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# Contemplating the Gap-Filling Role of Social Intrapreneurship

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### ABSTRACT

Social intrapreneurs occupy an intersectional space within the large corporate form at the crossroads of innovation, profit, and social good. They are often described as “disruptive” because they devise new ways to tackle problems, usually social in nature, in a manner that disrupts traditional operating models or long-standing assumptions. Although much has been written about social intrapreneurs in managerial literature, legal literature has been silent. This Article reverses that trend and develops a theory of social intrapreneurship from a corporate law perspective. Specifically, this Article posits that social intrapreneurship in terms of praxis, characteristics, and process can be conceptualized as serving a bridging function between discrete parts of a corporation’s business and, on a meta-level, between the canonical schism of “profit” and “social good.”

To be clear, the argument advanced in this Article is not that social intrapreneurship is the antidote to all corporate ills, but rather that in its most successful form, social intrapreneurship redefines the boundaries of a corporation’s business and social potential. Social intrapreneurship has implications for broader policy debates, such as those related to matters of corporate purpose, the choice of organizational forms, and the need for tri-sector cooperation.

### INTRODUCTION

A little less than a decade ago, two employees at Vodafone PLC noted a disconnect—although half of the population in Kenya

had mobile phones, less than 20% of Kenyans had access to formal banking services.<sup>1</sup> Struck by this gap, Vodafone employees Nick Hughes and Susie Lonie ideated an innovative mobile banking network called “M-PESA” that allowed Kenyans to perform banking activities via their mobile phones.<sup>2</sup> M-PESA’s success has been twofold: first, it effectively opened up access to banking services without the need to build brick-and-mortar banks, and second, it contributed to Vodafone’s financial bottom line.<sup>3</sup>

Vodafone’s story does not stand alone. At many large for-profit corporations, such as Dow Chemicals Co., Unilever Inc., and Danone SA, individuals like Nick and Susie exist.<sup>4</sup> Often termed “social intrapreneurs,” these employees spot gaps between intra-firm capabilities and extra-firm societal needs, and create new products, services, and/or practices that link business growth and profitability with social value creation.

Social intrapreneurship has attracted a lot of attention in business literature, as well as in media and corporate circles.<sup>5</sup> For example, a 2014 *Forbes* article described social intrapreneurs as “quickly becoming the most valuable employees at many companies because they are good for the bottom line, good for the brand, and good for

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<sup>1</sup> See IGNACIO MAS & DAN RADCLIFFE, BILL & MELINDA GATES FOUNDATION, *MOBILE PAYMENTS GO VIRAL: M-PESA IN KENYA* 2 n.5 (2010), [http://siteresources.worldbank.org/AFRICAEXT/Resources/258643-1271798012256/M-PESA\\_Kenya.pdf](http://siteresources.worldbank.org/AFRICAEXT/Resources/258643-1271798012256/M-PESA_Kenya.pdf); SUSTAINABILITY, *THE SOCIAL INTRAPRENEUR: A FIELD GUIDE FOR CORPORATE CHANGEMAKERS* 7 (2008), [http://www.echoinggreen.org/sites/default/files/The\\_Social\\_Intrapreneurs.pdf](http://www.echoinggreen.org/sites/default/files/The_Social_Intrapreneurs.pdf).

<sup>2</sup> SUSTAINABILITY, *supra* note 1, at 7.

<sup>3</sup> See Matt Twomey, *Cashless Africa: Kenya’s Smash Success with Mobile Money*, CNBC.COM (Nov. 11, 2013, 7:00 AM), <http://www.cnbc.com/2013/11/11/cashless-africa-kenyas-smash-success-with-mobile-money.html>.

<sup>4</sup> See *infra* Part I; Appendix.

<sup>5</sup> See GERALD F. DAVIS & CHRISTOPHER J. WHITE, *CHANGING YOUR COMPANY FROM THE INSIDE OUT: A GUIDE FOR SOCIAL INTRAPRENEURS* (2015); DAVID GRAYSON ET AL., *SOCIAL INTRAPRENEURISM AND ALL THAT JAZZ: HOW BUSINESS INNOVATORS ARE HELPING TO BUILD A MORE SUSTAINABLE WORLD* (2014); David Armano, *Move Over Entrepreneurs, Here Come the Intrapreneurs*, FORBES (May 21, 2012, 12:11 PM), <http://www.forbes.com/sites/onmarketing/2012/05/21/move-over-entrepreneurs-here-come-the-intrapreneurs/>; Scott MacFarland, *Are Social Intrapreneurs Emerging in Your Company?*, HUFFINGTON POST BLOG (Apr. 22, 2014, 5:59 AM), [http://www.huffingtonpost.com/scott-macfarland/are-social-intrapreneurs-\\_b\\_4818701.html](http://www.huffingtonpost.com/scott-macfarland/are-social-intrapreneurs-_b_4818701.html); Judy Samuelson, *Social Intrapreneurs: Disruptive Innovators on the Inside*, FORBES (Apr. 7, 2013, 8:00 PM), <http://www.forbes.com/sites/skollworldforum/2013/04/07/social-intrapreneurs-disruptive-innovators-on-the-inside>; Emma Stewart, *How Does a Social Intrapreneur Add Value to a Business?*, THE GUARDIAN (Sept. 11, 2013, 10:14 AM), <http://www.theguardian.com/sustainable-business/social-intrapreneur-value-business>.

staff morale.”<sup>6</sup> Relatedly, several corporations such as Google, Inc., BMW (through its foundation), and Barclays PLC have created processes for encouraging and supporting intrapreneurship, and a 2008 article in *The Economist* speculated that social intrapreneurs were arguably “[t]he greatest agents for sustainable change.”<sup>7</sup>

In addition to praising the potential value that social intrapreneurs bring to the corporate table, the business literature and practitioners in the intrapreneurship space often acknowledge and wrestle with the structural organizational obstacles that social intrapreneurs face.<sup>8</sup> Of prime concern are organizational structure constraints that hinder access to resources, obtaining approval from “higher-ups” for initiatives as they move from ideation to development, and securing a viable budget.

However, yet another structural feature that should be considered, but which has not received due consideration in intrapreneurial discussions is the effect of corporate law on intrapreneurship. Intrapreneurs operate within organizations, many of which are corporations, and by extension corporations operate within the bounds of corporate law. In turn corporate law provides a backdrop of rules and norms that govern the rights, responsibilities, and relationships of the board, officers, shareholders, and other constituents. Thus, corporate law is itself a structural feature that merits consideration.

This Article is the first to contemplate how corporate law potentially impacts social intrapreneurship and, concomitantly, how social intrapreneurship contributes to academic discussions on the nature of corporations. Of particular interest to this Article is contemplating how corporate law’s *theoretical* treatment of the nature of the relationship between the concepts of “profit” and “social interest” in the context of the for-profit corporation intersects with the *on-the-ground practice* of intrapreneurship. In this regard, this Article argues that social intrapreneurship represents a private ordering model that serves a gap-filling function between axioms of “profit” and “social interest.” While corporate law and attendant corporate law

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<sup>6</sup> Ashoka, *2014’s Most Valuable Employee: The Social Intrapreneur*, FORBES (Jan. 24, 2014, 12:00 AM), <http://www.forbes.com/sites/ashoka/2014/01/24/2014s-most-valuable-employee-the-social-intrapreneur/>.

<sup>7</sup> *Social Entrepreneurs: Agents of Change*, ECONOMIST (Jan. 31, 2008), <http://www.economist.com/node/10601356>.

<sup>8</sup> Nick de Mey, Bd. of Innovation, Webinar: Experiment to Fight Red Tape: Board of Innovation Pays the Expenses of Corporate Intrapreneurs (Aug 18, 2015, 11:00am–12:00pm); see also DAVIS & WHITE, *supra* note 5.

theory have always wrestled with the appropriate way to describe the relationship between a corporation's profit-seeking activity and the social value of that activity, social intrapreneurship potentially offers a practical model for mediating between the two.

This Article develops the analysis in four parts. First, Part I provides a descriptive overview of social-intrapreneurship activities based on research and analysis of a cross-section of over twenty large, for-profit corporations with identified social intrapreneurs.<sup>9</sup> Part II considers the normative landscape in which corporations and, by extension, social intrapreneurs operate. As such, Part II traces the contours of the normative debate on corporate purpose, not with an eye toward resolving the debate or advocating for a particular view, but with the objective of demonstrating the longstanding bifurcation that exists between concepts of profit and public interest. Part II concludes by surveying current data-points (such as the rise of benefit corporate forms and the push for new business models like "conscious capitalism" or "creating shared value"), which seek to amend, override, or present alternatives for "opting out" of the socio-profit divide.<sup>10</sup> Part III introduces and analyzes the idea of social intrapreneurship as serving a gap-filling function against the backdrop of the noted axiomatic divide between profit and social purpose. Part IV considers potential legal concerns presented by social intrapreneurship—such as the effectiveness of current fiduciary duty law to monitor intrapreneurial activities and the allocation of intellectual property rights—and contemplates potential doctrinal, organizational, and contractual solutions to address these concerns.

This Article concludes by offering some thoughts on the policy implications of social intrapreneurship. Specifically, points of intersect with broader policy discussions on corporate purpose, choice of organizational form, and the need for corporate initiatives in meeting social and environmental global challenges.

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<sup>9</sup> The research methodology underpinning this Article is a combination of first-hand interviews, literature review, and in-depth case studies. The intrapreneurs and, by extension, the intrapreneurial practices, analyzed in this Article have been identified as such by third-party organizations who are active in the intrapreneurial space. Such organizations include the Aspen Institute, the Skoll Foundation, Echoing Green, and the Ashoka Foundation.

<sup>10</sup> See generally JOHN MACKEY & RAJ SISODIA, *CONSCIOUS CAPITALISM: LIBERATING THE HEROIC SPIRIT OF BUSINESS* (2013); Michael E. Porter & Mark R. Kramer, *Creating Shared Value*, HARV. BUS. REV., Jan.–Feb. 2011, <https://hbr.org/2011/01/the-big-idea-creating-shared-value>.

The utility in examining social intrapreneurship through a corporate law lens is particularly salient in light of renewed interests by academics, policy-makers, business leaders, and the media on frameworks for integrating social values and sustainability into core business practices.

To be clear, the argument advanced in this Article is not that social intrapreneurship is a silver bullet that can solve all corporate ills. Rather, that the practice of social intrapreneurship is a vital yet underexplored realm of corporate activity that provides a discrete means of gap-filling between structural schisms of profit and social interest.

Relatedly, social intrapreneurs act as a valuable tool that allow their host firm to expand its mission beyond shareholders to society at large,<sup>11</sup> a key characteristic that is valued by those entering the work force.<sup>12</sup> In their most successful form, social intrapreneurs reimagine the existing boundaries of their host corporation's potential.<sup>13</sup> Or to use former Delaware Chancellor William T. Allen's words, they provide a meaningful bridge between corporate law's "alpha of [profit]" and the "omega of relationships."<sup>14</sup>

## I

### SOCIAL INTRAPRENEURSHIP: PRAXIS, PROCESS, AND CHARACTERISTICS

The term "intrapreneur" is often credited to Gifford Pinchot and Elizabeth S. Pinchot, who first used the term in a 1978 paper entitled *Intra-Corporate Entrepreneurs*.<sup>15</sup> Today several definitions of "intrapreneur" and by extension "intrapreneurship" abound. While there is no single definition of intrapreneur or intrapreneurship, existing definitions all capture the idea of a corporate employee who

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<sup>11</sup> See Tamara C. Belinfanti, *Shareholder Cultivation and New Governance*, 38 DEL. J. CORP. L. 789, 815 (2014) ("A firm's mission should then inform the narrative that the firm develops to explain its value proposition and operational strategies to shareholders, other stakeholders, and society at large.").

<sup>12</sup> See Jay Coen Gilbert et al., *Today Marks a Tipping Point in the Evolution of Capitalism*, FORBES (July 17, 2013, 9:30 AM), <http://www.forbes.com/sites/skollworldforum/2013/07/17/today-marks-a-tipping-point-in-the-evolution-of-capitalism/print/>.

<sup>13</sup> See SUSTAINABILITY, *supra* note 1, at 4, 5 (2008).

<sup>14</sup> See William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261, 273 (1992).

<sup>15</sup> See Gifford Pinchot III & Elizabeth S. Pinchot, *Intra-Corporate Entrepreneurship*, INTRAPRENEUR.COM (Fall 1978), <http://intrapreneur.com/MainPages/History/IntraCorp.html>.

is able to reimagine the potential for their host corporation and who develops a product, service, and/or solution that links business growth to social value creation.

For example, a 2008 report, *The Social Intrapreneur: A Field Guide for Corporate Changemakers* (the “Field Guide Report”), defined a social intrapreneur in three ways: (1) “[s]omeone who works inside major corporations or organizations to develop and promote practical solutions to social or environmental challenges where progress is currently stalled by market failures,” (2) “[s]omeone who applies the principles of social entrepreneurship inside a major organization,” and (3) “[o]ne characterized by an ‘insider-outsider’ approach.”<sup>16</sup> Similarly, the Aspen Institute Business and Society First Movers Fellowship Program defines intrapreneurship in relation to the employee’s demonstrated ability to “unite business growth with a sustainable society in the products and services they are developing.”<sup>17</sup> The program identifies insiders who have successfully leveraged the resources and capabilities of their organization to create new business solutions, which add value both to society and to the corporation’s operations.<sup>18</sup>

Social intrapreneurs may pursue their ideas individually or as part of a team. In their most successful and idealized form, social intrapreneurs devise products and/or solutions that deliver enhanced value to society and to their host corporation. The Field Guide Report summarized their value as follows:

Social intrapreneurs are creating and delivering new business models. They compel their host corporations to look outside their comfort zones—to see both the strategic risks and profound opportunities that exist beyond the purview of traditional business units. They are not satisfied with suboptimal equilibriums, where markets work well for some, but not at all for others. Their adept opposable minds exist to juggle dilemmas and catalyze new visions, products, services and solutions—some of which may fall beneath the radar today, but will eventually enable a scale of change that delivers value to society and business well into the future.<sup>19</sup>

Social intrapreneurs share key traits with other innovative players, namely entrepreneurs and innovators. These traits include: (1) a desire

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<sup>16</sup> SUSTAINABILITY, *supra* note 1, at 4.

<sup>17</sup> See *Aspen Institute First Movers*, ASPEN INST., <http://www.aspeninstitute.org/policy-work/business-society/corporate-programs/first-movers-fellowship-program> (last visited Oct. 17, 2015).

<sup>18</sup> *Id.*

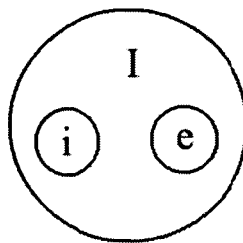
<sup>19</sup> SUSTAINABILITY, *supra* note 1, at 5.



to solve social problems; (2) the ability to innovate and devise new business solutions; (3) the ability to discern market trends; (4) the ability to recognize failed strategies and in response, pivot and retool; and (5) a belief in the positive role that business can play in society. As previously mentioned, however, social intrapreneurs differ from these other innovative players in several respects.

First, unlike entrepreneurs, social intrapreneurs elect to effect social change from within large corporations rather than exiting and forming their own venture.<sup>20</sup> The Field Guide Report noted that both social intrapreneurs and social entrepreneurs both “regularly scan the horizon for new ways to solve societal challenges” and “com[e] up with key concepts, business models, products and services that will open out new opportunity spaces.”<sup>21</sup> However, because the social intrapreneur is not self-employed, but instead works from within a corporation, the report noted that intrapreneurs are adept at “[tying] into the processes and business case elements of [their] venture.”<sup>22</sup> The report also notes that social intrapreneurs “potentially provide social entrepreneurs with a new point of access to multinational business and all it has to offer in terms of investment capital, global reach, resource and scale.”<sup>23</sup> Accordingly, while both intrapreneurs and entrepreneurs are innovators, they operate in separate spheres within the realm of innovation. Thus, assuming “I” represented innovators/innovation, “e” represented social entrepreneurs, and “i” represented social intrapreneurs, the relationship between the two could be visualized as follows:

Diagram 1



Second, vis-à-vis innovators, while all social intrapreneurs are innovators, not all innovators are social intrapreneurs. Thus, if social

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<sup>20</sup> *Id.* at 2.

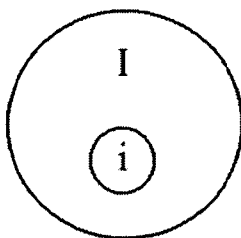
<sup>21</sup> *Id.* at 13.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 5.

intrapreneurs were represented by “i” and innovators/innovation by “I,” the relationship could be portrayed as follows:

**Diagram 2**



According to the Field Guide Report, one characteristic that distinguishes intrapreneurial behavior from merely innovative behavior is that intrapreneurs are inherently driven to develop new products, services, or solutions that *both* solve a societal problem and return profits, rather than being driven purely by a profit maximand.<sup>24</sup> Conceptually, this distinction is helpful, although in practice it may easily disintegrate. If, for example, an innovator belongs in circle “I” but not in sub-circle “i” above, yet masks his profit maximand preferences and instead expresses concerns for benefitting both the financial and social bottom line, such a person would get counted in the intrapreneur category. Conversely, envision a true intrapreneur—someone who belongs in sub-circle “i” but who is unsure whether her innovative idea that addresses a social problem will be embraced by superiors and thus decides to camouflage her true self and presents the idea solely in terms of profit. Under the Field Guide Report’s distinction, she would be represented as an innovator and not an intrapreneur.

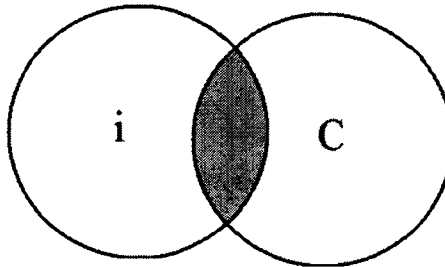
Third, when compared to other intra-corporate actors whose work also involves a focus on external social needs, an efficient way to distinguish is to look at whether external social needs are part of the employee’s core mandate. Examples of intra-corporate actors whose core mandate explicitly includes considerations of external societal needs are those hired for corporate social responsibility (CSR) matters; those who are part of a corporation’s “ESG” (Environmental/Social/Governance) team; those who are part of a corporation’s so-called “impact investing” arm; and those who focus on corporate charitable contributions. In contrast, social intrapreneurs

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<sup>24</sup> *Id.* at 13.

traditionally do not.<sup>25</sup> As a result, unlike other socially driven intra-corporate actors, social intrapreneurs must negotiate with their host corporation if they wish to implement their innovations. Therefore, using the same notations as above, with “C” representing CSR or sustainability initiatives, the relationship between social intrapreneurs and their C-counterparts could be illustrated as follows:

**Diagram 3**



However, the relationship between social intrapreneurs, entrepreneurs, innovators, and CSR/sustainability actors is fluid rather than static: any conception should allow for movement among the groups, as well as the adoption and assimilation by one group of traits and strategies from the other. For example, while some corporations employ a stand-alone CSR model, where CSR initiatives are divorced from the corporation's core business, many corporations have what can be viewed as an integrated-CSR model, whereby the corporation's CSR initiatives are an extension of and/or intimately tied to its business model. An example of the latter can be seen in Walgreens's "Shot@Life" Initiative, which donates a flu shot to someone in need each time a customer purchases and receives a flu shot at Walgreens.<sup>26</sup>

<sup>25</sup> This Article uses the word "traditionally" because, as discussed immediately later in Part I, as corporations begin to realize the value of social intrapreneurship, the process of social intrapreneurship has become formalized. For instance, Harvard University's Innovation Lab (or i-lab) teamed up with consulting firm IDEO to create a formal paid internship program called Future Lab (now renamed Bits + Blocks Lab), where students work for nine weeks at Fidelity Investments to develop skills of an intrapreneur. See *Bits + Blocks Lab: Trust & Transactions*, HARV. INNOVATION LAB, <https://i-lab.harvard.edu/experiential-learning/future-lab> (last visited Aug. 28, 2015).

<sup>26</sup> Walgreens and United Nations Foundation Launch "Get a Shot. Give a Shot" Campaign, Kicking Off Second Year of Collaboration to Provide Life-Saving Vaccines for Children in Developing Countries, SHOT@LIFE (Sept. 9, 2014), <http://shotatlife.org/news-media/press-releases/walgreens-and-united-nations-1.html>.

Intrapreneurs exist at various levels of a corporation's structure, from the top rungs of CEO and CFO (like Whole Food's CEO John Mackey) to deep within the corporation's structure.<sup>27</sup> A key challenge for the latter type of intrapreneur is that their intrapreneurial contributions could go hidden and unrealized without the necessary conduit to help bring their ideas to fruition—what the Field Guide Report refers to as a “gatekeeper” or “catalyst.”<sup>28</sup>

Relatedly, because corporations understand the potential power of intrapreneurial activity, some corporations have institutionalized intrapreneurial practices by creating corporation-supported intrapreneurial initiatives. For example, Google, Inc. allots a certain amount of time each week (the so-called “20% program”) in which all employees are free to think and come up with the proverbial next big idea.<sup>29</sup> At Lockheed Martin, Inc., members of its “Skunk Work” group operate as their own division and are explicitly given free-reign to develop innovative ideas;<sup>30</sup> however, this is not necessarily an intrapreneurial practice (or put differently, Skunk Work team members would fall in the “I” in Diagram 2 above, but not necessarily in “i”). Meanwhile, some corporations, such as Barclays PLC, sponsor internal competitions that invite employees to develop and submit intrapreneurial ideas.<sup>31</sup> Part of the prize for the winners is sponsorship to participate in The Intrapreneur Lab run in collaboration with Accenture Development Partnerships and a number of business schools globally.<sup>32</sup> More broadly speaking, some

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<sup>27</sup> See Steve Denning, *The New Management Paradigm & John Mackey's Whole Foods*, FORBES (Jan. 5, 2013, 2:48 PM), <http://www.forbes.com/sites/stevedenning/2013/01/05/the-new-management-paradigm-john-mackeys-whole-foods/>.

<sup>28</sup> SUSTAINABILITY, *supra* note 1, at 14.

<sup>29</sup> See Chris Trimble, *Google and the Myth of Free Time*, HARV. BUS. REV., Aug. 17, 2010, <http://blogs.hbr.org/2010/08/free-time-innovation/>; Ashoka, *2015's Most Valuable Organization: A Changemaker Company*, FORBES (Sept. 17, 2015, 12:00 AM), <http://www.forbes.com/sites/ashoka/2015/09/17/2015s-most-valuable-organization-the-changemaker-company/> (describing “changemaker companies” which attract, engage, and retain the top talent with three qualities: (1) implementing strong mandates and executive alignment towards creating social value; (2) integrating social impact objectives directly into corporate strategy; and (3) implementing structures in such a way as to allow for change-making within the organization such as professional development, training sessions, engagement in social impact, etc.).

<sup>30</sup> See generally *Skunk Works*, LOCKHEED MARTIN, <http://www.lockheedmartin.com/us/aeronautics/skunkworks.html> (last visited Oct. 17, 2015).

<sup>31</sup> David Grayson, *Helping Social Intrapreneurship Reach a Tipping Point*, THE GUARDIAN (Mar. 14, 2014, 1:00 PM), <http://www.theguardian.com/sustainable-business/social-intrapreneurship-tipping-point>.

<sup>32</sup> *Id.*

corporations try to encourage a general culture of innovation by working in open office spaces and/or adopting a holocracy system.<sup>33</sup>

While there is no singular model for social intrapreneurs, one common trait of successful intrapreneurs is that they are able to see connections between their corporation's capabilities and outside societal needs. Another common trait is their ability to tap into their corporation's business model to create products, services, or internal solutions that reshape the corporation's relationship with society in a mutually beneficial way. The Field Guide Report offered the following observation: Successful social intrapreneurs understand business processes and priorities, and have a sharp nose for identifying "suboptimal equilibriums, where markets work well for some, but not at all for others." These intrapreneurs develop innovative business models for addressing these suboptimal equilibriums and encourage their host organization to look beyond their comfort zones to see new opportunities for the business. As such, they act as an interface between the employer-organization and the world of social enterprise, and understand how to articulate the "business case" for their proposed venture.<sup>34</sup>

In addition to coordinating resources on a micro level within their individual corporations, on a macro level, social intrapreneurs have the potential to fundamentally change the business landscape. In this regard, the Field Guide Report compared social intrapreneurs to beavers, stating that:

Intrapreneurs have the potential to profoundly reshape their landscapes and to create whole cascades of new opportunity for those around them [just like] a beaver. Key elements of success include . . . perseverance in implementing small steps to achieve a clear intent and vision—but in addition the beaver brings its ability to engineer new dams and channels of value and to bend the resources of the wider ecosystem to the task at hand, and so transform the landscape.<sup>35</sup>

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<sup>33</sup> See, e.g., Lana Bortolot, *Designing a Better Office Space*, ENTREPRENEUR (July 26, 2014), <http://www.entrepreneur.com/article/235375> (discussing general culture of innovation and open office spaces); Lisa Wirthman, *Is Flat Better? Zappos Ditches Hierarchy to Improve Company Performance*, FORBES (Jan. 7, 2014, 8:52 AM), <http://www.forbes.com/sites/sungardas/2014/01/07/is-flat-better-zappos-ditches-hierarchy-to-improve-company-performance/> (discussing Zappos's move to flat management—or "[h]olacracy, a flatter operating structure with no job titles or managers"—and studies that show flat companies may actually perform better).

<sup>34</sup> See SUSTAINABILITY, *supra* note 1, at 5, 13.

<sup>35</sup> *Id.* at 30.

Continuing the beaver analogy, the report noted that beavers are known for “building dams in rivers and streams, and then setting up homes, or lodges, in the resulting pond.”<sup>36</sup> The beaver’s dam building usually benefits not only the beaver but the “wider ecosystem” as well, whether it be in “incidental benefits [like] flood control,” reduced erosion, or the restoration of wetlands.<sup>37</sup>

The comparison to beavers is a helpful metaphor for visualizing the impact that social intrapreneurs can have on their host corporation and, in turn, on their host corporation’s actions vis-à-vis society. The balance of Part I considers specific examples that reveal the nature of the relationships between intrapreneurs and their host corporation and, in turn, between the host corporation and external communities.

Consider the following case studies:

*Case Study 1: Vodafone & M-PESA.* Vodafone is in the telecommunications industry and is primarily focused on mobile telecommunication.<sup>38</sup> As highlighted in the Introduction, two employees of Vodafone developed a business model in response to Kenya’s access-to-banking problem.<sup>39</sup> The model M-PESA was based on the insight that as of 2006, 80% of the population had no access to the formal banking network,<sup>40</sup> even though 54% of the population owned mobile phones. M-PESA (“M” stands for mobile and “Pesa” is Swahili for money) allows users to move money and transfer funds through their phone, thereby creating a more efficient and cost-effective way of transacting their financial affairs.<sup>41</sup> Of course today, mobile banking is much more widespread, but, unbeknownst to many, its growth stemmed from a response to a societal problem. Not surprisingly, in addition to benefitting Kenyan society, Vodafone has also financially benefited, as it has been able to forge and secure a wider network of customers.<sup>42</sup> As a testament to

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<sup>36</sup> *Id.* at 43.

<sup>37</sup> *Id.*

<sup>38</sup> *About Us*, VODAFONE, <http://www.vodafone.com/content/index/about/about-us.html> (last visited Oct. 17, 2015).

<sup>39</sup> See MAS & RADCLIFFE, *supra* note 1, at 1–2; SUSTAINABILITY, *supra* note 1, at 7.

<sup>40</sup> FINACCESS, FINACCESS NATIONAL SURVEY 2009: DYNAMICS OF KENYA’S CHANGING FINANCIAL LANDSCAPE 11–12 (2009), [http://www.fsdkenya.org/finaccess/documents/09-06-10\\_FinAccess\\_FA09\\_Report.pdf](http://www.fsdkenya.org/finaccess/documents/09-06-10_FinAccess_FA09_Report.pdf).

<sup>41</sup> MAS & RADCLIFFE, *supra* note 1, at 1.

<sup>42</sup> See Twomey, *supra* note 3.

the business success of M-PESA, on March 31, 2014, Vodafone announced that it was launching its M-PESA platform in Europe.<sup>43</sup>

*Case Study 2: Procter & Gamble and PUR.* The story of Procter & Gamble (P&G) and PUR is illustrative of a different kind of intrapreneurship where, instead of developing a new product, technology, or business model, the intrapreneur takes an *existing* product, technology, or business model and reconceptualizes its use. In 2002, P&G launched PUR, an on-the-spot water decontaminant, which was designed to address the problem of access to clean water<sup>44</sup>—a problem that, according to UNICEF, affects approximately 768 million people across the globe.<sup>45</sup> At first, P&G attempted to market PUR commercially, but found that it lacked the capacity to reach remote rural areas in parts of the developing world that could benefit the most.<sup>46</sup> A P&G employee, Dr. Philip Souter, noted that one significant roadblock was in convincing skeptical villagers that the cause of many of their health problems was related to the contaminated water they had been consuming.<sup>47</sup> Another P&G employee, Dr. Greg Allgood, reconceptualized PUR from a direct commercial selling model and persuaded P&G to convert PUR into a nonprofit venture called the “P&G Children’s Safe Drinking Water program.”<sup>48</sup> Under this new nonprofit model, PUR would be provided at cost to humanitarian organizations, and, additionally, P&G would donate extra funding to provide education about its use and benefits.<sup>49</sup> The P&G PUR initiative is an example of the types of activities that would fall into the grey, shaded area in Diagram 3, above. Dr. Allgood had the intrapreneurial insight to reconceptualize an existing business model, but the model that resulted had social need as part of its core mandate, thus making it more like a CSR or philanthropic program. P&G later sold its PUR Water Filter division to Helen of

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<sup>43</sup> Press Release, Vodafone, Vodafone M-Pesa Comes to Europe for the First Time (Mar. 31, 2014), <http://www.vodafone.com/content/index/media/vodafone-group-releases/2014/m-pesa-romania.html>.

<sup>44</sup> Sarah Ellison & Eric Bellman, *Clean Water, No Profit*, WALL ST. J. (Feb. 23, 2005, 12:01 AM), <http://www.wsj.com/articles/SB110910057933261072>.

<sup>45</sup> Stephanie Adickman, *How Your Dollars Turn Into Clean Water*, UNICEF U.S. FUND (Mar. 18, 2014), <http://www.unicefusa.org/stories/mission/survival/water/tap-project/how-your-dollars-turn-clean-water/7570>.

<sup>46</sup> James Addis, *PUR Genius*, WORLD VISION BLOG (July 6, 2011), <http://blog.worldvision.org/causes/pur-genius>.

<sup>47</sup> *Id.*

<sup>48</sup> *Id.*

<sup>49</sup> *Id.*

Troy Ltd. in December 2011 for an undisclosed amount, and the division was expected to exceed \$110 million in sales by the time the transaction was complete.<sup>50</sup>

*Case Study 3: Hindustan Unilever.* Unilever is a large conglomerate that produces several well-known brands like Dove soap, Lipton tea, and Bertolli olive oil.<sup>51</sup> While Unilever's products are available throughout India, the company recognized that there were several rural villages in India that had no access to its products.<sup>52</sup> An insider at Unilever recognized that many of these rural villages had high rates of unemployment and the segment of the population that was most likely to be unemployed was women.<sup>53</sup> From this insight, the Unilever insider was able to create a bridge between the societal problem of rural unemployment that disproportionately affects women, and the corporation's interest in successfully reaching what were thought to be inaccessible rural markets.<sup>54</sup> The idea was Project Shakti, an initiative that employs women in rural villages to distribute Unilever's products.<sup>55</sup> Shakti currently employs approximately seventy thousand entrepreneurs ("Shakti Ammas"), who in turn distribute to approximately four million households, and because of Shakti are now able to provide some of the more basic needs for their families like food, education, and a modest home.<sup>56</sup> The scale and impact of Shakti grew dramatically, and Unilever anticipated in 2010 that it would recruit, train, and employ an additional forty-eight thousand Shakti Ammas

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<sup>50</sup> *Helen of Troy Buys PUR Water Filters from P&G*, FORBES (Dec. 6, 2011, 10:17 AM), <http://www.forbes.com/sites/marketnews/video/2011/12/06/helen-of-troy-buys-pur-water-filters-from-pg/>. However, the sale did not include P&G's Children's Safe Drinking Water philanthropy program that utilized the water filters to provide clean water to children in underdeveloped countries. See *Helen of Troy Buying PUR Business from P&G*, USA TODAY MONEY (Dec. 6, 2011, 11:01 AM), <http://usatoday30.usatoday.com/money/industries/story/2011-12-06/Helen-of-Troy-acquisition/51671312/1>; *About Us*, P&G CHILDREN'S SAFE DRINKING WATER PROGRAM, <https://www.csdw.org/csdw/about-childrens-safe-drinking-water.shtml> (last visited Oct. 17, 2015).

<sup>51</sup> *Our Brands*, UNILEVER, <http://www.unilever.com/brands-in-action/view-brands.aspx> (last visited Oct. 17, 2015).

<sup>52</sup> See SUSTAINABILITY, *supra* note 1, at 40.

<sup>53</sup> See *id.*

<sup>54</sup> See *id.*

<sup>55</sup> *Enhancing Livelihoods Through Project Shakti*, HINDUSTAN UNILEVER LIMITED, <http://www.hul.co.in/sustainable-living-2015/casestudies/Project-Shakti.aspx> (last visited Oct. 17, 2015).

<sup>56</sup> See *id.*



by 2015.<sup>57</sup> While reaching the rural population was perhaps directly driven by a profit-making ethos, *the way* in which the company decided to reach this rural population advanced not just corporate but social interests.

*Case Study 4: Danone Bangladesh.* Danone is a leader in the food industry and is probably best known for its yogurts.<sup>58</sup> Bangladesh has a high rate of malnutrition, with approximately 30% of all Bangladeshis and 56% of all Bangladeshi children under the age of five suffering from moderate to severe malnutrition.<sup>59</sup> In 2006, Danone developed an enriched yogurt with essential nutrients (Grameen Danone) that could be delivered at a price point well below Danone's traditional model.<sup>60</sup> Grameen Danone is run as a joint venture between Danone and the Bangladeshi government.<sup>61</sup> Since developing the product, Danone has decided not to focus on Grameen Danone as a profit-making venture.<sup>62</sup> Instead, Danone has taken the know-how it developed in creating the enriched yogurt product for the Bangladeshi market and applied it to a new line of yogurt products, Activia, which it now markets in the United States and other markets.<sup>63</sup> Danone executives have repeatedly noted that, but for their focus on developing a yogurt that helped solve Bangladesh's malnutrition crisis, they probably would never have developed the know-how that then allowed them to develop Activia. Activia has allowed Danone to broaden their yogurt offerings and market potential.<sup>64</sup>

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<sup>57</sup> *Id.*; HINDUSTAN UNILEVER LIMITED, ANNUAL REPORT 2012–13: MAKING SUSTAINABLE LIVING COMMONPLACE 14 (2013), [http://www.hul.co.in/Images/HUL\\_Annual\\_Report\\_2012-13\\_tcm114-289694.pdf](http://www.hul.co.in/Images/HUL_Annual_Report_2012-13_tcm114-289694.pdf); UNILEVER, PROGRESS REPORT 2012: UNILEVER SUSTAINABLE LIVING PLAN 7 (2013), [http://www.unilever.co.uk/Images/USLP-Progress-Report-2012-FI\\_tcm28-352007.pdf](http://www.unilever.co.uk/Images/USLP-Progress-Report-2012-FI_tcm28-352007.pdf).

<sup>58</sup> See *Danone at a Glance*, DANONE, <http://www.danone.com/en/for-all/mission-strategy/danone-at-a-glance/> (last visited Oct. 17, 2015).

<sup>59</sup> *Grameen Danone Foods Ltd.*, GRAMEEN CREATIVE LAB, <http://www.grameencreativelab.com/live-examples/grameen-danone-foods-ltd.html> (last visited Oct. 17, 2015); see also U.N. FOOD & AGRIC. ORG., FAO—NUTRITION COUNTRY PROFILES: BANGLADESH 3–4 (1999), <ftp://ftp.fao.org/es/esn/nutrition/ncp/BGDmap.pdf>.

<sup>60</sup> *Grameen Danone Foods Ltd.*, *supra* note 59.

<sup>61</sup> *Grameen Danone Foods Ltd: The Project's History*, DANONE COMMUNITIES, <http://www.danonecommunities.com/en/project/grameen-danone-food?mode=history> (last visited Oct. 17, 2015).

<sup>62</sup> *Id.*

<sup>63</sup> See DANNON ACTIVIA, <http://activia.us.com> (last visited Oct. 17, 2015); Barbara Kiviat, *Danone's Cheap Trick*, TIME (Aug. 23, 2010), <http://content.time.com/time/magazine/article/0,9171,2010077,00.html>.

<sup>64</sup> See Kiviat, *supra* note 63.

In addition to these examples, there are several other stories of intrapreneurial behavior occurring at different corporations in a variety of industries.<sup>65</sup> While the collected stories of intrapreneurial activity are too extensive to be individually described in detail, the Appendix provides a snapshot of the extent and multi-dimensionality of social-intrapreneurial endeavors.

The examples set forth in Appendix demonstrate the breadth of behavior associated with the social intrapreneur. Although social-intrapreneurial practices are diverse both in terms of the industry of the host corporations and the intrapreneurial products, services, or solutions they devise, six key commonalities emerge. First, social intrapreneurship is in large part a voluntary undertaking that requires either the implicit or explicit agreement on the part of the host corporation in order for it to be successful.<sup>66</sup> Second, social intrapreneurship is a private ordering intra-corporate activity that takes place in the absence of regulation or other legal directive. Third, social intrapreneurs are adept at seeing the relationship between the corporation's potential and the extra-corporation needs of society.<sup>67</sup> Fourth, and related to the third, social intrapreneurs are able to "code switch."<sup>68</sup> In other words, they are able to move between a business mindset and a focus on societal needs, part of which includes being able to make the "business case" for a social product or service that may not obviously contribute to the financial bottom line.<sup>69</sup> Fifth, social intrapreneurs are adept at seeing new ways of redeploying and coordinating corporate resources to achieve tripartite dimensionality—social, moral, and financial.<sup>70</sup> And sixth, social intrapreneurs do not seem to view profit as their *sole* maximand. Rather, their strength is in creating new opportunities that inure to the benefit of both the corporation and society, and being able to articulate the business case for their initiatives.<sup>71</sup> Put differently, considerations of profit are a necessary part of the analysis for many intrapreneurial initiatives, yet such considerations are not looked at in isolation or as a maximand; rather, they are viewed in tandem with the social need that the initiative seeks to address. For example, in a

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<sup>65</sup> See *infra* Appendix.

<sup>66</sup> See SUSTAINABILITY, *supra* note 1, at 5.

<sup>67</sup> See *id.*

<sup>68</sup> See *id.* at 30.

<sup>69</sup> See *id.*

<sup>70</sup> See Ashoka, *supra* note 6; SUSTAINABILITY, *supra* note 1, at 27, 30.

<sup>71</sup> See SUSTAINABILITY, *supra* note 1, at 13.

recent interview, Aspen First Movers Fellow and Director of Corporate Strategy Development at Dow Chemical, Dawn Baker, stated that to justify social intrapreneurship to shareholders, it is important to start with the company's vision and show how an innovative project will fulfill that vision.<sup>72</sup> In other words, corporations should present intrapreneurial innovations to shareholders not solely in terms of profit, but also by demonstrating how these innovations will benefit the corporation's corporate purpose and/or goals.

In spite of its touted value, however, social intrapreneurship presents concerns that should give one pause. First, one should consider the *all that glitters is not gold* problem—meaning that, as described above, there are certain activities that outwardly manifest as social-intrapreneurial-like but inwardly are really driven by profit, thus falling into the category of activities dismissively labeled as *green washing*. This concern will arise any time an initiative presents a strong business case. Second, is the concern that because some intrapreneurs work on their initiatives *off the clock*, there is an increased risk of inefficient resource use or, in the extreme, misappropriation of the corporation's resources by the employee-intrapreneur. Third, are concerns related to the increased identification and monitoring costs that are incurred by the corporation when managing intrapreneurial initiatives.

Many of the social intrapreneurs interviewed for the Field Guide Report acknowledged the opposing arguments against intrapreneurship. Common reported responses from opponents included, “[w]e’re not in that business,” “[w]e’ll be seen to be greenwashing,” and “[t]his is a distraction.”<sup>73</sup> Part V returns to these concerns and considers potential contractual, doctrinal, and organizational solutions that help alleviate these concerns.

Nonetheless, in spite of the various concerns about social intrapreneurship, *The Economist*, in an article reviewing a book on social intrapreneurs, posited that intrapreneurs rather than entrepreneurs were arguably the greatest change agents for developing innovative and sustainable products, services, and

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<sup>72</sup> Aspen at Roosevelt House—Social Intrapreneurship: *Keeping Your Day Job and Finding Meaning in Your Work*, ROOSEVELT HOUSE (Mar. 11, 2014), <http://www.roosevelthouse.hunter.cuny.edu/events/aspen-roosevelt-house-social-intrapreneurship/>.

<sup>73</sup> SUSTAINABILITY, *supra* note 1, at 43.

solutions for the market place.<sup>74</sup> In a separate article, *The Economist* noted:

The greatest agents for sustainable change are unlikely to be [social entrepreneurs], interesting though they are. They are much more likely to be the entirely reasonable people, often working for large companies, who see ways to create better products or reach new markets, and have the resources to do so.<sup>75</sup>

Additionally, Sir Richard Branson, author and founder of Virgin Group, summed up the value of intrapreneurs as follows:

Many millions of people proudly claim the title “entrepreneur.” On the other hand, a title that hasn’t gotten nearly the amount of attention it deserves is entrepreneur’s little brother, “intrapreneur” . . . . While it’s true that every company needs an entrepreneur to get it under way, healthy growth requires a smattering of intrapreneurs who drive new projects and explore new and unexpected directions for business development.<sup>76</sup>

In sum, while social intrapreneurship presents some legal concerns,<sup>77</sup> their value is in their ability to reimagine the bounds and limits of their host corporation’s activities. This reimagination, which successfully links directives of profit with other-regarding behavior, arguably offers an innovative way for a corporation to negotiate corporate law’s structural socio-profit divide.

## II

### THE SOCIO-PROFIT DIVIDE: UNDERSTANDING THE NEED FOR GAP-FILLING

In 2014, the United States Supreme Court, in *Burwell v. Hobby Lobby Stores, Inc.*, stated that “[a] corporation is simply a form of organization used by human beings to achieve desired ends.”<sup>78</sup> Those “desired ends” need not be homogeneous and in practice may differ from one corporation to the next. As one might expect, the scope and nature of these desired ends—or as one might say “purpose” or “mission”—may very well be determined by a range of factors. These factors include the corporation’s business model, the will of its

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<sup>74</sup> *Unreasonable People Power*, *ECONOMIST* (Jan. 22, 2008), <http://www.economist.com/node/%2010555875>.

<sup>75</sup> *Social Entrepreneurs: Agents of Change*, *supra* note 7.

<sup>76</sup> Richard Branson, *Richard Branson on Intrapreneurs*, *ENTREPRENEURS* (Jan. 31, 2011), <http://www.entrepreneur.com/article/218011>.

<sup>77</sup> *See infra* Part IV.

<sup>78</sup> *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2768 (2014).

shareholders, law, industry norms and best practices, management's internal moral compass, historical events, and external societal pressures.

However, despite the positive fact that, in practice, corporations seem to take a "let a thousand flowers bloom" approach to their articulated purpose, as a normative matter, the question of what should be the proper purpose of corporations continues to engage the corporate law academy. There are two primary approaches to the purpose of a corporation: one, to maximize shareholder wealth—called the "property view" or "shareholder primacy view"—and the other, as having a "broader social purpose that [goes] beyond making money for their shareholders."<sup>79</sup> Another category that should be inserted into this debate, but traditionally has not been, are those who believe there does not have to be a choice, that successful corporations can do both.

This Article does not seek to resolve the debate. Rather, the remainder of Part II attempts to trace the contours of the debate and to succinctly summarize key factors that have contributed to the trajectory and shape of the debate, with an eye on understanding the main points of contention.

### *A. The Origins*

While one could certainly have a mini-debate about where to begin an attempt to describe the history of corporations and, relatedly, discussions about their purpose, this Article takes the seventeenth century as its starting point, primarily because it was a period that saw the growth in the corporate form.<sup>80</sup> In the 1600s, as countries like England, the Netherlands, Portugal, and Spain tried to expand the reach of their empires and establish trade with the new world, corporate forms were established and granted powers by the state to execute these trading missions.<sup>81</sup> These initial corporations were viewed as "bodies politic" that existed "on sufferance of the Crown," which in turn had reserved the right to revoke or revise the corporation's issued charter and which required regular charter renewal.<sup>82</sup> As noted jurist and thinker, Sir William Blackstone,

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<sup>79</sup> LYNN STOUT, *THE SHAREHOLDER VALUE MYTH* 16 (2012).

<sup>80</sup> See David Ciepley, *Beyond Public and Private: Toward a Political Theory of the Corporation*, 107 AM. POL. SCI. REV. 139, 139 (2013). In the seventeenth century, the corporations were often referred to as "body corporates." *Id.*

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

observed at the time, corporations were essentially “little republic[s].”<sup>83</sup>

Prior to the nineteenth century, corporations were viewed as quasi-public entities that owed their existence and rights to the chartering state.<sup>84</sup> However, at some point in the nineteenth century, and continuing on into the early 1900s, corporations began to be conceptualized through a distinctly private-purpose lens.<sup>85</sup> One explanation for this change relates to the triumph of liberalism over mercantilism in broader political thought, which resulted in corporations being viewed as *private concerns drawn up through private contract*.<sup>86</sup> David Ciepley, a political science professor whose work focuses on the history of corporations, summarized the connection as such:

One of the signal projects of nineteenth-century American liberalism was to sharpen the distinction between public and private and divide the social world between them. Business corporations were placed on the private side of this divide, assimilated to liberalism as private partnerships and, in some contexts, even as private persons. Corporate power that was once unaccountable because of state regulatory weakness now became unaccountable as a point of legal doctrine, as corporations came to be viewed ever more thoroughly through the lens of private contract.<sup>87</sup>

In the 1930s, the *Harvard Law Review* published a highly charged dispute between Professors Adolf Berle and Merrick Dodd. Professor Berle adopted the shareholder primacy view, arguing that “all powers granted to a corporation or to the management of a corporation . . . [are] at all times exercisable only for the ratable benefit of all the

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<sup>83</sup> 1 WILLIAM BLACKSTONE, COMMENTARIES \*468 (“But when they are then consolidated and united into a corporation, they and their successors are then considered as one person in law: as one person, they have one will, which is collected from the sense of the majority of the individuals: this one will may establish rules and orders for the regulation of the whole, which are a sort of municipal laws of this little republic; or rules and statutes may be prescribed to it at its creation, which are then in the place of natural laws . . . .”); see also Ciepley, *supra* note 80, at 141.

<sup>84</sup> David Millon, *Theories of the Corporation*, 1990 DUKE L.J. 201, 205–06 (1990).

<sup>85</sup> See Allen, *supra* note 14, at 266 & n.13.

<sup>86</sup> See *id.* at 280.

<sup>87</sup> Ciepley, *supra* note 80, at 139 (citations omitted). As an aside, Ciepley’s point that corporations “came to be viewed ever more thoroughly through the lens of private contract” can be seen in the *nexus of contract* theoretical strand in the corporate law literature. Nexus of contract theorists view the corporation as an interconnected *web of contracts* that reflect privately negotiated terms and where the regulatory role of the state should be kept to a minimum. See *infra* Part V.B. for a general discussion of the web of contract theory and, specifically, its application to social intrapreneurship.

shareholders . . . .”<sup>88</sup> Professor Dodd staunchly disagreed.<sup>89</sup> He argued that “the business corporation [is] an economic institution which has a social service as well as a profit-making function . . . .”<sup>90</sup> Thus, as Professor Stout writes, for Dodd, “the proper purpose of a public company went beyond making money for shareholders and included providing secure jobs for employees, quality products for consumers, and contributions to the broader society.”<sup>91</sup> Dodd’s view of the public corporation as an entity chartered by the state “for public benefit and run by professional managers seeking to serve not only shareholders but also ‘stakeholders,’” held considerable sway in the first half of the twentieth century. Ironically, in 1954 Berle conceded the debate, stating that: “[t]he argument has been settled (at least for the time being) squarely in favor of Professor Dodd’s contention.”<sup>92</sup>

However, starting in the 1970s, shareholder primacy thinking began to regain its footing, with economists arguing that the proper purpose of corporate governance was to maximize shareholder wealth. An oft-cited example, which was influential in establishing shareholder primacy as a dominant paradigm, was an article by Nobel-prize winning economist Milton Friedman, in which he argued that given that shareholders “own” the corporation, increasing profits should be the only responsibility of business.<sup>93</sup>

This idea of shareholders as owners is the core of a seminal piece by Michael Jensen, where he described the shareholders as the principals of the corporation and the board of directors as their agents.<sup>94</sup> Thus, he argued, the only legitimate purpose of the corporation was to maximize shareholder wealth.<sup>95</sup>

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<sup>88</sup> A.A. Berle, Jr., *Corporate Powers as Powers in Trust*, 44 HARV. L. REV. 1049, 1049 (1931). In 1932, Professor Berle also articulated these views in a book he had coauthored with Gardiner Means. See generally ADOLF A. BERLE & GARDINAR MEANS, *THE MODERN CORPORATION AND PRIVATE PROPERTY* (1932).

<sup>89</sup> See E. Merrick Dodd, Jr., *For Whom Are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1147–48 (1932).

<sup>90</sup> *Id.* at 1148.

<sup>91</sup> STOUT, *supra* note 79, at 17.

<sup>92</sup> ADOLF A. BERLE, JR., *THE 20TH CENTURY CAPITALIST REVOLUTION* 169 (1954).

<sup>93</sup> Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES MAG., Sept. 13, 1970, at 33.

<sup>94</sup> See generally MICHAEL C. JENSEN, *A THEORY OF THE FIRM: GOVERNANCE, RESIDUAL CLAIMS, AND ORGANIZATIONAL FORMS* (2003).

<sup>95</sup> *Id.*

### B. Shareholder Primacy

Shareholder primacy has a built-in package of rules, principles, and terminology that makes it efficient and attractive to academia, the popular press, and business media alike. The notion of having an objective maximand (i.e., maximize shareholder wealth) with an objective means of measurement (the stock market and the attendant efficient market hypothesis) and a tightly worded framing of the problem, proved and continues to prove attractive to many.<sup>96</sup> The shareholder primacy view and its attendant solutions, such as increased shareholder rights and enhanced control and monitoring of boards, pervade and shape the corporate law landscape. For example, the shareholder primacy view is embedded in corporate law curriculum and is often presented to law students as the default framework for thinking about corporate governance and corporate purpose. Shareholder primacy thinking has also influenced significant changes and developments in corporate law, such as changes to the shareholder proxy voting rules in 1992 that made it easier for shareholders to embattle incumbent boards.<sup>97</sup> In addition, the shareholder primacy view is reflected in the tax code, most apparent in the 1993 amendments to the U.S. tax code that sought to encourage companies to tie executive pay to stock price and other objective performance metrics.<sup>98</sup> It can also be found in the case law, most notably in the case of *Dodge v. Ford Motor Co.*, where the court stated that “a business corporation is organized and carried on primarily for the profit of the stockholders.”<sup>99</sup>

Strands of shareholder primacy thinking are also reflected in the Cadbury Report (which notes that boards are accountable to shareholders because the board acts as stewards on behalf of the shareholders),<sup>100</sup> which in turn formed the basis for the OECD

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<sup>96</sup> See Tamara C. Belinfanti, *Forget Roger Rabbit—Is Corporate Purpose Being Framed?*, 58 N.Y.U. L. REV. 675 (2013–14) (discussing the implications of framing theory on the corporate purpose debate).

<sup>97</sup> See 17 C.F.R. 240.14a (2015).

<sup>98</sup> See 26 U.S.C. § 162(m); Jay Lorsch, *The Pay Problem*, HARV. MAG., May–June 2010, <http://harvardmagazine.com/2010/05/the-pay-problem>.

<sup>99</sup> *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919).

<sup>100</sup> See COMM. ON THE FIN. ASPECTS OF CORP. GOVERNANCE, REPORT OF THE COMMITTEE ON THE FINANCIAL ASPECTS OF CORPORATE GOVERNANCE ¶ 6.6 (1992), <http://www.icaew.com/~media/corporate/files/library/subjects/corporate%20governance/financial%20aspects%20of%20corporate%20governance.ashx>.



Principles of Corporate Governance.<sup>101</sup> However, the OECD Principles do not adopt a strong shareholder primacy view in that they recognize that one of the goals of corporate governance should be to design systems that encourage boards and managers to make decisions that benefit the long-term interests of the corporation and its shareholders.<sup>102</sup>

Finally, the shareholder primacy framework abounds in legal literature. As Professor Jeffrey Gordon observed, “[b]y the end of the 1990s, the triumph of the shareholder value criterion was nearly complete.”<sup>103</sup> However, perhaps no clearer indication of shareholder primacy’s “triumph” exists than an article entitled *The End of History for Corporate Law*, wherein Professors Kraakman and Hansmann asserted that “the triumph of the shareholder-oriented model of the corporation over its principal competitors is now assured . . . .”<sup>104</sup> Professors Kraakman and Hansmann declared that:

[A]cademic, business, and governmental elites in leading jurisdictions [all agreed] . . . that ultimate control over the corporation should rest with the shareholder class; the managers of the corporation should be charged with the obligation to manage the corporation in the interests of its shareholders; other corporate constituencies, such as creditors, employees, suppliers, and customers, should have their interests protected by contractual and regulatory means rather than through participation in corporate governance . . . .<sup>105</sup>

### C. *The Longstanding Counterpoint and Recent Shift*

Not to beat the proverbial dead horse, but despite the asserted triumph of shareholder primacy, there is a long-standing unease in the corporate law literature with how to square profit maxims with notions of social value creation. As others have noted, one view is that corporate law does not require that corporations relentlessly maximize shareholder value, except in the limited instance when the corporation has entered “*Revlon* mode,” which occurs when the

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<sup>101</sup> See generally ORG. FOR ECON. CO-OPERATION & DEV., OECD PRINCIPLES OF CORPORATE GOVERNANCE (2004), <http://www.oecd.org/daf/ca/corporategovernanceprinciples/31557724.pdf>.

<sup>102</sup> *Id.* at 60.

<sup>103</sup> Jeffrey N. Gordon, *The Rise of Independent Directors in the United States, 1950–2005: Of Shareholder Value and Stock Market Prices*, 59 STAN. L. REV. 1465, 1530 (2007).

<sup>104</sup> Henry Hansmann & Reinier Kraakman, *The End of History for Corporate Law*, 89 GEO. L.J. 439, 468 (2001).

<sup>105</sup> *Id.* at 440–41.

corporation is for sale.<sup>106</sup> Four sources of corporate law are helpful for explicating this point: state corporate and constituency statutes; the use of organic documents; the business judgment rule (BJR); and state case law. Thus, for starters, state corporate statutes do not require a specific purpose of profit maximization. The Delaware General Corporate Law (DGCL), for example, provides that “[a] corporation may be incorporated or organized under this chapter to conduct or promote any lawful business or purposes . . . .”<sup>107</sup> Similarly, the Pennsylvania Business Corporations Act provides that “every business corporation has as its corporate purpose the engaging in lawful business for which corporations may be incorporated under the BCL.”<sup>108</sup> In fact, a majority of states have constituency statutes that explicitly allow the corporation to consider stakeholders other than shareholders.<sup>109</sup>

Second, it is interesting to note that if a corporation chooses to define its purpose as being to maximize shareholder wealth, it could do so by indicating as such in its organic documents. However, according to Professor Lynn Stout, “[t]he typical corporate charter defines the corporate purpose as anything ‘lawful.’”<sup>110</sup> Third, the BJR leaves the board with discretion to determine the best course of action for the company so long as they are acting in good faith in the best interest of the company.<sup>111</sup> Fourth, similar to the OECD Principles, case law generally describes directors’ duties as being owed to *both* the corporation and the shareholders.<sup>112</sup> Moreover, several of the takeover cases provide an interesting counterpoint to the shareholder primacy paradigm. In the case of *Unocal Corp. v. Mesa Petroleum Co.*, the Supreme Court of Delaware stated that in considering the merits of a business transaction, the directors could consider the

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<sup>106</sup> See *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986) (holding that when the sale of a corporation becomes inevitable, the board of directors’ duties changes from preserving the corporate entity to maximizing the company’s value in the sale for the shareholders’ benefits).

<sup>107</sup> DEL. CODE ANN. tit. 8, § 101(b) (2014).

<sup>108</sup> 19 PA. CODE § 23.4(b) (2013).

<sup>109</sup> Jessica Chu, *Filling a Nonexistent Gap: Benefit Corporations and the Myth of Shareholder Wealth Maximization*, 22 S. CAL. INTERDISC. L.J. 155, 172 (2013) (“For the . . . states that have not adopted constituency statutes, state corporate laws neither expressly permit directors to consider the interests of stakeholders nor explicitly require directors to consider only corporations and shareholders.”).

<sup>110</sup> Lynn A. Stout, *Why We Should Stop Teaching Dodge v. Ford*, 3 VA. L. & BUS. REV. 163, 169 (2008).

<sup>111</sup> See *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985).

<sup>112</sup> *Id.*

“impact on ‘constituencies’ other than shareholders . . . .”<sup>113</sup> The court even went so far as to enumerate in parenthetical whom they had in mind, stating “(i.e., creditors, customers, employees, and perhaps even the community generally).”<sup>114</sup>

Leading corporate law scholars such as Professor Einer Elhauge and Professor Lynn Stout, have questioned the validity and utility of shareholder primacy when applied to the large public corporation.<sup>115</sup> Far from conceding the “triumph” of shareholder primacy over the social institution view, in a 1992 *Cardozo Law Review* article, former Chancellor Allen described the duality and bifurcation between axioms of profit and those of social interest that pervade corporate law and practice.<sup>116</sup> The former Chancellor wrote:

Two inconsistent conceptions have dominated our thinking about corporations since the evolution of the large integrated business corporation in the late nineteenth century. . . . In the first conception, the corporation is seen as the private property of its stockholder-owners [and] [t]he corporation’s purpose is to advance the purposes of these owners (predominantly to increase their wealth). . . . The second conception sees the corporation not as the private property of stockholders, but as a social institution. According to this view, the corporation is not strictly private; it is tinged with a public purpose.<sup>117</sup>

Similarly, in a 2005 article published in the *New York University Law Review*, Professor Elhauge discussed the conceptual divide that has traditionally existed in the canonical corporate law account between concepts of profit and those of social good.<sup>118</sup> Elhauge noted that the canonical account views social and moral considerations as best dealt with outside of corporate law, and thus, according to the canonical account, corporate law should focus on aligning the interests of managers and shareholders to maximize shareholder profit.<sup>119</sup>

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<sup>113</sup> *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985).

<sup>114</sup> *Id.*

<sup>115</sup> See generally Allen, *supra* note 14; Einer Elhauge, *Sacrificing Corporate Profits in the Public Interest*, 80 N.Y.U. L. REV. 733 (2005); Lynn A. Stout, *Bad and Not-So-Bad Arguments for Shareholder Primacy*, 75 S. CAL. L. REV. 1189 (2002); Leo E. Strine, Jr., *The Social Responsibility of Boards of Directors and Stockholders in Change of Control Transactions: Is There Any “There” There?*, 75 S. CAL. L. REV. 1169 (2002).

<sup>116</sup> See generally Allen, *supra* note 14.

<sup>117</sup> *Id.* at 264–65.

<sup>118</sup> Elhauge, *supra* note 115, at 776–818.

<sup>119</sup> See *id.*

The most recent installment in the debate can be found in a forthcoming essay by Delaware Supreme Court Chief Justice Leo E. Strine, Jr. In his forthcoming essay, the Chief Justice reaffirms the existing structural divide between profit and social axioms and argues that “directors must make stockholder welfare their sole end, and that other interests may be taken into consideration only as a means of promoting stockholder welfare.”<sup>120</sup> In sum, the gap between profit and social axioms remains a fundamental feature of American corporate law. Yet today many for-profit corporations face pressure from various stakeholders including investors, consumers, and prospective employees to bridge this structural gap created by corporate law.

#### *D. Bridging the Gap*

But how can one bridge this noted divide? In a post-2008 world, the solutions on the table have been both internal and external. In terms of the former, large pockets of attention have been dedicated to CSR and sustainability initiatives on the part of large corporations, and other internal programs that have a social aspect. These include impact investing, community relations, corporate philanthropy, or working towards innovative models (like Whole Foods CEO John Mackey’s “conscious capitalism” or Harvard Business School professor Michael Porter’s “creating shared value”).<sup>121</sup> Part I provided an overview of these *internal* CSR solutions and programs. The balance of Part II.D considers *external* solutions that focus on creating alternative business forms.

First, is the low-profit limited liability company (or L3C). Generally, L3Cs are modified LLCs that make it simpler for a company with a social purpose to gain investments by way of loans, grants, and charitable foundations.<sup>122</sup> State L3C legislation generally alters an existing LLC statute and allows the L3C to receive Program

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<sup>120</sup> Leo E. Strine, Jr., *The Danger of Denial: The Need for a Clear-Eyed Understanding of the Power and Accountability Structure Established by the Delaware General Corporation Law*, WAKE FOREST L. REV. (forthcoming 2015) (manuscript at 10) (<http://ssrn.com/abstract=2576389>).

<sup>121</sup> See generally MACKEY & SISODIA, *supra* note 10; Porter & Kramer, *supra* note 10.

<sup>122</sup> Malika Zouhali-Worrall, *For L3C Companies, Profit Isn’t the Point*, CNN: MONEY (Feb. 9, 2010, 10:49 AM), [http://money.cnn.com/2010/02/08/smallbusiness/l3c\\_low\\_profit\\_companies/](http://money.cnn.com/2010/02/08/smallbusiness/l3c_low_profit_companies/).

Related Investments (PRIs) from private foundations.<sup>123</sup> An L3C's articles of incorporation must typically state the entity's primary charitable or educational purpose, or that the entity does not have a significant purpose to produce income or appreciate property.<sup>124</sup> The L3C's benefits include the legal and tax flexibility of traditional LLCs, the "social good" approach of nonprofits, and the public relations benefits of a social enterprise.<sup>125</sup> However, their success largely depends on the effectiveness of proposed IRS regulations to reduce the tax risks associated with PRIs.<sup>126</sup> The future of the L3C, "the most widely criticized social enterprise entity,"<sup>127</sup> may even be in jeopardy. In January 2014, North Carolina abolished its L3C legislation, finding that "[they are] not necessary" and that the traditional LLC could be used for most of its purposes.<sup>128</sup>

Less controversial than the L3C are the flexible purpose corporations (FPCs) and social purpose corporations (SPCs). California established the first FPC state statute in 2011; however, the California legislature amended its FPC statute and renamed such entities "Social Purpose Corporations."<sup>129</sup> As in California, Washington and Texas have statutes for the organization of SPCs.<sup>130</sup>

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<sup>123</sup> Robert T. Esposito, *The Social Enterprise Revolution in Corporate Law: A Primer on Emerging Corporate Entities in Europe and the United States and the Case for the Benefit Corporation*, 4 WM. & MARY BUS. L. REV. 639, 682 (2013).

<sup>124</sup> *Id.* at 683.

<sup>125</sup> Marc J. Lane, *Social Enterprises: A New Business Form Driving Social Change*, 16 ABA YOUNG LAWYER, Dec. 2011, [http://www.americanbar.org/publications/young\\_lawyer/2011-12/december\\_2011/social\\_enterprises\\_new\\_business\\_form\\_driving\\_social\\_change.html](http://www.americanbar.org/publications/young_lawyer/2011-12/december_2011/social_enterprises_new_business_form_driving_social_change.html).

<sup>126</sup> Esposito, *supra* note 123, at 706.

<sup>127</sup> *Id.* at 688.

<sup>128</sup> Anne Field, *North Carolina Officially Abolishes the L3C*, FORBES (Jan. 11, 2014, 11:17 AM), <http://www.forbes.com/sites/annefield/2014/01/11/north-carolina-officially-abolishes-the-l3c/>.

<sup>129</sup> Steven R. Chiodini, *Goodbye Flexible Purpose Corporation, Hello Social Purpose Corporation*, LAWFORCHANGE, <http://www.lawforchange.org/NewsBot.asp?MODE=VIEW&ID=6384> (last visited Oct. 18, 2015). Effective January 1, 2015, previously organized FPCs in California became SPCs, but they need not amend their article of incorporation. *Id.*

<sup>130</sup> Corp. Laws Comm., ABA Bus. Law Section, *Benefit Corporation White Paper*, 68 BUS. LAW. 1083, 1088–89 (Aug. 2013). Under the Washington statute, "the articles of incorporation of a social purpose corporation *may*, but need not, contain a provision 'requiring the corporation's directors or officers to consider the impacts of any corporate action or proposed corporate action upon one or more of the social purposes of the corporation.'" *Id.* In Texas, its legislature amended its Business Organizations Code allowing "for-profit corporations to include one or more social purposes in their certificates of formation, and it set forth a list of acceptable social purposes identical to the

Like FPCs, an SPC's articles of incorporation must provide a corporate purpose statement and must be organized to promote or minimize short-term or long-term effects of the corporation's activities upon: (1) its employees, suppliers, or customers; (2) the local, state, national, or world community; and/or (3) the environment.<sup>131</sup> Unlike the FPC statute, "charitable purposes" is absent.<sup>132</sup> Additionally, under the California and Washington statutes, directors *may* but are not required to consider its enumerated purpose as a factor in making decisions, although the Washington statute allows SPCs to include a provision that requires directors to consider such impacts.<sup>133</sup> As with FPCs, directors of SPCs enjoy limited liability and are shielded from actions for failure to maximize shareholder value.<sup>134</sup> This "distinctly anti-Revlon, anti-shareholder wealth maximization mission" makes SPCs an appealing alternative.<sup>135</sup> However, SPCs and FPCs share similar drawbacks: the lack of a third-party standard in reporting promotes a lack of accountability and forces investors to rely on unregulated assessments.<sup>136</sup>

A final alternative business form is the benefit corporation.<sup>137</sup> At the time this Article was submitted for publication, thirty-one states have passed legislation on benefit corporations.<sup>138</sup> B Lab, the

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'specific public benefit' list offered by B Lab as a model for benefit corporation states." *Id.* at 1089.

<sup>131</sup> Esposito, *supra* note 123, at 692–93.

<sup>132</sup> *Id.* at 693.

<sup>133</sup> *Benefit Corporation White Paper*, *supra* note 130, at 1088–89.

<sup>134</sup> Esposito, *supra* note 123, at 693–94.

<sup>135</sup> *Id.* at 694 (italicization added).

<sup>136</sup> *Id.*

<sup>137</sup> Note the distinction between a "B Corporation" and a benefit corporation: B Lab certifies existing corporations that wish to brand themselves as "B Corporations," while benefit corporations are corporate entities authorized under state corporate law. *Id.* at 695. To become a B Lab-certified "B Corporation," B Lab requires that the corporation conduct an impact assessment, submit required documents, adopt B Lab's amendments to its articles of incorporation, complete a disclosure questionnaire, pay a certification fee, and agree to randomized on-site reviews. See *Performance Requirements*, BENEFIT CORP., <http://www.bcorporation.net/become-a-b-corp/how-to-become-a-b-corp/performance-requirements> (last visited Oct. 18, 2015).

<sup>138</sup> *State by State Status of Legislation*, BENEFIT CORP., <http://benefitcorp.net/policy-makers/state-by-state-status> (last visited Oct. 18, 2015). Not all legislation is uniform; for instance, Hawaii's benefit corporations are known as "sustainable business corporations" and Maryland's legislation includes both benefit corporations and benefit limited liability companies (or BLLCs). See CARTER G. BISHOP, SUFFOLK UNIV. LAW SCH., LEGAL STUDIES RESEARCH PAPER 10–11, FIFTY STATE SERIES: L3C & B CORPORATION LEGISLATION TABLE (2014).

organization that pioneered the benefit corporation,<sup>139</sup> reports that over 1,400 registered benefit corporations exist.<sup>140</sup> Overall, benefit corporation statute sections include general provisions, corporate purpose, accountability, and transparency.<sup>141</sup> Every statute requires the corporation's articles of incorporation to state that it has the purpose of creating a general public benefit and allows them to specify one or more special public benefits.<sup>142</sup> For accountability, in addition to the traditional shareholder-profit duty, benefit corporation directors have a duty to consider the effects of business decisions on stakeholder groups or constituencies.<sup>143</sup> A unique part of benefit-corporation legislation is the third-party standard requirement, ensuring proper transparency of its performance assessment.<sup>144</sup>

Many praise the benefit corporation form for providing an organizational form that allows companies to “do good” while still making a profit.<sup>145</sup> In addition, others have noted the appeal that benefit corporations have to Millennials, who comprise nearly 50% of the global workforce, demand a “work-life integration,” and want to bring their “whole selves” to work.<sup>146</sup> Delaware Supreme Court Chief Justice Strine praised benefit corporations for putting “some actual power behind the idea that” a corporation can operate for the best interest of both its stockholders and its constituencies.<sup>147</sup> However, the benefit corporation is not without criticism. For many, they present questions:<sup>148</sup> Will companies “doing good” also generate long-term returns? How will the public markets price them when they first go public? Can they honor their commitment if sold to larger

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<sup>139</sup> Esposito, *supra* note 123, at 695.

<sup>140</sup> *Find a Benefit Corp.*, BENEFIT CORP., <http://benefitcorp.net/businesses/find-a-benefit-corp> (last visited Oct. 18, 2015) (B Lab's search results also indicate whether the company is a certified “B Corporation” by B Lab).

<sup>141</sup> Esposito, *supra* note 123, at 697.

<sup>142</sup> *Id.*

<sup>143</sup> *Id.* at 699.

<sup>144</sup> *Id.* at 700–01.

<sup>145</sup> Gilbert et al., *supra* note 12. According to B Lab's co-founders, benefit corporations benefit (1) policy makers and the public interest by combatting “short termism”; (2) business leaders by attracting the best talent; (3) customers by providing greater transparency; (4) employees by promising higher-quality jobs; and (5) investors by mitigating risks and accelerating the growth of market opportunities that meet the needs of investors who want to “do good” while still making a profit.

<sup>146</sup> *Id.*

<sup>147</sup> Leo E. Strine, Jr., *Making it Easier for Directors to “Do the Right Thing”?*, 4 HARV. BUS. L. REV. 235, 242 (2014).

<sup>148</sup> *See id.* at 251–53.

companies? Additionally, the greater reporting requirements may deter many businesses due to the high transaction costs and the ambiguity of the third-party standard assessment.<sup>149</sup> The final, but arguably most powerful, critique of the benefit corporation<sup>150</sup> is the harmful “good” versus “bad” dichotomy they create.<sup>151</sup> Specifically, the promotion of the benefit corporation fosters the erroneous understanding that the law *compels* traditional for-profit corporations to single-mindedly maximize profits and only under alternative business forms can it consider a range of interests to make responsible business decisions.<sup>152</sup>

While these various models that seek to provide a business form for meshing profit and social interest have gained popularity both at the legislative level and in practice, a closer look at these models reveals their limits. Namely, these models involve potentially high transaction costs. These transaction costs include information gathering costs; the cost of initial set-up; ongoing compliance with extra layers of formalities (such as any attendant certification process); and the uncertainty that attends a wholesale opt-out of a known structure (in this case, the traditional for-profit corporation) and a wholesale opt-in to a relatively new and untested legal structure.

In sum, initiatives for bridging the socio-profit gap fall roughly into four different camps. The first is internal corporate programs like CSR, sustainability initiatives, or corporate philanthropy endeavors.<sup>153</sup> The second camp includes those proposals that seek to shift the focus of inquiry from encouraging the corporation to behave “responsibly” to encouraging shareholders—namely institutional investors—to behave more responsibly. The third is the creation of alternative statutory business forms, such as benefit corporations, L3Cs, flexible purpose corporations, and social purpose corporations, which explicitly allow corporations to pursue both profit and social

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<sup>149</sup> See Doug Bend & Alex King, *Why Consider a Benefit Corporation?*, FORBES (May 30, 2014, 9:00 AM), <http://www.forbes.com/sites/theyec/2014/05/30/why-consider-a-benefit-corporation/>.

<sup>150</sup> This critique is arguably applicable to all of the above mentioned alternative business forms.

<sup>151</sup> Mark A. Underberg, *Benefit Corporations vs. “Regular” Corporations: A Harmful Dichotomy*, HARV. L. SCH. F. ON CORP. GOVERNANCE & FIN. REG. (May 13, 2012), <http://blogs.law.harvard.edu/corpgov/2012/05/13/benefit-corporations-vs-regular-corporations-a-harmful-dichotomy/>.

<sup>152</sup> *Id.*

<sup>153</sup> See *supra* Part I.



interest. And the final camp includes the use of externality regulations such as environmental laws or human rights laws.

Thus far, social intrapreneurship has been noticeably absent from legal academic discourse on matters related to socio-profit divisions. Yet social intrapreneurship offers a compelling model to corporations interested in integrating their social potential with their profit objectives. As Luis Sota, an intrapreneur at CEMEX, noted: "Social intrapreneurs create the prophecies that allow companies to make new business offerings. At the same time, they are reenvisioning the terms in which corporations engage society."<sup>154</sup>

### III

#### SOCIAL INTRAPRENEURSHIP AS A BRIDGE?

Luis Sota's idea of "reenvisioning" and actually recreating "the terms [on] which corporations engage society" provides both a figurative and conceptual segue to understanding the importance of intrapreneurship as a gap-filling device.<sup>155</sup> The need for gap-filling exists because, in the corporate landscape, there has been a long-standing divide between notions of being for-profit and being socially beneficial.<sup>156</sup> Based on the range of social intrapreneurial initiatives analyzed for this Article, social intrapreneurship can be conceptualized as bridging three related but distinct sets of gaps.

First, is the "stockholder-to-stakeholder" bridge that results from intrapreneurial endeavors that create a connection between shareholder maximand concepts and the interests of other stakeholders who are involved with and/or affected by the corporation's activity. Second, is a "shareholder-to-shareholder" bridge that gets created between so-called impact investors or socially responsible shareholders on one hand and purely financially motivated shareholders on the other. The third and final bridge can be conceptualized as a "meta-bridge" between canonical schisms of profit and social interest. Social-intrapreneurs often attempt to create reimagined relationships between their host corporation and society. As re-imagined, the corporation's activities are no longer construed as bound by profit, but instead they are bound by their potential to be a resilient and viable corporation in a more interconnected world.

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<sup>154</sup> SUSTAINABILITY, *supra* note 1, at 43.

<sup>155</sup> *Id.*

<sup>156</sup> See *supra* Part II.

### A. Stockholder-to-Stakeholder Bridge

One effect of the tension that exists in the canonical account between profit-seeking and social-purpose endeavors is that, because the board is viewed primarily as an agent of the shareholders, non-shareholders or other stakeholders in the corporation are accorded a subsidiary status in our existing account. In practice, however, directors and management must navigate between all aspects of the corporation's business and often times do consider the impact of their decisions along financial and non-financial dimensions. This is not to say that managers and directors seek to subordinate the interests of stockholders to those of other firm patrons, but rather that they are often called upon to balance these various interests as part of their decision-making. Social intrapreneurship has utility in this regard.

Thus, returning to the aforementioned case study of Luis Sota's initiative at CEMEX, with *Patrimonio Hoy*—which roughly translates to “Patrimony Today” or “Savings/Property Today”<sup>157</sup>—Sota identified the external social problem as the lack of affordable housing for low-income families in Mexico. Sota's proposed solution was a business model that allowed CEMEX to create building material options for low-income builders, which in turn allowed these builders to provide low-income families with access to home ownership.<sup>158</sup> Instead of proposing that CEMEX donate houses or building materials to address low-income housing needs (i.e., engage in pure philanthropy) or create a CSR program where CEMEX would donate some portion of revenue to address these needs each time a consumer purchased a CEMEX product, Sota developed a model that directly enhanced the company's financial, as well as its social, bottom line.

Perhaps much of the success of the program has to do with Sota's ability to code-switch between the logic of the local communities in Mexico that CEMEX sought to reach and the business logic of CEMEX's business model and operations. Sota spotted the gap between these external societal needs and the business opportunity for CEMEX. Initially, CEMEX was flummoxed as to how to adapt its existing strategies and assets to service these communities.<sup>159</sup> As a result, CEMEX did something unprecedented. It issued a “Declaration

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<sup>157</sup> Ajit Sharma, *CEMEX: Innovation in Housing for the Poor*, MICH. BUS. SCH., Dec. 12, 2003, at 2; SUSTAINABILITY, *supra* note 1, at 39.

<sup>158</sup> See SUSTAINABILITY, *supra* note 1, at 39.

<sup>159</sup> See *id.*

of Ignorance” in which it publicly announced that it had identified deficiencies in its product offerings, that it had no idea how to correct these deficiencies, and that it was willing to disregard its traditional approaches to business in order to find a solution.<sup>160</sup>

This bold new approach did not at first receive widespread internal support, but senior management understood Sota’s vision and they forged ahead.<sup>161</sup> CEMEX then undertook a unique anthropological survey of these local communities, which studied the *autoconstruccion* or “do-it-yourself” model of building in low-income communities and sought to identify patterns of building techniques and market dynamics.<sup>162</sup> As a result of this research, key findings emerged that allowed Sota to better see how to reconfigure CEMEX’s approach and value chain in a way that was mutually beneficial to the company and low-income communities.<sup>163</sup> For example, the research revealed that the building process in targeted communities was characterized by a start-and-top pattern, which often resulted from lack of capital to complete construction and/or because of shoddy builders, contractors, or engineers who would not see a project through to completion.<sup>164</sup> Armed with this information, Sota was then able to retool CEMEX’s approach to both products and markets, in addition to its value chain. CEMEX launched *Patrimonio Hoy* in 1999, which is essentially a membership program for low-income customers, whereby customers apply in groups of three to become members. Membership requires a minimum hour of labor commitment, in addition to which they pay a weekly membership fee. In return, CEMEX provides a “package” for construction, which includes not only the building materials, but also an architect, engineer, and contractor.<sup>165</sup>

*Patrimonio Hoy* presents a prime example of how an intrapreneurial initiative could serve a gap-filling function between stockholder interests and the interests of other constituents. The

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<sup>160</sup> See Shared Value Initiative, *Patrimonio Hoy: Access to Housing and Finance*, CEMEX 1, [http://sharedvalue.org/sites/default/files/resource-files/Cemex\\_SV1Case\\_06-08-15.pdf](http://sharedvalue.org/sites/default/files/resource-files/Cemex_SV1Case_06-08-15.pdf) (last visited Oct. 18, 2015).

<sup>161</sup> *Id.*

<sup>162</sup> *Id.*

<sup>163</sup> SUSTAINABILITY, *supra* note 1, at 39.

<sup>164</sup> See *id.*; *Treasure at the Bottom of the Pyramid*, BUS. TODAY (Dec. 11, 2011), <http://businesstoday.intoday.in/story/innovation-cemex/1/20184.html>.

<sup>165</sup> See *High Impact Social Programs*, CEMEX, <http://www.cemex.com/SustainableDevelopment/HighImpactSocialPrograms.aspx> (last visited Oct. 18, 2015); Shared Value Initiative, *supra* note 160; SUSTAINABILITY, *supra* note 1, at 39.

success of *Patrimonio Hoy* lies in its ability to connect the internal competencies of the corporation with the external social needs of the low-income housing market. The connection of internal competencies to external needs arguably benefits CEMEX's shareholders as any increase in revenue and profits bodes well for their returns. Similarly, other constituents of CEMEX are able to reap tangible social benefits—the most direct being to members of *Patrimonio Hoy* who stand to gain a home.

In addition to creating a link between stockholder welfare and the welfare of other specific firm patrons like consumers, some social intrapreneurial endeavors rely on pan-sector partnerships. Examples include Coca-Cola's water sustainability program (designed to address problems of water scarcity) or Danone's Danone-Grameen collaboration (designed to address childhood malnutrition), both of which involve pan-sector collaboration across business, state and civil society. In the case of Danone-Grameen,<sup>166</sup> the Bangladeshi government and civil society organizations had identified and attempted to address—by their own admissions, unsuccessfully—the problem of childhood malnutrition.<sup>167</sup> Danone was able to apply its know-how and resources on yogurt manufacturing to create and deliver a product that was both appealing to children and effective in helping to alleviate some of the deficiencies in their diets.<sup>168</sup> Without the expertise of its civil society partners and the collaboration with the Bangladeshi government, Danone would not have had the same type of access to understanding of community norms and potential hiccups that prior social programs had faced. Similarly, the Bangladeshi government and the civil society organizations did not have the expertise or know-how to develop a product to address the malnutrition need. Social intrapreneur Muhammad Yunus identified the need and also identified the prospect of connecting Danone's business potential to the need and expertise of the Bangladeshi

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<sup>166</sup> See *supra* Part I.

<sup>167</sup> See *Bangladesh: Children and Women Suffer Severe Malnutrition*, IRIN (Dhaka) (Nov. 19, 2008), <http://www.irinnews.org/report/81544/bangladesh-children-and-women-suffer-severe-malnutrition>.

<sup>168</sup> See *Grameen Danone Foods Ltd.*, DANONE CMTY., <http://www.danonecommunities.com/en/project/grameen-danone-food?mode=history> (last visited Oct. 18, 2015); Asad Ghalib et al., *Social Responsibility, Business Strategy and Development: The Case of Grameen-Danone Foods Limited*, 3 AUSTL. ACCT., BUS. & FIN. J. 1, 7–8 (2009), <http://ro.uow.edu.au/cgi/viewcontent.cgi?article=1061&context=aabfj>.

government and its NGO partners.<sup>169</sup> Through Danone-Grameen, Yunus created an interconnected bridge of all three sectors, or in the words of Muhtar Kent, CEO of Coca-Cola, Inc., he provided the vision for drawing a “Golden Triangle” (i.e., a three-pronged connection between business, government, and civil society).<sup>170</sup>

The social intrapreneurial initiatives presented in this Part illustrate the role of social intrapreneurship as gap-filler between stockholder welfare and the welfare of other firm patrons and/or society. The initiatives examined attempt to construct a link between stockholder welfare and the welfare of others. Social intrapreneurial models are often *not* about reinforcing a subservient relationship between profit and social value creation, in either direction, but rather they attempt to reimagine the relationship as one of simultaneity rather than as being sequential in nature. Put differently, social intrapreneurship is not about flouting stockholder value; rather it is very much about achieving stockholder value by creating social value.

### *B. Shareholder-Shareholder Bridge*

For most publicly traded corporations, there is no single type of shareholder. As described in the 2014 article, *Shareholder Cultivation and New Governance*, share ownership is highly heterogeneous with different types of shareholders who have a dizzying array of investment behaviors, motives, agendas, internal pressures, and expectations.<sup>171</sup> This heterogeneity creates “for corporations and their boards,” what noted practitioner Ira Millstein termed a “‘zoo’ of owners with different stripes, teeth, sensors, claws, vision, strength, will, and attitudes.”<sup>172</sup> Thus, for example, shareholders differ as to whether they are natural beings; some shareholders are individuals, although most shareholders of record are large institutional shareholders. They also differ by the length of their investment

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<sup>169</sup> James Melik, *Danone's Yogurt Strategy for Bangladesh*, BBC NEWS (July 8, 2009, 7:05 PM), <http://news.bbc.co.uk/2/hi/business/8100183.stm>.

<sup>170</sup> Muhtar Kent, Opinion, *The Golden Triangle—Spearheading Change the Smart Way*, COCA-COLA (Nov. 7, 2012), <http://www.coca-colacompany.com/stories/opinion-the-golden-triangle-spearheading-change-the-smart-way#TCCC>.

<sup>171</sup> See generally Belinfanti, *supra* note 11 (discussing the diverse array of shareholder preferences in terms of investment horizon and objective).

<sup>172</sup> Ira M. Millstein, Senior Assoc. Dean for Corp. Governance, Yale Sch. of Mgmt., Lecture at Charkham Memorial, London, Eng.: Directors and Boards Amidst Shareholders with Conflicting Values: The Impact of the New Capital Markets (July 9, 2008) (transcript available at <https://www.frc.org.uk/FRC-Documents/FRC/Professor-Ira-M-Millstein-Lecture.aspx>).

horizon (short-term, long-term, or somewhere in between) and their objectives for investing in the company. Some shareholders are what Warren Buffett terms “owner-partners,” meaning that these are shareholders who understand the company’s operations, attitudes, and expectations and who are less likely to sell their shares, or as Buffett terms it, “wiggle[] around daily . . . when some economic or political event makes [them] nervous.”<sup>173</sup> On the other hand, some shareholders fall into what Professor Brian Bushee terms “transient” investors who exhibit a high rate of turnover and move in and out of a company’s stock.<sup>174</sup> Others are so-called “dedicated” shareholders who attempt, or whose objective is, to advance their own views of some aspect of corporate governance and/or business operations or strategy on the board and management, as well as on the other shareholders.<sup>175</sup> In addition, a relatively new type of shareholder has emerged: that of the so-called “high-frequency trader” or “high-speed trader.” High-frequency traders use a fully automated trading system to “read” the trades of others and to move in and out of securities at a rapid speed, often just in milliseconds, and often reaping a handsome profit at the expense of the trades that they leaped over.<sup>176</sup> As one would expect, shareholders who fall under the “high frequency trader” umbrella have minimal interest in understanding the business of the companies behind the shares (i.e., they are the antithesis of Buffett’s “owner-partner” shareholder).<sup>177</sup>

Still yet, shareholders differ on how they view the connection between a corporation’s profit-seeking activities and its undertaking of socially beneficial activities. For shareholders who fall under the “impact investor” or “socially responsible” investor banner, socially beneficial activities on the part of the company are part of their criteria and objective for investing their capital in the corporation. On the other hand, shareholders who embrace the pure profit-maximand

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<sup>173</sup> See WARREN E. BUFFETT, *AN OWNER’S MANUAL* (1996) (a booklet issued to Berkshire Hathaway, Inc.’s Class A and Class B shareholders to explain the company’s “broad principles of operation”).

<sup>174</sup> Brian Bushee, *Identifying and Attracting the “Right” Investors: Evidence on the Behavior of Institutional Investors*, 16 J. APPLIED CORP. FIN. 28, 29 (2004).

<sup>175</sup> *Id.*

<sup>176</sup> See Tamara Belinfanti, *Insider Trading 2.0 – Keeping Up With The Super Computer Arms Race*, BUS. L. PROF. BLOG (Mar. 19, 2014), [http://lawprofessors.typepad.com/business\\_law/2014/03/insider-trading-20-keeping-up-with-the-super-computer-arms-race.html](http://lawprofessors.typepad.com/business_law/2014/03/insider-trading-20-keeping-up-with-the-super-computer-arms-race.html).

<sup>177</sup> See, e.g., James Sterngold & Jenny Strasburg, *For SAC, a Shift in Investing Strategy Later Led to Suspensions*, WALL ST. J. (July 24, 2013, 6:40 PM), <http://www.wsj.com/articles/SB10001424127887324144304578622300959537068>.

norm are focused on financial returns, and a focus on the social side is either nonexistent or minimal.

Continuing Millstein's zoo analogy, unlike a true zoo, where everyone recognizes that different animals are indeed different (e.g., it would be unwise to feed the conures the same food that is meant for the lions), corporate law is yet to fully embrace the realities of shareholder heterogeneity. Responses to this heterogeneity have mainly been private-ordering in nature. Trends such as proxy-access bylaws, which limit eligible shareholders by amount of share ownership *and* length of share ownership, is an example of this type of private ordering, as well as various shareholder cultivation techniques used by corporations to identify potential "owner-partner" shareholders.<sup>178</sup>

Social intrapreneurship fits into these private-ordering activities because it is very much a practice that is privately negotiated and facilitated without explicit legal mandate.<sup>179</sup> Moreover, the social-intrapreneurial focus on connecting profit imperatives to social needs potentially helps to soften the divide between various shareholder interests. For example, impact investors or socially responsible investors, as well as shareholders who fall closer to the profit-maximand end of the spectrum, could all get behind initiatives like *Patrimonio Hoy* at CEMEX or Microsoft's Unlimited Potential Group initiative. The latter offers affordable technology to low-income segments of the population, which has allowed Microsoft to expand its reach into emerging markets.<sup>180</sup>

### C. The Meta-Bridge? Socio-to-Profit?

As illustrated throughout this Article, many social-intrapreneurial initiatives attempt to gap-fill between concepts of profit and social interest, and, in fact, it is this bridging between profit and social value creation that is at the heart of their success. Notably, *Patrimonio Hoy* has lived up to CEMEX's financial and business goals, as well as

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<sup>178</sup> See, e.g., Belinfanti, *supra* note 11, at 811; Paul Hodgson, *At Whole Foods, Chipotle, and Others, Shareholders Prepare for Battle*, FORTUNE (Feb. 3, 2015, 1:00 PM), <http://fortune.com/2015/02/03/whole-foods-chipotle-proxy-access/> (providing examples from Whole Foods and Chipotle, where the corporations present their own proxy-access resolutions).

<sup>179</sup> See generally Robert W. Hillman, *The Bargain in the Firm: Partnership Law, Corporate Law, and Private Ordering Within Closely-Held Business Associations*, 2005 U. ILL. L. REV. 171, 173 (2005).

<sup>180</sup> See *infra* Appendix.

social goals, with the company convinced the project has increased revenues and market shares, and improved the corporate image.<sup>181</sup> Simultaneously, *Patrimonio Hoy* has provided homes for eight hundred thousand families in Mexico and, because of its success, the program has been replicated in Nicaragua, Costa Rica, and the Dominican Republic.<sup>182</sup> Similarly, Unilever's initiative provides another case in point. On the internal-business side of the equation, Unilever estimates that it expanded its market and revenue as a result of the Shakti initiative.<sup>183</sup> Simultaneously, on the social side, the Shakti program has trained approximately seventy thousand women entrepreneurs who in turn distribute to four million households that were previously unable to access Unilever products.<sup>184</sup> Also, consider Accenture's Accenture Development Partnership (ADP), which resulted from an intrapreneurial initiative and which links Accenture's core consultancy with its ADP model to create new brokering functions that reach new clients and partnerships.

Establishing socio-profit connectivity through these various intrapreneurial initiatives leads to interesting normative as well as doctrinal questions. On the normative front, the more companies engage in this type of socio-profit bridging, the more the canonical corporate law account will be forced to wrestle with the question of whether pure profit maximization is the best norm for assessing corporate activity and for designing corporate governance rules. Of course, one obvious hedge to this question is to expand the definition of "profit maximization" to include value-enhancing initiatives such as these. Relatedly, in terms of doctrinal concerns, socio-profit bridging that allows for simultaneous instead of sequential positive contributions to both the financial bottom line and the social bottom line will arguably limit the need for the existing temporal divide in corporate law doctrine between the "short-term" and the "long-term."

This temporal divide is seen in *Shlensky v. Wrigley*,<sup>185</sup> which involved a derivative suit over a business decision by the owners of

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<sup>181</sup> SUSTAINABILITY, *supra* note 1, at 39; CEMEX, 2012 ANNUAL REPORT 19 (2012), <http://www.cemex.com/InvestorCenter/files/2012/CemexAnnualReport2012.pdf>; TED LONDON, MICH. ROSS SCH. OF BUS., CEMEX'S PATRIMONIO HOY: AT THE TIPPING POINT? 8 (2012).

<sup>182</sup> SUSTAINABILITY, *supra* note 1, at 39.

<sup>183</sup> Emily Mello, *Celebrate Solutions: Micro-Entrepreneurship as a Tool for Women's Empowerment*, WOMEN DELIVER (Jan. 19, 2015), <http://www.womendeliver.org/updates/entry/celebrate-solutions-micro-entrepreneurship-as-a-tool-for-womens-empowerment>.

<sup>184</sup> *Id.*

<sup>185</sup> *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. Ct. 1968).



the Cubs baseball team not to hold "night games."<sup>186</sup> The board's articulated reason for deciding not to hold night games was that it would have a deleterious effect on the surrounding neighborhood.<sup>187</sup> The shareholder-plaintiff attempted to argue that such a rationale was invalid because the board was not allowed to make decisions that would sacrifice the corporation's profit.<sup>188</sup> The *Shlensky* court drew a distinction between short-term interests and long-term interests. The Court opined that in the former, non-profit-seeking initiatives would be permitted within the confines of the business judgment rule, but that in the long-term, the board would have to demonstrate that their undertakings would inure to the financial bottom line.<sup>189</sup> This temporal divide articulated in *Shlensky* is a stable feature of corporate law jurisprudence and, as then-Chancellor Allen noted, it provides "a serviceable, [but potentially] intellectually problematic way, for the corporation law to avoid choosing between the alpha of property and the omega of relationships."<sup>190</sup>

Successful social intrapreneurship arguably lessens the problem because, instead of accepting the status quo of choosing "between the alpha of property and the omega of relationships," it dismantles the choice and seeks to forge a more complementary socio-profit relationship.

#### IV

#### POTENTIAL LEGAL CONCERNS

The existence of social intrapreneurship within a corporation raises interesting questions of transparency, accountability, monitoring, and the allocation of intellectual property rights.<sup>191</sup> Although social intrapreneurship does not fall under any one express law or legal mandate, social intrapreneurship as a practice does overlay and/or intersect with the corporate law framework in several ways. In addition to the legal rules and theories analyzed above in Part III, this Part considers other points of intersection.

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<sup>186</sup> *Id.* at 777-78.

<sup>187</sup> *Id.* at 778.

<sup>188</sup> *Id.*

<sup>189</sup> *See id.* at 779-80.

<sup>190</sup> Allen, *supra* note 14, at 273.

<sup>191</sup> Additionally, concerns about strategic bargaining, incentive structures, and tax consequences are also present in the context of social intrapreneurship.

### A. Business Judgment Rule and Social Intrapreneurship

The business judgment rule in corporate law is a long-standing, judge-made principle that provides a shield from liability for directors in making business decisions when the rule applies. In *Aronson v. Lewis*, the Supreme Court of Delaware articulated the rule as follows:

The business judgment rule is an acknowledgment of the managerial prerogatives of [] directors under [the Delaware General Corporate Law]. It is a presumption that in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company. Absent an abuse of discretion, that judgment will be respected by the courts. The burden is on the party challenging the decision to establish facts rebutting the presumption.<sup>192</sup>

Thus, should a host corporation's board of directors make a business decision to allow for the implementation and/or execution of social-intrapreneurial initiatives, absent a showing of fraud, illegality, "waste," or bad faith, this decision by the host corporation's board will enjoy deferential protection under the BJR.<sup>193</sup>

### B. Monitoring Devices—Fiduciary Duty of Oversight and Contractual Mechanisms

Second, even if a board does not make an affirmative business decision to permit social intrapreneurship activities (either specific ones or in general), the board would still need to comply with what are short-handedly referred to as its *Caremark* duties. In *In re Caremark International Inc. Derivative Litigation*, the Chancery Court of Delaware held that a board has a duty of oversight and that this duty of oversight required that the board establish "information and reporting systems . . . that are reasonably designed to provide to senior management and to the board itself timely, accurate information sufficient to allow management and the board, each within its scope, to reach informed judgments concerning both the corporation's compliance with law and its business performance."<sup>194</sup> The Chancery Court noted that in order to prove a breach of *Caremark* duties:

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<sup>192</sup> *Aronson v. Lewis*, 473 A.2d 805, 812 (Del. Super. Ct. 1984) (citations omitted).

<sup>193</sup> *See id.* at 812 n.6.

<sup>194</sup> *In re Caremark International Inc. Derivative Litigation*, 698 A.2d 959, 970 (Del. Ch. 1996).

plaintiffs would have to show either (1) that the directors knew or (2) should have known that violations of law were occurring and, in either event, (3) that the directors took no steps in a good faith effort to prevent or remedy that situation, and (4) that such failure proximately resulted in the losses complained of . . . .<sup>195</sup>

The *Caremark* standard applies to *legal* risks; thus, it would apply should any intrapreneurial activity cause the host corporation to violate the law.<sup>196</sup> In terms of intrapreneurial activities that do not result in a violation of law, the case of *In re Citigroup Inc. Shareholder Derivative Litigation* is instructive.<sup>197</sup>

In *Citigroup*, the plaintiff alleged that the Citigroup directors had breached their duty of oversight by failing to monitor the *business* risks, which ultimately led to Citigroup suffering billions of losses in the wake of the subprime mortgage crisis.<sup>198</sup> The *Citigroup* court drew a distinction between matters of *legal* risk and matters of *business* risk. The Court noted that the latter falls squarely within the business judgment of the board and, *a priori*, “the core protections of the business judgment rule”;<sup>199</sup> thus the presumption could only be rebutted by showing gross negligence or bad faith.<sup>200</sup> Additionally, the court noted that “the mere fact that a company takes on business risk and suffers losses—even catastrophic losses—does not evidence misconduct, and without more, is not a basis for personal director liability.”<sup>201</sup> The implication of *Caremark* and *Citigroup* on social-intrapreneurial initiatives is that, while they provide core legal boundaries for intrapreneurial endeavors, they simultaneously allow broad latitude for a corporation to facilitate intrapreneurship practices within the bounds of the fiduciary duty of care.

For activities that are not illegal but nonetheless potentially troublesome (e.g., spending inordinate amounts of the workday daydreaming about solving some social problem rather than attending to the tasks at hand), as well as for illegal activities, such situations can be dealt with *ex ante* in the employee’s contract. This method serves as a private-ordering means of establishing a governance mechanism *ex ante* for problems that could occur *ex post*.

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<sup>195</sup> *Id.* at 971.

<sup>196</sup> *See id.* at 967.

<sup>197</sup> *In re Citigroup Inc. Shareholder Derivative Litigation*, 964 A.2d 106 (Del. Ch. 2009).

<sup>198</sup> *Id.* at 111.

<sup>199</sup> *Id.* at 125.

<sup>200</sup> *Id.* at 124, 128.

<sup>201</sup> *Id.* at 130.

On this last point, intrapreneurial contractual devices could draw on contractual mechanisms employed by universities for research employees or used by corporations for employees who develop and/or have knowledge of the company's intellectual property design. For starters, social-intrapreneurial innovation typically builds upon existing inventions or, in the alternative, establishes "novel and radical ideas."<sup>202</sup>

Under the traditional setup in the innovation space, an employee-inventor owns the patent rights to an invention even if the invention was "conceived and/or reduced to practice while the inventor was employed" by the corporation.<sup>203</sup> However, corporations often ensure asset lock-in by requiring employees to enter into contracts that expressly vest ownership over such inventions in the corporation-employer.<sup>204</sup> This type of contractual arrangement could be easily replicated in the intrapreneurial space.

Additionally, several strategies used in the broader innovation space for incentivizing and rewarding innovation could be adopted and tailored to social-intrapreneurial initiatives. Potential strategies that could be used to incentivize, retain, and/or reward social intrapreneurs include financial rewards (e.g., raises, bonuses, and promotions), management-endorsed discretion to alter the corporation's culture, substantial autonomy, and proper allocation of resources for developing innovations.<sup>205</sup>

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<sup>202</sup> Shannon H. Hedvat, *A New Age of Pro-Employer Rights: Are Automatic Assignments the Standard?*, 13 U. PA. J. BUS. L. 817, 822–23 (2011); see also Wuryan Andayani et al., *Corporate Social Responsibility, Good Corporate Governance and the Intellectual Property: An External Strategy of the Management to Increase the Company's Value*, NAT'L CONF. ON MGMT. RES. 2008 (Nov. 27, 2008) ("In the intellectual capital, there are intellectual properties which include the income from the patent right, the amount of the patents, and the registered design, the value of copyright, the expenditure of R & D, house mark, and brand survey. The company which does the R & D, improves its information technology, introduces a plan, house mark, and creates a new thing to be patented, will obviously improve its way of work, and have the contribution to the shareholders, the owners of interests, employees, business partners, and the society. Therefore, it is expected that the company which has the intellectual property can improve the way of work of the company.").

<sup>203</sup> Paul C. Van Slyke & Mark M. Friedman, *Employer's Rights to Inventions and Patents of Its Officers, Directors and Employees*, 18 AIPLA Q.J. 127, 132 (1990).

<sup>204</sup> *Id.*

<sup>205</sup> See Larry Myler, *Intrapreneurs Are Just Like Entrepreneurs. . .NOT!*, FORBES (Jan. 15, 2014, 12:11 PM), <http://www.forbes.com/sites/larrymyler/2014/01/15/intrapreneurs-are-just-like-entrepreneurs-not/>.

### *C. The Efficient Market Hypothesis and Social Intrapreneurship*

A third point of interest in terms of legal implications is the ability of the market and stockholders to monitor and discipline wayward social-intrapreneurial practices. The disciplining of wayward social-intrapreneurial practices is analogous to the disciplining of any internal activity of the corporation. Under the efficient capital market hypothesis (ECMH), markets are deemed to be efficient, meaning that they reflect all available information about the given corporation in the stock price.<sup>206</sup> Investors can react to this information by buying or selling. This trading by investors serves as a disciplinary tool, because a sale of the company's stock would reflect a disapproval or lack of confidence in the corporation's business.<sup>207</sup>

Applying the ECMH framework, the argument would be that if a given corporation's social-intrapreneurship facilitation began to eat into or affect the corporation's value, as reflected in its stock price, the market will react by trading out of that corporation's stock, thus exerting discipline on management. Of course, there are two flies in the ointment. First, there are problems with the ECMH, as the stock price does *not* always do a good job of reflecting necessary information, and thus reliance on ECMH may be overstated. Second, even if ECMH were to work perfectly, is social intrapreneurship always visible? Meaning, because it involves the voluntary work of insiders, and it is work that is not necessarily part of their core mandate, there is a reasonable probability that, for at least some period of time, these activities will remain hidden from the market. In addition, however, to the use of stock price as a disciplinary tool, other standard disciplinary tools, such as the potential for managerial ouster and the market for takeovers, also still exist as a means of market discipline of wayward social intrapreneurship.

### *D. Disclosure Rules and Social Intrapreneurship*

A fourth point—that connects to the third—is the role that disclosure can play in both keeping the corporation honest and in informing the market, thereby enhancing the shareholders' ability to

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<sup>206</sup> See generally Ronald J. Gilson & Reinier H. Kraakman, *The Mechanisms of Market Efficiency*, 70 VA. L. REV. 549 (1984); Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

<sup>207</sup> See generally Gilson & Kraakman, *supra* note 206; Jensen & Meckling, *supra* note 206. But see Stout, *supra* note 110.

monitor and make decisions. Currently, social-intrapreneurial endeavors are not explicitly required to be disclosed under the United States securities rules and the regulations by the United States Securities Exchange Commission (SEC). However, should a social-intrapreneurial initiative evolve to the point where it becomes formalized and becomes a significant revenue earner, disclosure could be required under United States securities laws.<sup>208</sup> Similarly, should the initiative be formalized as a separate business segment under Regulation S-K, the company would be required to report and provide necessary disclosures.<sup>209</sup> Also, although not formally required in the United States, companies who voluntarily issue social responsibility reports or “integrated reports” can take the opportunity to disclose successful social-intrapreneurial initiatives therein.<sup>210</sup>

### *E. Shareholder Proposals and Social Intrapreneurship*

A fifth and admittedly more forward-looking connection is the role of social intrapreneurship within the Rule 14a-8 shareholder proposal framework.<sup>211</sup> Under Rule 14a-8 of the United States Securities and Exchange Act of 1934 (as amended), shareholders who meet certain requirements are entitled to have their proposals included in a corporation’s proxy statement for its annual meeting, *unless* the proposal falls under one of the rule’s thirteen substantive grounds for exclusion.<sup>212</sup> One of the thirteen substantive grounds for exclusion is if the proposal relates to “ordinary business.”<sup>213</sup> A review of the case law and SEC action in this area illustrates that courts and the SEC often draw a distinction between proposals involving business matters and those that raise issues of public policy. For example, in the case of *Medical Committee for Human Rights v. SEC*, the D.C. Circuit held that the Dow Chemical Company could not omit a shareholder

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<sup>208</sup> See Securities Act of 1933, 15 U.S.C. § 77 (2012); Securities Exchange Act of 1934, 15 U.S.C. § 78 (2012); Sarbanes-Oxley Act of 2002, 18 U.S.C. § 1514A (2012).

<sup>209</sup> 17 C.F.R. § 229.101(c)(1)(i) (2015) (requiring disclosure for each business segment “for each of the last three fiscal years the amount or percentage of total revenue contributed by any class of similar products or services which accounted for 10 percent or more of consolidated revenue in any of the last three fiscal years or 15 percent or more of consolidated revenue, if total revenue did not exceed \$50,000,000 during any of such fiscal years.”).

<sup>210</sup> See generally Henry G. Manne, *Mergers and the Market for Corporate Control*, J. POL. ECON. 110 (1965).

<sup>211</sup> 17 C.F.R. § 240.14a-8 (2015).

<sup>212</sup> See *id.* at § 240.14a-8(f)(1).

<sup>213</sup> See *id.* at § 240.14a-8(i)(7).

proposal related to Dow's production of napalm. The proposal requested that the Dow board adopt an amendment to the company's certificate of incorporation to bar the sale of napalm to any buyer unless the buyer was able to provide certain assurances.<sup>214</sup> The court noted that "there [was] a clear and compelling distinction between management's legitimate need for freedom to apply its expertise in matters of day-to-day business judgment, and management's patently illegitimate claim of power to treat modern corporations with their vast resources as personal satrapies implementing personal political or moral predilections."<sup>215</sup> The court further noted that "[i]t could scarcely be argued that management is more qualified or more entitled to make these kinds of decisions than the shareholders . . . ."<sup>216</sup>

Similarly, in a 1976 Interpretive Release addressing the *Medical Committee* decision, the SEC noted that there was a distinction between proposals that involve ordinary business operations and those that involve significant policy implications.<sup>217</sup> According to the SEC, "proposals of that nature" (i.e., those that have significant social or moral implications) while at one time "excludable," could not be excluded because such proposals were "beyond the realm of an issuer's ordinary business operations."<sup>218</sup>

The use of the shareholder proposal mechanism to garner attention for social and environmental matters has a long history. If support for corporate sustainability as an ideal continues to grow, one would expect that shareholder proposals involving social and environmental issues would also continue to maintain a presence in the annual corporate voting season. The presence of successful social-intrapreneurial initiatives within a corporation's operations could arguably head off some of these proposals, or conversely, social or environmental concerns raised by shareholder proposals could serve

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<sup>214</sup> 432 F.2d 659, 680–81 (D.C. Cir. 1970), *vacated by* SEC v. Med. Comm. for Human Rights, 404 U.S. 403 (1972). *But see* Cracker Barrel Old Country Stores, Inc., SEC Staff No-Action Letter (Sept. 20, 1994), 1994 WL 511459 (allowing exclusion of proposal regarding Cracker Barrel's discrimination policies).

<sup>215</sup> Med. Comm. for Human Rights, 432 F.2d at 681.

<sup>216</sup> *Id.*

<sup>217</sup> Adoption of Amendments Relating to Proposals by Security Holders, Exchange Act Release No. 34-12,999 (Nov. 22, 1976) [hereinafter SEC Release No. 34-12,999]; *see also* Keir D. Gumbs & Elizabeth A. Ising, *The Shareholder Proposal Process*, in A PRACTICAL GUIDE TO SEC PROXY AND COMPENSATION RULES § 12.04 (Amy L. Goodman et al. eds., 5th ed., 2014).

<sup>218</sup> SEC Release No. 34-12,999, *supra* note 217.

as a spark for an intrapreneurial initiative. Put differently, intrapreneurship may provide a manageable and practical way for a corporation to address reasonable concerns that are expressed through the shareholder proposal mechanism.

## V

### THEORIES OF THE CORPORATION AND SOCIAL INTRAPRENEURSHIP

No account of social intrapreneurship through a corporate law lens would be complete without contemplating how the practice of social intrapreneurship would be interpreted under various theories on the nature of corporations. Not surprisingly, because corporations are not homogeneous in terms of patterns of ownership, distribution of rights, internal governance structures, and business strategy—to name a few—several theories on the nature of the corporation exist. Thus, the corporation *qua* institution has been described in various ways, including (1) as a legal entity; (2) as a web of contracts; (3) as an aggregate of people; (4) as the property of its shareholders; (5) as a team of people; and (6) as a political choice.<sup>219</sup>

With respect to social intrapreneurship, the nexus of contract theory, the property theory, and the team-production theory are particularly salient because they attempt to deal with the complexities of internal corporate affairs and competing interests. The balance of this Part contemplates the narrative of intrapreneurship under each of the theoretical frames of contract, property, and team production.<sup>220</sup>

#### A. *Web of Contracts Theory*

Web of contract theorists view the corporation as a web or “nexus” of both implicit and explicit contracts among the state, the corporation and its shareholders, employees, and customers.<sup>221</sup> All are voluntarily

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<sup>219</sup> See JEFFREY D. BAUMAN & RUSSELL B. STEVENSON, CORPORATIONS LAW AND POLICY 17–49 (West eds., 8th ed. 2013); LYNN STOUT, CORPORATE ENTITIES: THEIR OWNERSHIP, CONTROL, AND PURPOSE ch. B.VII.3 (forthcoming) (manuscript at 10) (on file with author).

<sup>220</sup> For each theoretical frame of contract, property, and team production, this Article has deliberately limited the description of each theory to the position taken by proponents and has not attempted to capture the range of drawbacks and concerns that agitators of each have noted. This choice is mainly driven by concerns of argument efficiency, as well as the realization that the general concerns voiced by agitators inherently wend their way into the discussion as they manifest as limitations of the specific theory in explaining intrapreneurship.

<sup>221</sup> STOUT, *supra* note 219 (manuscript at 15).



engaged in the corporate enterprise.<sup>222</sup> For example, in *The Economic Structure of Corporate Law*, Frank Easterbrook and Daniel Fischel posited that “corporate law has an economic structure, [which] increases the wealth of all by supplying the rules that investors would select if it were easy to contract more fully.”<sup>223</sup> Similarly, in *The Contractual Theory of the Corporation*, Professor Henry Butler argued that “the corporation [is] founded in private contract, where the role of the state is limited to enforcing contracts.”<sup>224</sup> The influence of the contract theorist approach can also be seen in court opinions. For example, in 2010, the Supreme Court of Delaware in *Airgas, Inc. v. Air Products and Chemicals, Inc.* referred to the corporate bylaws as “contracts among a corporation’s shareholders.”<sup>225</sup>

Under this theory, freedom of contract permits the parties to structure their relationships as they choose. A related strand of the theory advances the idea that corporate law itself is contractual in nature because it supplies a package or “standard form” of terms, which in many instances, can be negotiated or “contracted around” to produce the optimal contractual arrangement for the particular corporation.<sup>226</sup> Finally, the web-of-contract literature posits that because corporations must compete for investors’ capital, they will design governance structures to reduce the risk of management overreaching so as to attract investment.<sup>227</sup>

Thus, under a nexus of contracts view, social-intrapreneurial endeavors could be conceptualized as constituting yet another implicit or explicit—depending on the level of formality and endorsement exhibited by the host corporation—contractual arrangement between the intrapreneur and the host corporation. In terms of the metaphor of corporate law as providing a standard form contract,<sup>228</sup> one can conceptualize profit-maximand principles as functioning as a (mandatory?) default term and, relatedly, social intrapreneurship as a contracting practice that provides an alternative means of achieving

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<sup>222</sup> *Id.*

<sup>223</sup> FRANK H. EASTERBROOK & DANIEL R. FISCHEL, *THE ECONOMIC STRUCTURE OF CORPORATE LAW*, at vii (1991).

<sup>224</sup> Henry N. Butler, *The Contractual Theory of the Corporation*, 11 GEO. MASON U. L. REV. 99, 100 (1989).

<sup>225</sup> *Airgas, Inc. v. Air Prods. and Chems., Inc.*, 8 A.3d 1182, 1188 (Del. 2010).

<sup>226</sup> See Butler, *supra* note 224, at 119–20 (1989); BAUMAN & STEVENSON, *supra* note 219.

<sup>227</sup> BAUMAN & STEVENSON, *supra* note 219, at 602.

<sup>228</sup> See *supra* Part II.

this default. Finally, as shall be discussed below, the web-of-contract framework is helpful in designing mechanisms for addressing traditional contract problems that occur within the intrapreneurial space, which include problems of shirking, relationship breakdown, and contract unwinding.

One limitation of attempting to understand intrapreneurship from the prism of web-of-contracts, is that many web-of-contract theorists “dismiss the corporate entity as irrelevant or even nonexistent.”<sup>229</sup> This is problematic for a fulsome account of intrapreneurship because successful intrapreneurship depends on the active involvement of the corporation itself; not simply as an intangible series of contracts, but as a tangible form that has the wherewithal to apply its know-how to address a social problem.

### *B. Property Theory*

Under property theory of the corporation, shareholders are deemed to be the “owners” of the corporation; the corporation “belong[s]” to the shareholders, and thus the directors and officers are best conceptualized as being “agents” of the shareholder “principals.”<sup>230</sup> By extension, property theorists hold that in carrying out their duties as agents of the shareholders, management must be guided by an objective of maximizing shareholder value.<sup>231</sup> The moment in time at which one measures this value, or the means of how best to measure the value, is the subject of contentious debate. However, drawing on the short-term/long-term bridge, as well as the shareholder-shareholder and shareholder-stakeholder bridges described above, the intrapreneurial narrative under a property theorists view could be constructed as follows: successful intrapreneurial initiatives positively contribute to the corporation’s financial bottom line, thus increasing the shareholder’s return on equity. Moreover, shareholders maintain a monitoring role vis-à-vis management and are thus in a position to discipline management either through “exit” or “voice” for failed initiatives.<sup>232</sup>

The limit of property theory in explaining the presence of intrapreneurship is that for a property theory purist social intrapreneurship could in many ways be viewed as the antithesis of

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<sup>229</sup> STOUT, *supra* note 219 (manuscript at 16).

<sup>230</sup> *Id.* (manuscript at 13).

<sup>231</sup> See *supra* Part II.

<sup>232</sup> ALBERT O. HIRSCHMAN, EXIT, VOICE, AND LOYALTY (1970).

the theory's premise. Property theory views shareholders as the principals for whose benefit the corporation should be run, while social intrapreneurs by the nature of their work are employing the corporation's resources to address the needs of stakeholders *and* shareholders. One response to this limitation would be to say that social intrapreneurship practices inure to stockholder welfare, and thus they can be viewed as fulfilling the objective of serving the best interest of shareholders. Furthermore, an argument could be made under the property-theorist view that best interest of shareholders by necessity contemplates meeting the external needs of external stakeholders in a manner that benefits the corporation's financial bottom line or at a minimum does not negatively impact the corporation's financial value beyond some reasonable amount.

### *C. Team Production Theory*

The team production theory of the corporation "focuses on the role corporate entities play in fostering team production, meaning production that requires contributions from more than one party."<sup>233</sup> According to Professors Blair and Stout, who were the first to espouse this theory:

Essential corporate team members (shareholders, employees, and others who make company-specific investments) give up property rights over the team's joint output to the corporate entity, which "owns" any surplus generated by team production. The corporate entity in turn is governed by a board of directors whose members cannot keep the surplus for themselves but must choose between keeping the surplus in the entity's name or distributing all or part of it to various corporate team members (for example, paying dividends to shareholders or larger salaries to employees). If the board's members want to keep the corporate entity viable so as to keep their board positions, they have incentive to use corporate surplus to reward various team members as necessary to keep those members inside the corporate team.<sup>234</sup>

Therefore, according to the team production theory, "corporate directors [are] not [viewed] as agents of shareholders, but as a governance mechanism designed to encourage and protect specific investment in corporate team production."<sup>235</sup>

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<sup>233</sup> STOUT, *supra* note 219 (manuscript at 17) (citing Margaret M. Blair & Lynn A. Stout, *A Team Production Theory of Corporate Law*, 85 VA. L. REV. 247 (1999)).

<sup>234</sup> *Id.* (manuscript at 17-18).

<sup>235</sup> *Id.* (manuscript at 18).

Under this theory, social intrapreneurs would thus be conceptualized as “team members” whose input or contribution to the team include not only what they were initially hired to do but also the voluntary intrapreneurial activities that they are now engaged in. For corporations that have a formalized intrapreneurial process or who are beginning to specifically recruit team members to contribute their intrapreneurial talents, the same result holds. Moreover, any surplus that results from intrapreneurial activities would become part of the corporation’s surplus, and the use of this surplus would fall under the discretion of the board as “mediating hierarch.”<sup>236</sup> Under the team production model, the board is incentivized to partition the surplus to reward corporate team members because this is necessary to minimize members “quitting” the team.

Team production theory appears to capture the essence of social-intrapreneurial practice; although, one potential limitation of the theory is that it does not explicitly address how one would deal with a wayward intrapreneurial team member. Thus, one could imagine a scenario where a team has a member who is an intrapreneur, but who deliberately keeps his or her intrapreneurial activities hidden from the rest of the team. In the extreme, one could further imagine that these hidden activities are actually to the detriment of joint production. While team production theory does not explicitly address this scenario, one default that team production does provide for dealing with these types of scenarios is to refer to the mediating-hierarch function of the board. Hence, it would be the board, on a case-by-case basis, who would decide how best to handle actions by team members that detract from the overall contributions of the team.

Social intrapreneurship presents various points of intersect with corporate law theory, doctrine, statutory rules, and general principles. An examination of social intrapreneurship through a corporate law frame reveals that the conceptual divide between profit and social good need not be as sharp as currently portrayed.

#### IMPLICATIONS AND CONCLUDING THOUGHTS

Social intrapreneurs occupy a unique space within for-profit corporations at the intersection of innovation, profit, and social good. The hallmark of their work is in identifying a target problem, often social in nature, and reconceptualizing the use of corporate resources in a manner that inures to the full complement of the proverbial triple

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<sup>236</sup> See generally Blair & Stout, *supra* note 233.

bottom line. While being close relatives of social entrepreneurs and their corporate sustainability counterparts, social intrapreneurs differ in one important respect: solving social needs are not part of their mandate. Rather, they voluntarily opt to make social need their business. While this distinction is potentially beginning to fade the more corporations recognize the value of social intrapreneurship and the more formalized intrapreneurship becomes, the intrapreneurial initiatives studied in this Article all shared this core characteristic of volunteerism at the outset.

While social intrapreneurship is not without its limitations, such as problems of shirking, increased monitoring costs on the part of the host corporation, or problems of identification, governance, and monitoring, incentive structures can be designed to address these concerns. In addition, the presence of corporate law fiduciary duties, the threat of product or market discipline, and the threat of managerial ouster, all serve as potential disciplinary mechanisms against inefficient intrapreneurialism.

Social intrapreneurship offers potential gap-filling benefits for today's corporations. It presents a compelling new imaginary that reconceptualizes and expands the boundaries of corporate activity in a manner that interweaves concerns of profit and social interest. Furthermore, social intrapreneurship arguably has significant policy implications. First, it offers a model for traditional C-corporations to compete with newer business forms, such as benefit corporations or social purpose corporations, which have been explicitly created to address the profit-public interest divide. Second, social intrapreneurship is a means for keeping socially conscious employees in the corporate sector rather than crowding them out. Third, social intrapreneurship provides a more organic, advanced, and arguably more sustainable approach to the profit-public interest divide than CSR initiatives or other corporate philanthropic endeavors. Fourth, and perhaps most important for this Article, is that social intrapreneurs help corporations navigate the axiomatic divide between profit and public interest. This latter point has implications for the broader policy discussions that are occurring primarily outside of law: on the unaddressed needs and untapped potential of nonconventional markets, the so-called "bottom of the pyramid," and the advantages of trisector (state/private/nonprofit) coordination.

To be clear, this Article does not make a normative claim that profit and social interest *should* be aligned. Nor that stockholder welfare should be subsumed to the interests of others. And nor does it

make a Panglossian claim that profit and public interest can perfectly coexist. Instead, it makes a more modest and achievable claim that social intrapreneurship provides a discrete and practical approach for bridging profit and social interest, and, as a result, it has key implications for the broader corporate-purpose debate. Social intrapreneurs' value-focused innovation is a means of modernizing their host firm's approach to society at large, broadening the firm's appeal towards future innovators joining the work force. Finally, social intrapreneurship offers to the corporation and to society potential advantages that are not necessarily present in other socially focused corporate activities, such as charitable contributions, corporate philanthropy, or stand-alone CSR initiatives.

APPENDIX<sup>237</sup>

Organization	Intrapreneur	Insight	Socio-Profit Impact
<i>Allianz</i>	Michael Anthony	Created method to provide the “bottom of the pyramid” with insurance, including accident, life, and health.	<b>Business:</b> The Micro-Insurance model expanded Allianz’s market share with over two million customers globally. <b>Societal:</b> Offering insurance packages to individuals that could not normally receive such protections but face natural disasters, such as Tsunamis.
<i>Accenture</i>	Gib Bulloch	Created a nonprofit consulting model called Accenture Development Partnerships (ADP) that worked in concert with Accenture’s main business model.	<b>Business:</b> Accenture linked its core consultancy with ADP’s model to create new brokering functions that further develops clientele and partnerships. <b>Societal:</b> By combining Bulloch’s nonprofit consultancy with its existing model, Accenture can develop the value of clients with societal impacts through public/private partnerships.
<i>CEMEX</i>	Luis Sota	Created a solution to address low-income housing needs by taking cement, CEMEX’s existing consumer product offering, and developing a model called <i>Patrimonio Hoy</i> to address local needs.	<b>Business:</b> Faced with increased market competition, the launch of <i>Patrimonio Hoy</i> allowed CEMEX to enter into a new business segment, low-income homebuilders, and became CEMEX’s most profitable segment, making up 35% of Mexico’s total market for cement. <b>Societal:</b> Since <i>Patrimonio Hoy</i> ’s launch, CEMEX has helped nearly eight hundred

<sup>237</sup> This table is adapted from “*The Yunus Inside*”—How Social Intrapreneurs Create and Blend Societal and Business Value, along with intrapreneurs identified in the SustainAbility report and stories based on research of the Aspen Institute’s First Movers program. See Heiko Spitzack, “*The Yunus Inside*”—How Social Intrapreneurs Create and Blend Societal and Business Value, tbl.2 (Dec. 14, 2010), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1725254](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1725254); SUSTAINABILITY, *supra* note 1; *Aspen Institute First Movers*, *supra* note 17.

Organization	Intrapreneur	Insight	Socio-Profit Impact
			thousand low-income families in Mexico own homes, and the company plans to expand the model in additional countries.
<b>Coca-Cola</b>	Dan Vermeer	Created a water sustainability initiative utilizing Coca-Cola's global brand recognition and business system.	<b>Business:</b> Since water is crucial to Coca-Cola's products, reducing the risk of water scarcity is critical to Coca-Cola's future success and operations. <b>Societal:</b> Under Coca-Cola's global reach, the initiative provides a forum for best practices as well as risk- and value-sharing solutions to address water sustainability.
<b>Dow Chemicals</b>	Dawn Baker <sup>238</sup>	Created connection between internal leadership development and sustainable business models as part of Dow's Human Capital Planning and Development team.	<b>Business:</b> The approach builds Dow's succession capability and contributes to the company's people and organizational goals in key employee-related fields, including Human Resources Development and Training and Workforce Planning. <b>Societal:</b> This innovative method allows Dow to combine its power of science and technology to innovate what Dow views as important for human progress and development.
<b>General Electric</b>	Jonathan Murray <sup>239</sup>	Founded GE's Research Circle Technology business as a way of utilizing the company's	<b>Business:</b> Through the Research Circle Technology business, GE provides new solutions to the health care industry. <b>Societal:</b> By providing

<sup>238</sup> 2012 Class of Aspen Institute First Mover Fellows, ASPEN INST., [http://www.aspeninstitute.org/sites/default/files/content/upload/2009-2014\\_First\\_Mover\\_Projects.pdf](http://www.aspeninstitute.org/sites/default/files/content/upload/2009-2014_First_Mover_Projects.pdf) (last visited Oct. 17, 2015).

<sup>239</sup> GE Launches Company to Enhance Development of Innovative Technology in Collaboration with Leading Scientists, BUSINESS WIRE (Sept. 9, 2011, 2:00 PM), <http://www.businesswire.com/news/home/20110909005844/en/GE-Launches-Company-Enhance-Development-Innovative-Technology#.VF0muZPF800>.



Organization	Intrapreneur	Insight	Socio-Profit Impact
		scientists to facilitate open innovation.	tools, services, and solutions, the open-innovation initiative allows researchers to discover potentially life-saving knowledge faster.
<i>Microsoft</i>	Orlando Ayala	Launched the Unlimited Potential Group to offer affordable technology to low-income market segments.	<b>Business:</b> By developing technologies that are available and affordable in low-income and less-developed countries, Microsoft is expanding its potential for future growth; additionally, its worldwide partners allow for collaboration, and future developers within the corporation now consider low-cost computer compatibility when developing new technologies. <b>Societal:</b> Expanding technologies into less-developed countries fosters education, innovation, and job opportunities.
<i>Nike</i>	Sam McCracken	Created a way for the brand to expand into new business territory that leverages the power of the Nike brand with the goal of driving athleticism in the Native American community.	<b>Business:</b> With its Native American Business, Nike expands its revenue stream, reputation, and competitive edge. <b>Societal:</b> By expanding the business into the Native American community, Nike continues promoting physical fitness worldwide.
<i>Pepsi</i>	Amy Chen <sup>240</sup>	Created the Food for Good program to leverage Pepsi's food and beverage expertise to solve	<b>Business:</b> In addition to building trust and equity with consumers, the program acts as a research and development incubator

<sup>240</sup> Emily Bosland, *How to Change the World and Still Pay Your Bills*, FORBES (Jan. 22, 2013, 1:35 PM), <http://www.forbes.com/sites/ashoka/2013/01/22/how-to-change-the-world-and-still-pay-your-bills/>; see also Amy Chen, *Food for Good*, ASHOKA CHANGEMAKERS, <http://www.changemakers.com/intrapreneurs/entries/food-good-pepsico> (last visited Oct. 17, 2015).

Organization	Intrapreneur	Insight	Socio-Profit Impact
		nutrition issues in underserved communities.	to foster new, low-cost technologies to improve Pepsi's business. <b>Societal:</b> Since its creation in 2009, the program has provided over one million meals to at-risk youth throughout the country.
<i>P&amp;G</i>	Win Sakdinan	Created the Future Friendly initiative that educates consumers on sustainability practices through the use of P&G's products.	<b>Business:</b> By educating consumers on green-friendly practices through the use of P&G brand products, the initiative increases both the availability of sustainable products as well as P&G's business. <b>Societal:</b> The Future Friendly initiative paves the way for future business leaders with a focus on sustainability, as well as a sustainability strategy that benefits consumers and the environment.
<i>Siemens</i>	Mark Siebert	Created information technology solutions for "corporate greening," citizen participation, and e-democracy (its "IT4 Sustainability Solution").	<b>Business:</b> Following its creation, the German Government now invests in new forms of online participation, expanding the market on a global scale. <b>Societal:</b> The IT4 Sustainability Solution allows citizens to use the Internet to participate in democracy.
<i>Starbucks</i>	Sue Mecklenburg	Created a comprehensive program that connects the quality of Starbucks's products with social, economic, and environmental standards.	<b>Business:</b> Through this new approach to supply chain management and best practices, Starbucks ensures the quality and responsible procurement of its products. <b>Societal:</b> The program sets forth key opportunities for enhancing the livelihood of its suppliers while reducing their environmental footprint.

Organization	Intrapreneur	Insight	Socio-Profit Impact
<i>Timberland</i>	Michael Fischer	Created a tool for measuring emissions, tracking, and modeling to manage emissions from global transportation of the brand's products.	<b>Business:</b> Utilizing the Supply Chain Emission Tracking tool reduces costs associated with off-setting carbon emissions and potential carbon taxes. <b>Societal:</b> By recognizing its carbon emissions, Timberland now reduces its emissions through optimizing global transportation of its products.
<i>Unilever</i>	Santiago Gowland	Created an opportunity to engage consumers and market influencers in the conversation about sustainability through "Brand Imprint" assessments.	<b>Business:</b> The "Brand Imprint" assessments of fourteen Unilever brands incorporated its core business competencies in a way that results in positive brand innovation and impact. <b>Societal:</b> To introduce consumers to the sustainability conversation and use Unilever's impact to leverage engagement.