BENEFIT CORPORATION LAW AND GOVERNANCE

PURSUING PROFIT WITH PURPOSE

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Foreword

As someone who grew up under the heavy influence of George Orwell, I respect those who have the courage to look at the world the way it is and to get their hands dirty trying to make it a better one. For too long, an important perspective on the American corporate governance system has eschewed this clear-eyed approach. Rather than having the fortitude to fight to change the system we have, they bemoan the reality that corporate managers and directors who are accountable to only one corporate constituency—the stockholders who directly own their voting shares—seem to be focused on putting that constituency first. Rather than fighting to change the corporate law statutes that give stockholders the exclusive authority to elect directors, vote on transactions, and sue for breach of fiduciary duty, these good-hearted, but often faint-willed, commentators just urge the directors to "do the right thing."

In this debate has emerged a strain of realist courage in the form of the benefit corporation movement. Recognizing that it might be unrealistic in the current American political context to give other corporate constituencies the right to elect elements of the board, the benefit corporation movement has sought to move the legal power structure established by corporation statutes in another way to give corporations the ability to make legally enforceable commitments to social responsibility and fair worker treatment, and to put actual teeth behind those commitments.

Although the movement still depends critically on an evolution in not only the social responsibility but also the financial prudence of institutional investors who hold the capital of ordinary Americans if it is come to full flower, the benefit corporation movement represents a refreshing and substantial step forward for those who believe that corporations—and all business entities—not only can but should do well not only by their investors but also by their workers and the societies in which they operate. As Rick Alexander's comprehensive and learned overview explains, the benefit corporation model moves us in a positive direction through various means. But, most important of all, the model does so by changing the corporate power dynamic so that there is legal—and thus market—force behind the social responsibility commitments benefit corporations make.

Rather than just high-minded talk, the benefit corporation model represents a serious effort to match talk with important action. At a time when the irrationally tumultuous influences of volatile stock market forces are encouraging entrepreneurs to keep their companies private or to even go public without giving other stockholders a right to vote, benefit corporations also promise benefit to ordinary investors. End-user ordinary investors primarily save for two long-term objectives—paying for college for their kids and retirement for themselves. These long-term objectives depend on money made the old-fashioned way, in a steady, responsible manner that focuses on buying and holding the stock of a diverse array of companies that make and deliver real products that are of durable worth.

Through the more straightforward means of the benefit corporation model—as opposed to structures built on denying other investors real voting power—entrepreneurs and corporate managers who wish to do well by doing right have a credible means to establish a more rational accountability structure. Through this model, investors have a chance to invest in socially responsible corporations and to diminish the credibility of the argument that minimizing the voting power of institutional investors in public corporations is necessary if corporations are to be able to pursue long-term value in a socially responsible manner. No doubt that the biggest challenge remains making sure that the class of fiduciaries who directly hold most Americans' wealth—the money managers who control institutional investors like mutual and pension funds—act and vote in a manner consistent with those whose capital they hold. But the benefit corporation model will goad them in that direction and provide a foundation for further innovation.

For anyone who cares about our corporate governance system and whether it is delivering the results that America deserves, Rick Alexander's primer on the innovative benefit corporation model is well worth the effort. Dig in!

—Leo E. Strine, Jr., Chief Justice of the Delaware Supreme Court

INTRODUCTION

A Corporate Lawyer's Journey

Many readers of this book will be familiar with traditional corporations and the law that governs them and may wonder why more than thirty jurisdictions in the United States, including Delaware, the center of U.S. corporate law for the past century, would introduce a new corporate governance model. They may be reading this book to discover the "why" of benefit corporation law as much as the "how." In light of that, I thought it might be helpful to tell a bit of my own history with the changes to the Delaware statute.

I have spent almost thirty years in private practice, advising clients on Delaware corporate law issues. As a partner in the transaction group of a leading Delaware law firm, I worked on preferred stock financings, initial public offerings, mergers, hostile takeovers, proxy contests, corporate governance, and fiduciary issues. My practice addressed anything in the life cycle of a corporation that involved the relationship between shareholders, directors, officers, and corporations. There was a great deal of complexity, but that complexity, for the most part, arose not from a profusion of laws and regulation but rather from the multiplicity of situations in which some fairly simple rules and principles were to be applied. In a nutshell, these principles are that (1) directors are elected by shareholders, and, once elected, have the full authority to manage the corporation; and (2) that authority is subject to the board's fiduciary duties of care and loyalty: the directors must prudently and unselfishly manage the corporation to create a financial return for shareholders.

Of course, there are a few other rules (how the director elections work, what charters and bylaws can include, and so on), but that basic structure—shareholder-elected directors manage the corporation but must do so carefully and loyally for the financial benefit of the shareholders—underlies nearly every question that comes up in corporate law disputes. This paradigm is often called the "shareholder primacy" model, and it drove much of the advice I gave.

Thus, in my practice it was critical to help directors understand the primacy of shareholder value, particularly when the company was being sold. While corporations could certainly be good employers and provide valuable resources to the community, that was not their raison d'être; corporate law was about creating value for the shareholders, who owned the corporation and who elected its managers to oversee their investment.

For corporate lawyers, these were simple, non-ideological facts. The corporate form was a brilliant legal technology that allowed entities to raise large sums of money from disaggregated investors, who could diversify their investments across many such entities, allowing many corporations to take risks and create value. The underlying ethos was that investors were willing to risk their capital with these complete strangers because they knew that there was a system in place to protect them: elected directors who were obligated to be loyal to shareholders.

A few years ago, when I was chairing the bar committee (the "council") that recommends changes to the Delaware General Corporation Law (DGCL), we were approached by B Lab, a nonprofit organization working to create a business infrastructure that encourages corporate conduct that benefits all members of society. B Lab certifies companies as being good corporate citizens (like a Fair Trade mark for companies). B Lab has requirements for certification: first, the company must meet a strict standard of social and environmental performance; second, the company must have a corporate governance model that mandates accountability for all stakeholder interests. For corporations, however, that second aspect violates the shareholder primacy model central to traditional corporate law, and B Lab was asking state legislatures to adopt a statute they had drafted called the Model Benefit Corporation Legislation (MBCL). The MBCL contains a number of provisions that require corporations to follow a broader fiduciary model. When a state adopts the MBCL or similar statutory provisions, corporations created under that state's general corporation law can opt into the new provisions and become "benefit corporations."

In Delaware, the council's immediate reaction to B Lab was far from positive. The corporate bar was very comfortable with the way that corporate law worked, and recognized the tremendous value the corporate form had produced over time. Even corporate lawyers who believed that corporate behavior with respect to social and environmental issues was a concern, and who believed that the profit motive could encourage behavior that damaged the public interest, did not think those issues should be addressed by changing corporate law. Instead, there was consensus that those issues could be better addressed with laws and regulations that protect society and the environment and with contractual provisions negotiated with creditors, customers, and other stakeholders. There was also concern that trying to add those concepts into a corporate governance model would enhance board discretion too broadly and provide management with a tool with which to impinge upon the rights of shareholders.

However, the council was encouraged by the governor and the secretary of state to undertake a review of the concept, particularly in light of Delaware's national leadership in corporate law, and the growing interest in the benefit corporation movement. With the assistance of B Lab, members of the council met with entrepreneurs and investors who championed the concept. As a result of this process, the council determined that an opt-in statute could offer the option of stakeholder-oriented governance for corporations, without impugning traditional shareholder rights. Members of the council found it particularly persuasive that there were business founders and investors who believed that benefit corporation law was a better fit for some businesses than conventional corporate law. In light of such demand, the council saw little reason to completely reject the benefit corporation model, as long as shareholders were adequately protected.

In 2013, Delaware adopted a statute that reflects that balance and that allows corporations to opt into a structure where the duties of directors extend beyond the consideration of shareholder interests to include the interests of all stakeholders. As I will discuss in chapter 6, however, Delaware's statute has some significant differences from the MBCL, and also uses slightly different terminology, so that a corporation using the Delaware version is called a public benefit corporation (PBC). I will try to use the term "PBC" when referring specifically to Delaware entities and "benefit corporations" when referring to the general concept. As of this writing, a total of thirty-five U.S. jurisdictions and Italy provide some form of benefit corporation legislation.

I wanted to write this book because I suspect that many corporate lawyers, investors, and policy makers are still where the council was when first approached by B Lab—suspicious that this is not a very good idea, and maybe thinking, *If it ain't broke*. . . . I want to share some of my thought process in moving from being first a strong skeptic, then one of the drafters of the PBC statute, and, finally, head of legal policy at B Lab.

First, I reexamined corporate theory as we studied B Lab's proposal. One idea that struck me came from Lynn Stout, a law professor at Cornell, who wrote an important book called *The Shareholder Value Myth*.[1] In that work, she notes that if a human being were to operate under the rule of always maximizing value for herself, no matter the cost to others, we would consider such a person a psychopath. As discussed in chapter 4, most corporations do not actually operate in a completely antisocial manner, but the question is whether the principle of profit value maximization makes any sense in a world where corporate activity dominates the economy. Do we really want directors to be guided by fiduciary duties that can justify child labor in their supply chain, or shifting costs to future generations, as long as they determine that such actions are legal and will increase shareholder value? One writer painted a particularly grim picture: "Somehow, at the beginning of the twenty-first century, the corporation had evolved to the point of being a sociopathic institution, at odds with the deep-rooted prosocial tendencies in human psychology and behavior."[2] Admittedly, the terms "psychopath" and "sociopathic" seem strong and certainly do not accurately describe the behavior of most corporations. The point, however, is that such behavior is the logical extension of mainstream corporate governance rules.

Another work I found significant was the book *Firm Commitment*, written by Colin Mayer, a finance professor at Oxford.[3] Mayer convincingly shows that the existence of the value maximization principle destroys trust, which paradoxically destroys value for the "value-maximizing" entity. He argues that third parties, including employees, customers, and communities, know that any commitment the corporation makes may be contingent on either legal compulsion (such as a contract right) or the commitment to continuing to create value for shareholders. Thus, rather than trusting the corporation as a partner, these third parties must always be on guard against the corporation's tendency to maximize shareholder value at their expense. This lack of trust creates antagonism and overly legalistic relationships that deter the creation of durable long-term value with trusted partners.

A third element that was important in my conversion was the position of the "universal owner." Large institutional owners, like pension funds and mutual funds, end up owning most of the market in order to be sufficiently diversified. Small asset owners, like an individual 401(k), would be wise to have the same diversification. The returns of such universal owners suffer from the commons-grazing effects of a corporate law regime that supports corporate managers who load negative externalities onto the system in order to "create value" for their individual shareholders. Hermes Investment Management, a well-known UK pension adviser, articulates this idea in its ownership principles: "Most investors are widely diversified; therefore it makes little sense for them to support activity by one company which is damaging to overall economic activity. . . . It makes little sense for pension funds to support commercial activity which creates an equal or greater cost to society by robbing Peter to pay Paul."

Yet traditional corporate law *requires* Paul Corp. to rob Peter Inc., even though they have the same shareholders. The fact is that institutional investors have emerged as an important force in corporate governance over the past two decades, and they are increasingly using their voice to act as stewards on behalf of their beneficiaries. This stewardship obligation will require institutions to manage not just companies but also the systems in which their portfolios are embedded, in order to prevent the Peter/Paul problem.

All of this led me to believe that there is good reason to provide an option where corporations can be managed for the good of all stakeholders rather than simply to provide a financial return to shareholders. Hopefully, by making room for such corporations, benefit corporation governance can create better opportunities for entrepreneurs and investors interested in corporations that operate in a responsible and sustainable manner, and place market pressure on other businesses to do the same.

I remain convinced that the for-profit corporation is the best vehicle for raising and allocating capital (other than for certain public goods that remain the responsibility of government and nongovernmental organizations). However, given the challenges that our planet and society face, I also believe we must find a way for that vehicle to recognize the interdependence of our complex globe, and the corresponding responsibility that corporations have. The benefit corporation provides a path.

CHAPTER ONE

Corporations and Investors

SETTING THE STAGE

Chapter 1 provides context for the rest of the book. It includes a discussion of just what makes business entities like corporations so important to the global economy. It also explores the special privileges such entities enjoy, and the historical path that led to these privileges. Next is a brief exploration of the system through which savers channel their capital to the productive economy and of how that system interacts with corporations, which are often the final stop for capital flowing through the investment chain. Finally, the chapter raises the question whether the participants in the investment chain should have obligations to safeguard the vital systems they impact, in light of their powerful role in the economy. This question foreshadows the issue raised by benefit corporation law: Should the purpose of corporations encompass obligations to protect the systems that serve all of their stakeholders?

The Corporation

ROLE OF THE CORPORATION

This entire book is dedicated to the study of one form of corporation. The form is relatively new and still rare. As of the date of this publication, there are only five thousand benefit entities out of a total of 8 million business entities in the

United States.[1] Why then is the subject worthy of a book? More fundamentally, what is the significance of the distinction between benefit corporations and other entities?

Answering these questions requires an understanding of the importance of business corporations and the role they play in our economy.[2] In particular, it is important to understand the relationship between corporations and shareholders, who own the equity of such entities. These shareholders provide risk capital that drives the world economy. One source estimates that publicly traded equity has a value of $70 trillion, constituting 20 percent of the "value of everything."[3] By way of comparison, the same source estimates $100 trillion in fixed income securities and another $95 trillion in real estate value.

The ability of the corporation to organize capital and apply it to areas of need has long been recognized. A leading treatise from last century described the importance of the modern corporation to industrial society:

> Much of the industrial and commercial development of the nineteenth and twentieth centuries has been made possible by the corporate mechanism. By its use investors may combine their capital and participate in the profits of large- or small-scale business enterprises under a centralized management, with a risk limited to the capital contributed and without peril to their other resources and business. *The amount of capital needed for modern business could hardly have been assembled and combined in any other way* [emphasis added].[4]

The treatise goes on to say that the important elements of the corporate form are the right to hold property and otherwise deal with third parties as a separate person, limited liability for shareholders, continued existence when a shareholder dies or transfers shares, and centralized management and organization.

While this may all seem quite intuitive to a reader who has spent her entire existence in a society where transactions with artificial persons is routine, these corporate characteristics were quite disruptive. Without them, every enterprise that required the equity capital of more than one person would be subject to complex contracting issues, legal uncertainties, and financial risks that would make it extremely difficult to aggregate large amounts of financial capital. One leading English academic has noted the remarkable historical importance of the corporation:

> That the corporation can explain the growth of nations around the world and the failure of others to progress is indicative of its macroeconomic significance. That the different nature of the corporation is associated with social benefits and ills and its changes over time with their emergence and eradication suggests that it is to the corporation that we should turn for the source of both our prosperity and our impoverishment.[5]

THE HISTORY OF THE CORPORATION

A very brief history of the corporation will help to explain why the development of the benefit corporation may be the leading edge of a critical turning point in economic history. Initially, when individuals wanted to engage in business enterprises, they could do so as individuals or, perhaps, as partners, but as such, they were subject to liability for everything that the enterprise did, and, whenever a partner left or a new partner was brought in, new contracts had to be established. This system did not work well for encouraging private enterprise that required large amounts of capital, but in the preindustrial age there was limited need for such capital formation.

Nevertheless, certain business enterprises did require significant financial capital. For example, trading companies required large amounts of risk capital to finance expensive operations abroad. Early English corporations were formed by royal act, creating charters for particular corporations to trade, such as the East India Company.[6] In Anglo-American history, these were followed by legislatively created charters that enabled corporations to collect sufficient capital to fuel the investments that brought about the industrial revolution.[7] Essentially, legislatures were choosing enterprises that they believed needed capital to deliver needed improvements—canals, bridges, railways, banks, and utilities. The enterprises were granted the advantages that came with incorporation. In exchange for these privileges, shareholders committed capital to enterprises that created social good.

Eventually, legislatures came to see the power of corporations to steer capital to productive use as an important public good, without regard to any particular industry. As a result, general incorporation laws were created, allowing any business to be structured as a corporation, without obtaining a charter from the legislature. This also had the salutary effect of depoliticizing incorporation, as access to the legislature was not a prerequisite to forming a corporation.

In 1811, New York became the first state in the United States to establish a general corporation law, but even that statute limited its use to corporations that manufactured textiles, glass, metals, or paint. Not until 1837 did a state adopt a general incorporation statute that could be used for any "lawful, specified purposes." Within these statutes, states initially imposed limits on corporate power, requiring strict statements of purpose, and limiting the right to own other corporations, but eventually these restrictions were lifted, due in part to competition among the states for charters.[8] As corporations grew in size and strength, they became the dominant players in the economy, and incorporation had fully shifted from a privilege to a right.[9] At the same time, the corporation shifted from being a public institution to a private one.[10] As a result, incorporation ceased to be viewed as a "concession" from the state.[11]

Corporations thus evolved as an institution created by government in order to benefit the societies they governed. They allowed investors to aggregate resources into an artificial person, without fear of personal liability. This, in turn, allowed for massive, efficient investment vehicles that create the goods and services that benefit society. As the economy became more complex, there were more instances in which these vehicles were advantageous. The end point of this evolution was general incorporation laws, which allowed any business to use the corporate form, without regard to social benefit.

The Investment Chain

THE STRUCTURE OF THE INVESTMENT CHAIN

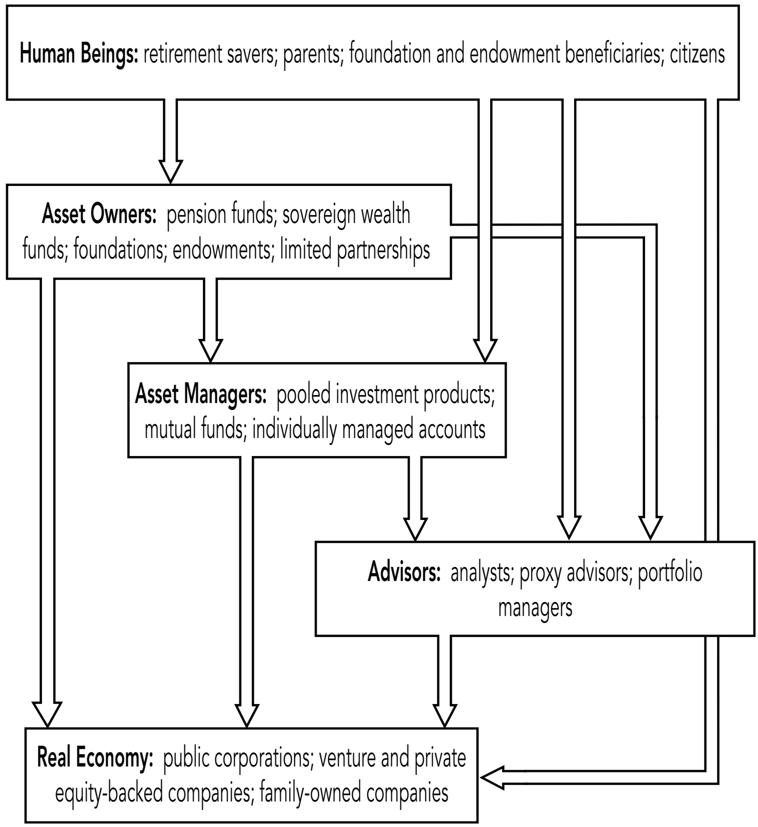
The previous section discussed the history of the corporate form and touched on the rationale for granting it special rights. Corporate forms now dominate global business, with $70 trillion in equity capital invested in public companies, and more in private entities with corporate characteristics.[12] This section examines the context in which that equity is purchased and managed.

The history of the equity investor parallels the history of the corporation itself in many ways. As the economy grew beyond one based on land and agriculture, individuals who accumulated wealth needed ways to invest that wealth in new businesses beyond land ownership—first trade, then industry, and eventually all forms of business activity. Corporate shares provided a method to do this. Investors were able to save, but also to access their wealth by selling their shares. Moreover, they could invest in many different enterprises, without having to take on any of the burdens of managing the enterprises. Shares in corporations provided limited liability, liquidity, and diversification. Investors could fund an enterprise without concern that they could lose more than they invested. Shares of stock in business became a way to save, accumulate, and transfer wealth.

But although savings through stock ownership originated as direct ownership by individuals, the global capital system has become a vast and complex network. For example, in the United States, the value of publicly traded stocks in early 2017 was more than $25.6 trillion, much of which is held by "institutional owners."[13] These institutions include banks, mutual funds, pension funds, sovereign wealth funds, insurance companies, endowments, and foundations.[14] All of these institutions are holding that money on behalf of beneficiaries—insureds, pension beneficiaries, citizens, students, and others. Anne Tucker has pointed out that citizens' participation in the stock market through this system is not voluntary; in the United States, in particular, workers saving for retirement are forced to become "citizen shareholders."[15] Those institutions employ asset managers, who in turn employ consultants and additional managers.

In this system, the directors and officers of corporations are essentially the last line of fiduciaries in a long chain. For example, an individual may buy a mutual fund in a 401(k) plan.[16] That fund may employ asset managers, who in turn rely on outside consultants. Those consultants may recommend the purchase of shares in particular corporations, whose directors and officers finally deploy the assets that underlie the individual's retirement savings into the real economy. As table 1 (on page 14) shows, assets may go through every link in the chain, or skip one or more links, as when a human being invests directly in a public corporation, skipping the layers of asset owners and managers. In contrast, a human being's capital may flow through multiple links, encountering advisers at each level, and perhaps flowing through multiple layers of subadvisers.

TABLE 1: THE INVESTING CHAIN



One author described this as a long chain of delegation in the investment management industry:

> At the top of the investment management industry are the individual investors, those who invest in pension funds and mutual funds or invest through bank savings accounts or insurance contracts. Individual investors are delegating most of their investment decisions to these asset owners. Asset owners then delegate asset management to in-house managers or external funds. These asset managers then delegate the decision on how to allocate capital

> across productive projects to corporate executives. Corporate executives can thus be viewed as the bottom of the investment management industry.[17]

This chain of investment performs many important functions. It allows members of society to protect their savings throughout their own life cycle and to save for housing, for education, and for retirement. It allows society to channel savings into productive investments. Finally, and most importantly for the purposes of this book, this investment channel creates a mechanism whereby asset owners—or their representatives—can oversee and provide stewardship for those assets.[18]

THE ABSENCE OF SOCIETAL RESPONSIBILITIES IN THE INVESTMENT CHAIN

The allocation and use of these assets has tremendous effects on civic life and the environment—the corporate executives at the bottom of the investing chain must make decisions about treatment of workers, supply chains, and carbon emissions. In light of the tremendous amount of capital the financial industry oversees, one might believe that the asset managers along the chain would assume a certain level of societal responsibility. Yet, despite their critical role, these investment professionals often believe that their focus as investment fiduciaries must be on maximizing the return on the companies in the portfolios under their charge, and not on broader societal issues: "The majority of mainstream asset owners hold the view that it is not only appropriate, but required, to focus only on delivering financial returns to clients and beneficiaries."[19]

However, this limited view of investing can be self-defeating for beneficiaries, because the long-term financial cost of the externalities to diversified portfolios may outweigh any benefit gained at particular companies that create those external costs.[20] The chief justice of the Delaware Supreme Court has noted that the voice of the ultimate beneficiaries of institutional funds is not heard in this investing chain: "As a human investor, you turn your capital over every paycheck to funds available among fund families chosen by your employer. Those funds are effectively available to you only when you hit fifty-nine-and-a-half years old. Thus, for decades . . . you do not get to pick the shares of stock bought on your behalf or to express any view about how those shares are voted."[21]

The money managers and other intermediaries ignore the larger concerns that should be of most concern to those whom Chief Justice Strine calls "the human investor," and Professor Tucker the "citizen shareholder." Their focus on returns within the portfolios they manage means that they may ignore the effect that the components of those portfolios have on the system as a whole, including the markets themselves and the world in which the beneficiaries live. This leads to actions that can actually create systemic damage. Thamotheram and Ward compare the damage done by investment management that ignores systemic risk to doctor-induced illness:

> An iatrogenic illness is an illness caused by medication or a physician. By analogy iatrogenic risk is risk caused by the investment industry itself relating to the real world of the end-beneficiary, a world that investment intermediaries, especially the richest and most senior decision-makers, isolate themselves from. In a nutshell, the financial return from investment of, for example, a pension fund may fail to compensate for the costs imposed by environmental and social degradation owing to said investments.[22]

The evolution of this concern, and its interaction with the forces driving the adoption of benefit corporation legislation, are discussed in later chapters. However, this work is only focused on the changes that benefit corporation law effects with respect to the duties of directors. The foregoing discussion suggests that there should be a similar recalibration with respect to the fiduciary duties of asset managers and owners to the ultimate beneficiaries of the assets under management.[23] As with corporations themselves, investment fiduciaries may face problems of collective action and free riding when making decisions that have direct positive effects on investment returns and less direct, but negative, effects on the systems within which those investments operate.[24] Nevertheless, these investment fiduciaries ultimately control immense wealth that may be the only store of societal resources available to address our most pressing concerns: "Philanthropy is a powerful force for good. But the funds contributed by global philanthropy, even when combined with the development or aid budgets of many national governments (themselves facing budget constraints), add up to mere *billions*. The cost of solving problems such as water scarcity, climate change, and lack of access to health care, education, and affordable housing runs into the *trillions* of dollars."[25]

* * *

It is within this complex system of investment that corporations operate. The next chapter examines the ways that corporate law has traditionally protected the interests of shareholders within this system.

Epilogue

I wrote this book because of my belief that the incredible gains of modern civilization that have lifted billions out of poverty are threatened by some of the very elements that brought those gains. The atmosphere's carrying capacity for greenhouse gas is limited; society's carrying capacity for inequality is limited; the financial system's capacity for risk is limited. The monocapitalist system that evolved as a means for allocating economic resources simply does not adequately address these limitations. Continuing to rely on a legal and financial system that answers only to financial capital is untenable.

Attempts to address the threats to our rapidly diminishing stocks of human, social, and natural capital through regulation and repair cannot overcome the overwhelming momentum of an economy run solely on financial principles. The power of financial capital—hundreds of trillions of dollars—is too powerful for governments and nongovernmental organizations to overcome. If we are to address these threats before the system reaches a tragic overload—and if we are to address the inequality that leaves so many in poverty—we must establish an economic system that accounts for the value of all forms of capital.

The global economic system is not the result of a grand design, any more than human beings are. Both evolved haphazardly in response to a constantly changing environment, and both have many elements that just don't work well in the modern world. Our sweet tooth was great on the savanna, when ripe fruit was a rare but critical source of calories and nutrition. Not so much in an era when drugstores, grocery stores, and vending machines are full of cookies, cakes, and candy, as our epidemic of obesity-related illness shows. By the same token, the idea of shareholder primacy might have worked well to combat the agency problem discussed in chapter 2, but as our economic system has globalized and become more interdependent, and as the earth's population has grown, the financial system's "short-term-profit tooth" has become a similar liability, with corporations consuming social and environmental resources at an unsustainable pace.

This book is not simply about corporate law. It is really about public policy and the need to insist that the professionals responsible for managing our stores of financial wealth use tools that manage all of the capitals they impact, and not just the money. This applies to asset allocators, such as pension funds, and to managers, such as mutual fund complexes and their advisers, and finally to the corporate directors and managers that apply that capital in the real economy.

The simplest and most direct way to accomplish that change is to begin at the level of the real economy. Every time a corporation becomes a benefit corporation, all of the assets under its control are reoriented to respect all of the limited resources we share. Such corporations must be mindful of the environment, their workforces, and all the communities they impact. If not, they will have to find a trajectory that takes them there. Such determinations will not be easy; there are many complicated questions about what sort of consumption is sustainable and what any one company's fair share of that consumption is. But being approximately right is better than being precisely wrong, especially when the questions are existential.

The benefit corporation structure relies on shareholders understanding the need to value systems—if they remain in share-value mode, they will not use their power to enforce the new obligations. And while some institutional shareholders are beginning to recognize that value, it is not yet the norm. Although there certainly is increased understanding of the need to manage systems, institutions struggle to find tools to do so, and they worry about free riding and problems of collective action. Benefit corporations are one way to address those concerns. By encouraging corporations in their portfolios to change governance focus, investors can work together to make these changes.

There will certainly be objections. Some will say that corporations can already do well by doing good and that creating this distinction just gives other companies further license to exploit resources. The fact is, they are already doing that. The stronger objection, perhaps, is that there is just no way to make this work. There is too much opportunity for free riding and commons grazing, and there will always be non–benefit corporations that rush in to profit from unsustainable behavior.

I am more optimistic. There are many companies for whom benefit corporation adoption is actually a way to implement their business plan. For these companies, the ability to make authentic commitments to their stakeholders is a way to induce those stakeholders to commit back, so that benefit corporation law represents a new opportunity. As these companies introduce responsible governance into the market, more workers and customers will look for businesses that have stakeholder values in their DNA, and investors can contribute to this pressure. Eventually, there will be a tipping point and the paradigm will shift.

And shift it must. I opened this book with a dedication to the memory of the more than one thousand individuals who died in a garment factory in 2012. Business behavior had signaled that corporations and their shareholders cared more about profits than about the safety of those workers. We can put a stop to these signals by changing the question from "*Why are you a benefit corporation?*" *to "Why aren't you?"*