a purpose is included in the articles, the shareholders relinquish their rights to sue the directors for a breach of fiduciary duties if the potentially incriminated decision was made toward this purpose. This aspect was designed to ensure that the directors and top executives indeed have appropriate discretion to follow the stated purpose, and to prevent them from being subjected to a legal risk that would dissuade them from engaging in an actual firm transformation.

Conversely, directors and managers accept that the newly stated purpose be part of their mandate, and evaluated against the purpose; i.e. whether or not the company's strategy indeed makes progress toward fulfilling the purpose. Depending on the state-specific formulation, the directors may or shall consider this purpose when making decisions, and consider the impacts of their decisions on the company's capacity to pursue its purpose. In some cases, shareholders even have the capacity to sue the corporation itself or its directors for not pursuing the purpose. This double commitment enables directors to oppose shareholders' demands that would contradict their own engagement, but also enables shareholders to require precise information and account over the company's action toward the purpose. Compared with traditional corporate social responsibility (CSR), for which extralegal character has often been accused of enabling "greenwashing" behaviors, this legal commitment is the condition of the statute's robustness and credibility (self-cite).

3.2.3. Creating purpose-specific accountability mechanisms

Finally, the control over the corporation's activities relies on new accountability mechanisms, to ensure the purpose is effectively taken into account in company conduct. Despite their creation in the remarkably short span of 5 years in the United States, PPCs are not a uniform category in law—they provide different mechanisms to do so.

For instance, benefit corporations must choose a third-party evaluation standard, which should be independent from the company and “comprehensive,” i.e., addressing all environment-social-governance (ESG) criteria. For social purpose corporations and public benefit corporations (in Delaware), each company chooses its own way of evaluating its progress toward its purpose, provided this progress can be derived in measurable operational objectives. In both cases, this assessment must then be published in an annual report, for instance in the form of a management discussion and analysis (MD&A), discussing not only the achievements but also the strategies and investments made during the year, and to be deployed for the year to come, as well as the impediments or decisions taken against the purpose. Reports might also be required for significant decisions involving a compromise between profit and purpose during the year.

Additional mechanisms, such as appointment of a purpose-dedicated officer or director, or creation of a specific governance committee tasked with evaluating the company's performance in relation to the purpose, have also been adopted in some countries.

3.3. Not “for whom” but “for what”: a purpose at the heart of corporate governance

Several elements hint at relative success of this legal innovation. First, a steady rate of adoption by actual companies, among which more than 5,000 in the US in 2019, according to B Lab association promoting the statute of benefit corporations, including brands with certain

public recognition, such as Patagonia, Kickstarter, Danone, and Method. Second, a process of replication of statutes in different countries, including reflections at different political levels such as working groups in the European Union, the Organisation for Economic Co-operation and Development, and the G8. Third, an observable increasing momentum of the theme of “purpose” in various corporate governance codes and corporate communications³. Clearly, by introducing substantial changes in comparison with classical governance schemes, including modifications of shareholders’ rights and new directors’ duties, this legal innovation arouses expectations over a new model that revisits the classical options of corporate governance.

In academia, however, the emerging literature discussing the expected impacts and implications of these new forms, both in management and in legal studies, appears to reproduce the old debates from the corporate governance field. On the one hand, several studies underline corporate law’s remarkable step forward by acknowledging that business corporations can formally engage with purposes not restricted to shareholder interests (Alexander, 2017; Hiller, 2013; Reiser, 2011). On the other hand, some scholars wonder whether this legal evolution was useful at all, and whether it will not, conversely, promote greater unaccountability by managers and create the false conclusion that, by contrast, classical corporations are now bound to follow the shareholder wealth maximization objective (McMullen & Warnick, 2016; Rawhouser et al., 2015; Yosifon, 2016). In the same vein, some authors fear these new mechanisms will not create sufficient accountability toward external stakeholders (Ebrahim et al., 2014), while others rather

³ See, for example, the two latest letters from the CEO of BlackRock, the world’s largest asset manager: “A Sense of Purpose” (2018) and “Profit & Purpose” (2019), or the revisions of corporate governance codes in the United Kingdom and France introducing “purpose” as the first core principle of good governance.

demonstrate they deeply revisit the drawbacks of previous modes of socially responsible engagement (Kurland, 2017).

Taken in the traditional “primacy” framework, this debate is quite logical: PPCs seem to simultaneously reinforce both shareholder and director primacy. The former is because shareholder approval is still required to amend the company’s articles, and therefore to define, revise, and remove the purpose the corporation will engage in – in some cases, shareholders might even have new enforcement rights thanks to the purpose. The latter is because, by offering the ability for directors to prioritize between profit-making and social and environmental goals, they reduce shareholders’ capacity to sue directors for breach of fiduciary duties, and therefore broaden directors’ discretion.

This interpretation, however, fails to account for the main shift PPCs create: introduction of a specific substantial purpose into the articles of incorporation, that is, at the heart of the corporate contract and the governance mechanisms. In doing so, PPCs do not rely on affected stakeholders’ representation to voice their concerns or interests. Rather, they suggest including potential engagements aimed at these stakeholders within a firm-specific purpose, which becomes a collective goal to which the corporation is committed. To characterize this new model, we suggest shifting from a “primacy” view of corporate governance, to a “purpose commitment” view, wherein legal contracts deal not only with relational issues but also with the collective action itself taking place within the firm; i.e., “what are we doing together and for what purpose?”

4. From primacy to purpose commitment: implications for corporate governance

theory and practice

4.1. Commitment to a purpose: solving the decoupling issue in corporate control

How can defining a purpose in the articles of incorporation provide new avenues for corporate governance theory? In the current search for more sustainable models of corporate governance, emphasis is regularly placed on the impacts of corporate *activities* on various elements, from tangible groups of stakeholders to the more-intangible society at large, the environment, or future generations. However, as briefly shown at the beginning of this paper, the bulk of the newly suggested governance models is captured by the primacy approach, which consists of assigning control rights and predictable interests to identified groups of constituencies. This orientation remains even for more-normative proposals suggesting a change of law to switch to “stakeholder governance” in which control rights are more-evenly distributed to broader stakeholders (see, for example, Freeman & Evan, 1990; Greenfield, 2007, 2008; Turnbull, 1997).

Corporate governance research is, as a result, fundamentally focused on the appropriate distribution of rights between constituencies. Such an approach can be called “political” or “relational,” not in the sense that corporations must be thought of as actors penetrating the public political sphere (Ciepley, 2013; Scherer & Palazzo, 2007), but because it leads to boiling corporate governance down to the questions of “who elects whom?” and “who monitors whom?” Accordingly, the notions of “ends” or of corporate “objectives” (Freeman, Wicks, & Parmar, 2004; Jensen, 2001; Keay, 2011b; Mitchell et al., 2016; Sundaram & Inkpen, 2004) in the primacy framework are thought of as interests borne by these constituencies, and the debate is

polarized by the evaluation of these constituencies' legitimacy for promoting their own private interests over those of others.

This discussion over the distribution of control rights undoubtedly remains necessary, and numerous authors rightly point out the risks an imbalanced governance system creates. However, we argue that PPC innovation led to supplementing this political approach. To take into account the actual impact of companies' activities, PPCs suggest shifting from a political view of corporate functioning to a consideration within the governance system of the activity of the company itself. In essence, corporate governance should therefore also be concerned with the actual content of the collective action taking place within the company, including its substantial consequences, and the common objective that binds these constituencies together.

This shift now makes the decoupling hypothesis identified in the first section a tenable one. The existence of a common purpose, explicitly stated in publicly available legal documents, enables derivation of objective and stable criteria for controlling executives' action—for instance through the definition of common standards—independently from the party that is supposed to exert this control. The pursuit of a responsible purpose no longer depends on the contingent engagement of one particular leader or the consent of changing shareholders: it is made independent from the specific groups of constituencies given “political” rights in the company's governance system.

This decoupling is only made possible because the purpose is given a legal dimension through its introduction into the corporate contract. We therefore suggest calling this approach “purpose commitment”: while classical governance mechanisms already incurred some commitments in between constituencies (fiduciary duties, for instance, are directors'

commitments to act with care and loyalty to the corporation) PPCs add a new category of commitments, required of all potentially controlling parties cited in the corporate charter (generally shareholders, directors, and top executives) toward a substantial objective. In doing so, they reject the notion that a hierarchy of control rights is sufficient to organize a responsible corporation's governing rules.

4.2. Theoretical consequences: defining a corporation by its purpose and not its constituencies

Before unraveling the practical implications of this legal innovation, we aim to explore some theoretical consequences for the field of corporate governance research.

4.2.1. From a standardized economic objective to a firm-specific, freely chosen purpose

The shift from a primacy approach of corporate governance to a purpose commitment one entails a reappraisal of one fundamental principle articulating the debate between shareholder and stakeholder views of the business corporation: the idea that corporate purpose should be taken as a universal construct similarly affecting all businesses.

Thus far, governance literature has generally attempted to justify the corporation's legal form via an economic analysis of its performance over pure market mechanisms. As such, corporate governance was deemed efficient either when it supported the maximization of the "residual claim" or when it protected the firm-specific investment of all value-creating parties (Blair & Stout, 1999; Jensen & Meckling, 1976). As such, corporate purpose was guided by an economic

imperative, which served as a prerequisite to efficient design of corporate governance systems, including their repartition of control rights, alignment, and incentive mechanisms.

With PPCs, however, purpose becomes a significant output of the governance process itself. As this is a pivotal condition for the effectiveness of the decoupling between the corporate objective and the interests of the controlling constituencies, this purpose becomes part of each corporation's defining attributes. The corporation therefore ceases to be formally characterized only by a list of constituencies⁴. Paradoxically, requiring by law that companies formulate their purposes as they see fit therefore becomes a condition for freeing the business corporation from the dominant economic representation of its objective.

4.2.2. Existence of the corporation as a separate legal entity

A direct consequence of the firm-specific definition of corporate purpose is therefore the formal, even legal, capacity to delineate the "interests" of the corporation from those of each of its constituencies.

This is a recurring ambition of scholars aiming to formulate alternative corporate governance models to the agency framework to acknowledge corporations' responsibility toward constituencies other than shareholders. From this standpoint, a common argument is the existence of the corporation as a "separate legal entity" (Biondi, Canziani, & Kirat, 2008; Lan & Heracleous, 2010; Pickering, 1968; Veldman, 2018); i.e., separate from its constituents and

⁴ Formally, corporate law in the United States and United Kingdom has long required the definition of a "purpose" to create a corporation. This purpose was, however, in practice restricted to a list of the activities the company was authorized to conduct under the *ultra vires* doctrine (see, for instance, Greenfield 2001). Recent developments in corporate law have made this "object clause" optional; thus enforcing the fact that the actual corporate objective could be restricted to the interests of some constituencies' groups.

therefore motivated by its own interests. However, as long as the decoupling hypothesis is not verified, the corporation's spokespersons are inevitably subjected to a bias toward the controllers' interests. Conversely, without control, some authors argue that executives might be freed from the liability of the actions they take on the corporation's behalf; thus creating a hazardous irresponsibility (Maitland, 2017).

Here, the formal definition of the corporate purpose creates a means to make the corporation an "autonomous" entity (Blair, 2014) in a certain sense: it specifies an explicit mandate given to directors representing the organization, and to top executives when exerting their power within the corporate setting. This is without the need to resort either to the "single corporate objective" hypothesis that the shareholder maximization is the only unequivocal objective possible (e.g., Sundaram & Inkpen, 2004), or to an external economic justification of the firm's performance, preserving the value-creating constituencies' engagement. The stated purpose delineates the management's discretion space and clarifies the articulation between management and control, another recurring issue for corporate governance research⁵. Management is therefore viewed not as agents of potential controllers (be they shareholders or other constituencies), but as a competence-based way to explore creative strategies for fulfilling the common stated purpose. As a consequence, the "misunderstanding" pertaining to the "shareholder value myth" (Stout, 2012) that managers should, even if this is not explicit, pursue the financial interests of shareholders is explicitly deterred through a device that has a legal character, and relies on the commitment of shareholders themselves.

⁵ See, for instance, Goshen and Squire (2017), who introduce "principal costs" to balance agency costs and justify the need for making the relationship between managers and shareholder flexible rather than aligned.

4.3. Intended practical consequences: renewed capacity for responsible engagement and innovation

4.3.1. Increased management leeway and protection against shareholder activism

In practice, the new formal role attributed to management in the fulfilment of the purpose entails, at the same time, greater discretion for managers and a change in their responsibilities. According to Justice Strine, it simultaneously make it possible to “give corporate managers more ability to, and impose upon them an enforceable duty to ‘do the right thing.’” (Strine, 2014, p. 235).

First, the greater discretion is linked to their ability to choose to prioritize this purpose over usual demands of stakeholders, including shareholders. Introduction of the purpose in the articles of incorporation implies that shareholders legally endorse the firm’s collective goal, and therefore relinquish their rights to sue directors for decisions that arguably oppose their own interests, but which advance the fulfilment of this purpose. In the US especially, the legal securing that this change in shareholders’ rights provides is expected to be a strong factor to encourage socially or environmentally responsible innovation, which was previously deterred by the accompanying risks. In doing so, the purpose commitment model also contributes to leveling out some discrepancies created by corporate law between the rights of different groups of constituencies: shareholders are no longer entitled to enforce the prioritization of their interests over the collective goal through formal means.

In the current context of shareholder activism’s growth (see, for instance, Cheffins & Armour, 2011; Coffee Jr & Palia, 2016), and given the strong pressure the risk of takeover exerts

on management decisions (Kacperczyk, 2009), this commitment was specifically designed to reduce the number of ways some shareholders can influence the company's management toward their own private interests: generally, short-term financial performance. The specific case of takeover, for instance, was addressed: the reluctance to keep the stated purpose into the articles of incorporation after the takeover becomes a legitimate motive to turn down an offer, whereas previous case law (especially the most discussed cases of *Unocal v. Mesa* [1985] and *Revlon, Inc. v. Mac Andrews & Forbes Holdings, Inc.* [1986], see for instance [Yosifon, 2014]) required directors to accept the best offer in terms of stock price, regardless of the other impacts that the strategy suggested by the acquirer would entail. As such, it should be noted that such a commitment also appears as a protection for incumbent shareholders advocating for long-term strategies, and who also fear the consequences of short-term shareholder activism. This partially explains the relative success of these new legal forms despite the apparent decrease in shareholders' rights that it entails.

4.3.2. A new form of corporate accountability toward society

Defining a purpose however also entails new responsibilities for directors and executives, who can now explicitly be evaluated on their capacity to advance the stated objective. In practice, this means developing new dedicated assessment tools and methods, which complement traditional accountability mechanisms (Ebrahim, Battilana, & Mair, 2014; Mac Cormac & Haney, 2012). Interestingly, it also invites reappraisal of lesser-used governance mechanisms, which offer interesting properties for this control. An example is oversight boards dedicated to

monitoring the company's performance and strategy in relation to this purpose (Kay & Silberston, 1995; Raelin & Bondy, 2013).

The main objective PPC form proponents pursued was to make it easier to discuss the impacts of the corporation's activities. This discussion is enabled in practice by the inclusion within corporate governance mechanisms of the corporation's actual activities and objectives, rather than the repartition of "political" rights between constituencies only. Through the requirement that purposes, assessments, and annual reports be made transparent and publicly accessible, the assessment of the interaction of companies' activities with society at large becomes part of the governance system, even if filtered by the actual formulation of the purpose that shareholders adopted. It therefore renews the traditional approach to companies' social responsibility and accountability toward their stakeholders, which was previously mediated by the representation of some stakeholders' groups or the classical ESG criteria of voluntary initiatives of CSR. In practice, exchanges at the board of directors level, during general meetings, with personnel representatives during social dialogue, or through communications with the general public or customers are all informed by a common formulation of the corporate purpose written in its bylaws. While the current mechanisms that existing legal options formally require might arguably fall short of ambitious proposals in this matter (see next section), an enhanced discussion of firms' activity and strategy might rely on innovative mechanisms promoting a collective discussion on the definition, evaluation, interpretation, and revision of the corporate purpose; such as having boards in which constituencies affected or experts in the purpose could contribute.

Lastly, the legal nature of the purpose included in corporate bylaws may serve as a standard for judges to assess whether directors indeed abided by their fiduciary duties. This is particularly useful in change of control situations in which the heightened level of scrutiny from the court was thus far mainly related to the shareholders' financial interests (Bainbridge, 1991). It is also extremely useful amid a new rising class of socially responsible and impact investors, who currently rely on *ad hoc* commitment mechanisms to ensure the companies they invest in indeed respect social responsibility criteria, or social purposes, and without relying on actual legal mechanisms thereby creating new risks.

4.4. Boundary conditions of the model: options for policymakers, current limitations, and further research

4.4.1. A new option for policymakers to regulate corporate behavior

PPCs are still in their infancy, and there remains a certain lack of perspective for grasping all the empirical transformations these new statutes entail. It remains, however, a hot topic for policymakers involved in the evolution of corporate governance laws, codes, and norms toward greater business sustainability, as evidenced by the recent transformations in corporate codes on the “purpose” of corporations, as well as the political debates on corporate governance in several countries. Our research highlights the potential interest of the PPC model for policy development.

The purpose commitment model provides a different and complimentary approach for corporate regulation compared with typical ways in which legislators consider revising business law, which rely on stakeholder representation. Two recent legal changes illustrate this classical

approach: section 172 of the UK Company Act in 2006, and the creation of “constituency statutes” in the United States. Section 172 states a company director “must act in a way that he considers, in good faith, would be most likely to promote the success of the company for the benefit of its members as a whole,” (Companies Act 2006, Part 10, Chapter 2, Section 172) naming a variety of constituencies, such as employees, suppliers, and customers. Constituency statutes provide similar changes to directors’ duties in the United States, notably to enable directors to oppose takeovers that would harm public interest. While these changes are remarkable evolutions of corporate law, reinforcing a stakeholder view of good corporate governance, they have thus far contributed to limited change in practices and virtually no litigation in court (Keay, 2011a; McDonnell, 2004). Our model leads us to hypothesize that such limited impact is due to the failure of these legal provisions to actually address the coupling between controllers’ interests and corporate purpose. This view is confirmed by Keay’s analysis (2011a) that these changes come under the enlightened shareholder doctrine preserving shareholders’ interests within the ultimate corporate purpose.

PPCs, by decoupling control and corporate purpose, appear as a powerful addition to change directors’ duties and create an actual responsibility toward a purpose not restricted to shareholders’ interests. We therefore suggest that in countries in which such statutes have not yet been adopted, legislators consider the potential opened by this focus on corporate purpose. Debates sparked by such an adoption (see, for instance, Rawhouser et al., 2015; Levillain et al., 2018) have questioned the need for an actual legal change, given that contractual freedom generally already offers the ability for existing firms to change their bylaws and include such a purpose. In practice however, as shown in this study, the interpretation of corporate governance

as a system of distribution of rights between constituencies, as well as the unclear interpretation of what is actually in corporate law, does not lead business actors to consider this possibility. A change in corporate law therefore offers a replicable model with potentially significant impact on the change in doctrine on the matter. It is particularly notable that, in countries having adopted such a statute, there is no other advantage (e.g., tax reduction or subsidies) to explain the steady rate of adoption.

4.4.2. Remaining practical issues and limitations of current legal frameworks

Our model however also emphasizes some limitations of currently adopted forms of PPC, which can inform policy-makers that would be interested in exploring alternative corporate governance frameworks.

In the first place, for states in which such a PPC statute is adopted, special care must be given to the efficiency of governance mechanisms provided to ensure proper definition and revision of the purpose, as well as assessment of companies' respect of their own purpose. Given the innovativeness of such a statute at its inception, legislators may be prudent to wait for actual feedback of firms having adopted it before considering changes in the related requirements (e.g., annual reports, assessment standards); however, it now appears necessary to move forward with reflection on governance mechanisms ensuring enhanced sustainability for purpose-driven businesses. For instance, exploration is needed into whether specifications should be given as to what serves as an acceptable corporate purpose. For the US social purpose corporations, there is no public body to determine what a "social or environmental" purpose should be, meaning formulation of a purpose is virtually unrestricted. For instance, given the necessary transparency of articles of incorporation, will the formulation of large companies' purposes be the object of

public debate within civil society? This could create a political space for discussing how such firms' technological development impacts broader society.

In the same vein, other means of controllers' influence might still pressure directors to depart from the purpose in their day-to-day decision-making. Current legal options, for instance, still raise the question of whether this formal commitment is sufficient for deterring all means of "implicit" shareholder influence (Gelter, 2009). An example is the pressure that can be exerted through the threat of dismissal without cause—a right still only owned by shareholders. Policy development therefore needs to review incentive mechanisms—including executive remuneration package for instance—as well as the ability for majority shareholders to easily change the formulation of the purpose, or the capacity to dismiss directors. For the legal form to effectively enable the decoupling between controlling constituencies and pursued collective interest, the governance mechanisms should inevitably create the conditions of the discussion, definition, and revision of the firm-specific purpose, from which will derive the mandate given to management, as well as of the evaluation process regarding the corporation's respect of the stated purpose.

On this issue, it is very significant that the French model of "*société à mission*" adopted more recently than its US counterparts (in 2019) includes the requirement in corporate law to create a specific governance committee, different from existing boards, aiming at assessing whether the company indeed pursues its purpose, and comprising at least one employee (Notat and Sénard, 2018). Some authors (see e.g. Ebrahim et al., 2014) regret that the most widespread model of PPC that is the benefit corporation does not include any mechanism to reinforce stakeholder power or representation. While our model leads to the finding that reinforcing stakeholder representation might be insufficient without a qualification of the corporate purpose (i.e. in a

“primacy” view), it does not preclude a pluralistic mechanism of control to ensure that the purpose included in the bylaws is indeed respected. On the contrary, this new model creates two new opportunities to include stakeholders, which are underexploited by existing forms: include stakeholders in the process of definition of the purpose—which is in practice often done by existing companies having chosen this form—and include stakeholders in the assessment of the company’s behavior and impacts regarding the purpose—which the French form requires, at least with employees.

Finally, while benefit corporations require use of a third-party assessment standard to evaluate the firm’s response to its purpose, all available standards are privately developed. Policy development could therefore also be concerned with the development of such a standard to provide the evaluations with enhanced credibility. Overall, all these developments must of course take into account the specific local legal frameworks, and it is highly likely that choices US legislators make regarding the appropriate mechanisms will not suit different legal contexts, given the strong differences among countries regarding corporate governance systems (Aguilera & Jackson, 2003).

4.4.3. A need for further empirical research

While the PPC movement might open new avenues for renewing corporate governance frameworks, it nevertheless still raises numerous for further research to address.

First of all, what purposes will PPCs adopt? Will they focus on highly specific issues and therefore provide only limited changes in corporate behavior, or will they promote ambitious

changes in the face of current socioeconomic and environmental challenges? Then, what accountability mechanisms will guarantee that corporations curb the risk of “mission-washing,” a term stemming from the model of “greenwashing” in CSR research, wherein companies’ voluntary engagement gave way to communication practices or early disengagement (Fleming & Jones, 2013)? Another question regards how to complement the numerous frameworks that have been developed during the past few decades to account for other dimensions of firms’ performance (e.g., balanced scorecard [Kaplan & Norton, 1995], human capital [Becker, 2009], and corporate social performance [Wood, 2010]) so as to specifically evaluate PPCs response to their purpose. Additionally, who should have the legitimacy and expertise to do so, even more so if this purpose is of an innovative nature and revisits the usual CSR concerns?

Even though further research is needed to gather empirical evidence proving or disproving the potential of such innovative legal changes to tackle the current defects of corporate activities and governance, the first years of experimentation demonstrate the wide variety of companies which have adopted such statutes. These range from closely-held companies, including family-owned businesses, private equity invested firms and start-ups funded by venture capital, to co-operatives and mutual companies ; from consultancy firms with limited direct environmental impact to tech companies developing disruptive innovations ; from small firms to large subsidiaries, including medium-sized industrial companies ; and from very socially oriented companies with nonprofit-like missions to broad purposes very similar to the ESG criteria of corporate social responsibility. Overall, the entrepreneurs having chosen a PPC form we met did not struggle with funding, even when they presented their status to conventional investors, especially in private equity and venture capital. On the contrary, their engagement was deemed as

another proof of their dedication to fulfill the project they were presenting to the investor. There is still the question whether the PPC form will be adopted by publicly-traded companies, and the case of Etsy in the US raised doubts about the structural integrity of publicly-traded PPCs. Yet recent developments in France, with large companies having publicly considered to change their bylaws, lead to think that this might soon be the case. The lawyers' group at the origin of the social purpose corporate form explicitly stated that creating a specific legal form was also a tool to standardize the articles of incorporation and avoid the trouble for investors to read every clause. Finally, with the current trend of "delisting" and "going private" (Davis, 2016; Engel, Hayes & Wang, 2007), as well as the renewed interest of large asset management funds such as BlackRock in the theme of "purpose", the PPC form might still have the potential to grasp a significant part of the business economy.

In the end, the purpose commitment view of corporate governance could offer interesting insights for framing this future research, to avoid the bias created by the traditional primacy framework which is ill-equipped to deal with the recent orientation of businesses for defining their purposes. As the rhythm of innovations in governance is rising at the moment, and is recognized as a crucial stake to face current challenges, we think that this framework can quickly help overcoming the remaining shortcomings of current forms and contribute to change the potentially problematic representations of the corporation both in theory and in practice.

5. Conclusions

Corporate governance theory, while being regularly accused of contributing to corporate activities' harmful impacts on society and the environment (Ghoshal, 2005; Sjøfjell et al., 2015), remains a field with copious debates on how to characterize good corporate governance and develop models that foster social welfare. However, it may have overlooked the consequences of the growing wave of legal changes around newly adopted PPC forms, both in theory and practice. These statutes, although still affecting few corporations in view of the total number of businesses, are attracting a growing number of legislators and entrepreneurs, because they change fundamental tenets of classical governance models. In particular, they tackle the legal insecurity that responsible business leaders fear when advocating for more sustainable business conduct within traditional legal frameworks.

Based on the innovations these new forms introduce, our proposed purpose commitment model opens new ways of characterizing a governance system, and ties with defining a purpose in a company's articles of incorporation. It supplements the traditional approach of corporate governance, inherited from economic models, which consists of allocating rights over corporate control and results in different groups of constituencies. Instead of assuming corporate impacts can satisfactorily be tackled by nominating different stakeholder groups within the corporation's power structure, it suggests including discussion on the objectives and desired impacts of the corporate activities directly at the heart of the corporate contract, and creating a long-term commitment of the corporation—acknowledged by shareholders and directors—to this purpose.

This shift from “political” rights (who elects whom? who controls whom?) to a substantial purpose (what goals do we intend to achieve?) entails several consequences both at the theoretical and practical levels. At the theoretical level, it frees corporations from a standardized

economic representation of their performance and enables definition of corporate interests independent from the private interests of each group of constituencies, therefore bolstering the thesis of the corporation as a separate legal entity. Practically, it entails greater leeway for managers to achieve the stated purpose, by mitigating shareholders' rights while not granting them free rein: new accountability mechanisms, directly derived from the purpose, ensure that whoever is in control, managers will be held accountable for the purpose, and only for that purpose.

The existing profit-with-purpose forms (e.g., benefit corporations, social purpose corporations) still raise numerous questions concerning the long-term credibility of their specific mechanisms of accountability, and the purpose they will adopt. However, they also may be only one manner of designing new legal frameworks around sustainable purposes, thus paving the way for innovative practices and models. Numerous other forms might still be built, either at the legislative or company level, to ensure that corporations in the future indeed play a part in dealing with contemporary challenges.

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References

- Ahrens, T., Filatotchev, I., & Thomsen, S. (2011). The research frontier in corporate governance. *Journal of Management and Governance*, 15(3), 311–325.
- Aguilera, R. V., & Jackson, G. (2003). The Cross-National Diversity of Corporate Governance: Dimensions and Determinants. *Academy of Management Review*, 28(3), 447–465.
- Alchian, A. A., & Demsetz, H. (1972). Production, information costs, and economic organization. *The American Economic Review*, 62(5), 777–795.
- Alexander, F. H. (2017). *Pursuing Profit With Purpose*. Berrett-Koehler.
- André, R. (2015). Benefit corporations at a crossroads: As lawyers weigh in, companies weigh their options. *Business Horizons*, 58(3), 243–252.
- Bainbridge, S. M. (1991). Interpreting Nonshareholder Constituency Statutes. *Pepperdine Law Review*, 19, 971.
- Bainbridge, S. M. (2002). Director primacy: The means and ends of corporate governance. *Nw. UL Rev.*, 97, 547.
- Bebchuk, L. A. (2005). The case for increasing shareholder power. *Harvard Law Review*, 833–914.
- Bebchuk, L. A. (2007). The myth of the shareholder franchise. *Virginia Law Review*, 93, 675–732.
- Becker, G. S. (2009). *Human Capital: A Theoretical and Empirical Analysis, with Special Reference to Education*. University of Chicago Press.
- Biondi, Y., Canziani, A., & Kirat, T. (2008). *The firm as an entity: Implications for economics, accounting and the law*. Routledge.
- Blair, M. M. (2014). Boards of Directors as Mediating Hierarchs. *Seattle UL Rev.*, 38, 297.
- Blair, M. M., & Stout, L. A. (1999). A team production theory of corporate law. *Virginia Law Review*, 85(2), 247–328.
- Canals, J. L. (2011). Rethinking the Firm's Mission and Purpose. *European Management Review*, 7(4), 195–204.

- Cheffins, B. R., & Armour, J. (2011). The past, present, and future of shareholder activism by hedge funds. *J. Corp. L.*, 37, 51.
- Ciepley, D. (2013). Beyond Public and Private: Toward a Political Theory of the Corporation. *American Political Science Review*, 107(01), 139–158.
- Clark, W. H. J., & Babson, E. K. (2012). How Benefit Corporations are redefining the purpose of business corporations. *Wm. Mitchell L. Rev.*, 38(2), 817.
- Clark, W. H. J., & Vranka, L. (2013). *White Paper: The need and rationale for the benefit corporation: why it is the legal form that best addresses the needs of social entrepreneurs, investors and ultimately the public.*
- Clarke, T. (2014). The impact of financialisation on international corporate governance: the role of agency theory and maximising shareholder value. *Law and Financial Markets Review*, 8(1), 39-51.
- Coffee, J. C. Jr., & Palia, D. (2016). The wolf at the door: The impact of hedge fund activism on corporate governance. *Annals of Corporate Governance*, 1(1), 1–94.
- Davis, G. F. (2016). *The vanishing American corporation: Navigating the hazards of a new economy.* Berrett-Koehler Publishers.
- Davis, J. H., Schoorman, F. D., & Donaldson, L. (1997). Toward a stewardship theory of management. *Academy of Management Review*, 22(1), 20–47.
- Deakin, S. (2011). The corporation as commons: rethinking property rights, governance and sustainability in the business enterprise. *Queen's LJ*, 37, 339.
- Dent, G. W. J. (2007). Academics in Wonderland: The Team Production and Director Primacy Models of Corporate Governance. *Hous. L. Rev.*, 44, 1213.
- Ebrahim, A., Battilana, J., & Mair, J. (2014). The governance of social enterprises: Mission drift and accountability challenges in hybrid organizations. *Research in Organizational Behavior*, 34, 81–100.
- Engel, E., Hayes, R. M., & Wang, X. (2007). The Sarbanes–Oxley Act and firms' going-private decisions. *Journal of Accounting and Economics*, 44(1-2), 116-145.
- Fleming, P., & Jones, M. (2013). *The end of corporate social responsibility: Crisis and critique.* Sage.

- Freeman, R. E., & Evan, W. M. (1990). Corporate governance: A stakeholder interpretation. *Journal of Behavioral Economics*, 19(4), 337–359.
- Freeman, R. E., Wicks, A. C., & Parmar, B. (2004). Stakeholder Theory and "The Corporate Objective Revisited ". *Organization Science*, 15(3), 364–369.
- Gelter, M. (2009). The dark side of shareholder influence: Managerial autonomy and stakeholder orientation in comparative corporate governance. *Harvard International Law Journal*, 50(1), 129–194.
- George, G., Howard-Grenville, J., Joshi, A., & Tihanyi, L. (2016). Understanding and tackling societal grand challenges through management research. *Academy of Management Journal*, 59(6), 1880.
- Ghoshal, S. (2005). Bad Management Theories Are Destroying Good Management Practices. *Academy of Management Learning & Education*, 4(1), 75–91.
- Greenfield, K. (2007). Defending Stakeholder Governance. *Case W. Res. L. Rev.*, 58, 1043.
- Greenfield, K. (2008). *The Failure of Corporate Law: Fundamental Flaws and Progressive Possibilities*. Chicago: University of Chicago Press.
- Hart, O., & Zingales, L. (2017). Companies Should Maximize Shareholder Welfare Not Market Value. *Journal of Law*, 2, 247–274.
- Hill, C. W. L., & Jones, T. M. (1992). Stakeholder-agency theory. *Journal of Management Studies*, 29(2), 131–154.
- Hiller, J. S. (2013). The Benefit Corporation and Corporate Social Responsibility. *Journal of Business Ethics*, 118(2), 287–301.
- Ho, V. H. (2010). Enlightened shareholder value: Corporate governance beyond the shareholder-stakeholder divide. *J. Corp. L.*, 36, 59.
- Ingle, C., Mueller, J., & Cocks, G. (2011). The financial crisis, investor activists and corporate strategy: will this mean shareholders in the boardroom? *Journal of Management and Governance*, 15(4), 557–587.
- Jensen, M. C. (2001). Value Maximization, Stakeholder Theory, and the Corporate Objective Function. *European Financial Management*, 7(3), 297–317.

- Jensen, M. C., & Meckling, W. H. (1976). Theory of the firm: Managerial behavior, agency costs and ownership structure. *Journal of Financial Economics*, 3(4), 305–360.
- Kacperczyk, A. (2009). With greater power comes greater responsibility? Takeover protection and corporate attention to stakeholders. *Strategic Management Journal*, 30(3), 261–285.
- Kahan, M., & Rock, E. B. (2007). Hedge Funds in Corporate Governance and Corporate Control. *University of Pennsylvania Law Review*, 155(5), 1021–1093.
- Kaplan, R. S., & Norton, D. P. (1995). Putting the balanced scorecard to work. *Performance Measurement, Management, and Appraisal Sourcebook*, 66, 17511.
- Kaufman, A., & Englander, E. (2005). A team production model of corporate governance. *The Academy of Management Executive*, 19(3), 9–22.
- Kay, J., & Silberston, A. (1995). Corporate Governance. *National Institute Economic Review*, 153(1), 84–107.
- Key, A. (2011a). Moving Towards Stakeholderism? Constituency Statutes, Enlightened Shareholder Value, and More: Much Ado About Little? *European Business Law Review*, 22(1), 1–49.
- Key, A. (2011b). *The Corporate Objective*. Edward Elgar Publishing.
- Kemper, A., & Martin, R. L. (2010). After the fall: The global financial crisis as a test of corporate social responsibility theories. *European Management Review*, 7(4), 229–239.
- Kurland, N. B. (2017). Accountability and the public benefit corporation. *Business Horizons*, 60(4), 519–528.
- Lan, L. L., & Heracleous, L. (2010). Rethinking Agency Theory : the View from the Law. *Academy of Management Review*, 35(2), 294–314.
- Lazonick, W. (2014). Profits without Prosperity. *Harvard Business Review*, 92(9), 46–55.
- Levillain, K., Parker, S., Ridley-Duff, R., Segrestin, B., Veldman, J., & Willmott, H. (2018). Protecting long-term commitment: legal and organizational means. In C. Driver & G. Thomson (Eds.), *Corporate Governance in Contention*. Oxford University Press.
- Mac Cormac, S., & Haney, H. (2012). New Corporate Forms : One Viable Solution to Advancing Environmental Sustainability. *Journal of Applied Corporate Finance*, 24(2).

- Maitland, I. (2017). How Insiders Abuse the Idea of Corporate Personality. In E. W. Orts & C. Smith (Eds.), *The Moral Responsibility of Firms* (p. 106).
- Margolis, J. D., & Walsh, J. P. (2003). Misery loves companies: Rethinking social initiatives by business. *Administrative Science Quarterly*, 48(2), 268–305.
- McDonnell, B. (2004). Corporate Constituency Statutes and Employee Governance. *William Mitchell Law Review*, 30, 1227.
- McMullen, J. S., & Warnick, B. J. (2016). Should We Require Every New Venture to Be a Hybrid Organization? *Journal of Management Studies*, 53(4), 630–662.
- Mitchell, R. K., Weaver, G. R., Agle, B. R., Bailey, A. D., & Carlson, J. (2016). Stakeholder Agency and Social Welfare: Pluralism and Decision Making in the Multi-Objective Corporation. *Academy of Management Review*, 41(2), 252–275.
- Notat, N., & Sénard, J. D. (2018). *L'entreprise, objet d'intérêt collectif*. Rapport aux Ministres de la Transition écologique et solidaire, de la Justice, de l'Economie et des Finances, du Travail. La Documentation Française.
- O'Sullivan, M. (2000). The innovative enterprise and corporate governance. *Cambridge Journal of Economics*, 24(4), 393.
- Orts, E. W., & Strudler, A. (2010). Putting a Stake in Stakeholder Theory. *Journal of Business Ethics*, 88(S4), 605–615.
- Pickering, M. A. (1968). The Company as a Separate Legal Entity. *The Modern Law Review*, 31(5), 481–511.
- Pitelis, C. N., & Teece, D. J. (2009). The (new) nature and essence of the firm. *European Management Review*, 6(1), 5–15.
- Prior, C., Cohen, S. R., & Fox, T. (2014). *Profit-with-Purpose Businesses - Subject paper of the Mission Alignment Working Group*. Social Impact Investment Taskforce, G8.
- Raelin, J. D., & Bondy, K. (2013). Putting the Good Back in Good Corporate Governance: The Presence and Problems of Double-Layered Agency Theory. *Corporate Governance: An International Review*, 21(5), 420–435.
- Rajan, R. G., & Zingales, L. (1998). Power in a Theory of the Firm. *The Quarterly Journal of Economics*, 113(2), 387–432.

- Rawhouser, H., Cummings, M. E., & Crane, A. (2015). Benefit Corporation Legislation and the Emergence of a Social Hybrid Category. *California Management Review*, 57(3), 13–35.
- Reid, W. V., Chen, D., Goldfarb, L., Hackmann, H., Lee, Y. T., Mokhele, K., ... Whyte, A. (2010). Earth System Science for Global Sustainability: Grand Challenges. *Science*, 330(6006), 916–917.
- Reiser, D. B. (2011). Benefit Corporations-A Sustainable Form of Organization? *Wake Forest L. Rev.*, 46, 591–867.
- Reiser, D. B. (2012). Next Big Thing: Flexible Purpose Corporations, The.
- Sandberg, J. (2011). Socially Responsible Investment and Fiduciary Duty: Putting the Freshfields Report into Perspective. *Journal of Business Ethics*, 101(1), 143–162.
- Scherer, A. G., & Palazzo, G. (2007). Toward a political conception of corporate responsibility: business and society seen from a Habermasian perspective. *Academy of Management Review*, 32(4), 1096–1120.
- Scherer, A. G., & Voegtlin, C. (2018). Corporate Governance for Responsible Innovation: Approaches to Corporate Governance and Their Implications for Sustainable Development. *Academy of Management Perspectives*, (Published Online).
- Segrestin, B., & Hatchuel, A. (2011). Beyond Agency Theory, a Post-crisis View of Corporate Law. *British Journal of Management*, 22(3), 484–499.
- Sjåfjell, B., Johnston, A., Anker-Sørensen, L., & Millon, D. (2015). Shareholder primacy: the main barrier to sustainable companies. In B. J. R. Beate Sjåfjell (Ed.), *Company Law and Sustainability, Legal Barriers and Opportunities*. Cambridge University Press.
- Stout, L. A. (2002). Bad and not-so-bad arguments for shareholder primacy. *S. Cal. L. Rev.*, 75, 1189.
- Strine, L. E. (2014). Making It Easier for Directors to Do the Right Thing. *Harv. Bus. L. Rev.*, 4, 235.
- Sundaram, A. K., & Inkpen, A. C. (2004). The Corporate Objective Revisited. *Organization Science*, 15(3), 350–363.
- Thompson, R. B. (2016). Anti-primacy: Sharing power in American corporations. *Bus. Law.*, 71, 381–383.

- Turnbull, S. (1997). Stakeholder governance: A cybernetic and property rights analysis. *Corporate Governance: An International Review*, 5(1), 11–23.
- Veldman, J. (2018). The Separate Legal Entity and the Architecture of the Modern Corporation. In N. Boeger & C. Villiers (Eds.), *Shaping the Corporate Landscape: Towards Corporate Reform and Enterprise Diversity* (pp. 61–75). Hart Publishing.
- Wood, D. J. (2010). Measuring corporate social performance: a review. *International Journal of Management Reviews*, 12(1), 50–84.
- Yosifon, D. G. (2014). The Law of Corporate Purpose. *Berkeley Business Law Journal*, 10, 181–230.
- Yosifon, D. G. (2016). Opting out of Shareholder Primacy: Is the Public Benefit Corporation Trivial. *Del. J. Corp. L.*, 41, 461.

Tables & Figures

		Who holds the ultimate control rights		
		Shareholders	Directors	CEOs
Who holds rights over the value created	Shareholders	Radical shareholder primacy	Director primacy	Stewardship models
	The Corporation		Corporation as a principal	
	Stakeholders or the Community	Double-layered agency	Team Production Theory	
	CEOs		Managerialism	

Table 1 - Mapping of the main models of corporate governance