

**A TALL ORDER: LEGAL FORMS AND
SOCIAL CHANGE
A REVIEW OF MICHAEL B. DORFF,
*BECOMING A PUBLIC BENEFIT
CORPORATION: EXPRESS YOUR VALUES,
ENERGIZE YOUR STAKEHOLDERS, MAKE
THE WORLD A BETTER PLACE (2024)***

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I. INTRODUCTION

Michael Dorff’s *Becoming a Public Benefit Corporation*¹, focuses on two legal forms designed for and now widely available to firms across the United States: the benefit corporation and the titular public benefit corporation. The benefit corporation (BC) came first in time and offers access to a specialized legal form for for-profit corporations that “have a purpose of creating a general public benefit.”² It was developed by B Lab, a nonprofit that also offers to certify companies “that meet high standards of social and environmental performance, accountability, and transparency.”³ State legislatures enacted versions of B Lab’s model benefit corporation, enabling legislation in fairly short order, and the form is now available in most U.S. jurisdictions.

The public benefit corporation (PBC) is Delaware’s version of a specialized legal form in this vein, initially designed by the Council of the Delaware State Bar Association’s Section of Corporation Law and ultimately

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1. MICHAEL B. DORFF, *BECOMING A PUBLIC BENEFIT CORPORATION: EXPRESS YOUR VALUES, ENERGIZE YOUR STAKEHOLDERS, MAKE THE WORLD A BETTER PLACE* (Steve Catalano ed.) (2024).

2. DORFF, *supra* note 1, at 53 (quoting MODEL BENEFIT CORP. LEGIS., § 201(a) (B LAB 2016) (on file with Michael Dorff) [hereinafter MODEL ACT]).

3. *About B Lab*, B LAB, <https://www.bcorporation.net/en-us/movement/about-b-lab/> (last visited Oct. 24, 2024).

adopted by the state legislature in 2013.⁴ This legislation provides a for-profit legal form for firms “intended to produce a public benefit or public benefits and to operate in a responsible and sustainable manner.”⁵ The PBC model’s importance stems from the outsized power of Delaware in the corporate law field. As the home (at least for the moment) of more than two-thirds of Fortune 500 companies,⁶ it is also destined to be the format used by most of the publicly traded firms that adopt a specialized form. Although this population is currently quite small, *Becoming a Public Benefit Corporation* commendably offers one of the first deep treatments of the phenomenon of publicly traded firms adopting these forms.

Dorff’s subtitle offers three reasons for (or perhaps anticipated results of!) adopting one of these specialized forms: expressing your values, energizing your stakeholders, and making the world a better place.⁷ Dorff’s cogent analysis, marked by the deft explanations of a long-time teacher, ably demonstrates how adopting either form can contribute meaningfully to the first two objectives. Making the world a better place, however, is a tall order for a novel legal form.

This short essay will use the book as a frame to briefly explore how well the BC and PBC forms operate to achieve these goals. Dorff emerges from his extensive and well-balanced analysis firmly in the optimistic camp. My own views of the theoretical promise for the impact of these forms and their early results are more mixed.

II. EXPRESSING YOUR VALUES

Dorff’s vision for the BC or PBC as a vehicle to express one’s values connects importantly to the longstanding debate over the proper objectives of standard for-profit corporations.⁸ Shareholder primacy advocates, on the one hand, argue for a shareholder value maximization objective.⁹ When making decisions on behalf of the corporation, directors, and officers of corporations should prioritize increasing value for shareholders over other objectives the corporation might pursue.¹⁰ Shareholder primacists

4. See DORFF, *supra* note 1, at 3-4, 66.

5. DEL. CODE ANN. tit. 8, § 362(a) (2024).

6. *Why Businesses Choose Delaware*, STATE OF DEL., <https://corplaw.delaware.gov/why-businesses-choose-delaware/> (last visited Oct. 24, 2024).

7. See DORFF, *supra* note 1, at 10, 12-13.

8. See *id.* at 30.

9. For an example of the shareholder primacist view from a Delaware jurist, see Leo E. Strine, Jr., *Our Continuing Struggle with the Idea that For-Profit Corporations Seek Profit*, 47 WAKE FOREST L. REV. 135, 136 (2012).

10. See DORFF, *supra* note 1, at 143.

understand that corporations' actions will impact their workers, lenders, customers, and communities. In their view, however, external regulation can better address the highly contested policy questions raised by their competing interests. Labor, banking, bankruptcy, consumer protection, environmental and zoning laws, to name just a few, are better venues to sort all that out. Corporate actors should focus on maximizing value for shareholders.

Stakeholder theorists, on the other hand, argue for bringing this more complex calculus into the boardroom and the executive suite.¹¹ Directors and officers making decisions on behalf of their corporations should consider and seek to promote the interests of all corporate stakeholders. Alongside shareholders, these stakeholders include employees, creditors, suppliers, consumers, and even the local community, environment, and society at large. While recognizing that any given decision will not likely promote the interests of all these constituencies (or all of them equally), stakeholder theorists believe corporate leaders should engage these questions with their best efforts rather than prioritize shareholder interests consistently.

As Dorff concedes, corporate legislation (even in Delaware) is remarkably silent on the question of corporate objectives.¹² Cases on the topic are also few and far between. Like most commentators on the subject, he begins with *Dodge v. Ford Motor Co.*,¹³ a case in which Henry Ford attempted to justify both reduced dividends and operational expansion on humanitarian, rather than profit-maximizing, grounds.¹⁴ Ford prevailed as to the latter, but the Michigan Supreme Court that decided the case in 1919 rejected his arguments against dividends. Its opinion included the sweeping statement that “[a] business corporation is organized and carried on primarily for the profit of the stockholders,”¹⁵ now ubiquitously quoted in corporate law textbooks and by shareholder primacists.¹⁶

Delaware cases addressing the point are a bit more recent and, given their provenance, more relevant. As Dorff relates, seminal takeover cases of the 1980s provide support to both sides of the corporate objectives debate. *Unocal* appeared to embrace the stakeholder view that directors might consider the interests of other constituencies in making decisions.¹⁷ But *Revlon* instructs them to do so only when in service of ultimate shareholder

11. For an example of the stakeholder theory view from one of its most ardent advocates, see generally LYNN STOUT, *THE SHAREHOLDER VALUE MYTH* (2012).

12. See DORFF, *supra* note 1, at 20.

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

14. See DORFF, *supra* note 1, at 20-23.

15. *Dodge*, 170 N.W. at 684.

16. DORFF, *supra* note 1, at 21-22.

17. See *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985), *modified by Coster v. UIP Cos.*, 383 A.3d 656 (Del. 2023).

interests, at least in an endgame scenario where directors' actions are the last clear chance for shareholders to capture value.¹⁸ The Delaware Chancery Court's *eBay v. Craigslist* case provides another excellent quote. "The [for-profit] corporate form . . . is not an appropriate vehicle for purely philanthropic ends, at least not when there are other stockholders interested in realizing a return on their investment."¹⁹

Like Dorff, my view is that these cases, together with the business judgment rule, leave directors with extraordinary discretion. The breadth of this discretion means there is little risk that pursuing one's values, in the event they conflict with shareholder value maximization, will result in litigation at all, let alone successful litigation. Culturally, though, within large for-profit firms and among their leaders, shareholder primacy has largely prevailed. Market forces, from incentive-based executive compensation linked to share price to the rise of private equity, align to reinforce it. I believe a for-profit corporation can easily be a place to express one's values if it stays small.²⁰ For firms operating at a mass scale – or even firms whose desire to reach that scale, though, Dorff is right. It will be practically difficult to buck shareholder primacy in service of consistently prioritizing social or environmental goals.

The BC and PBC forms offer an alternative, deliberately built on a foundation of value expression. *Becoming a Public Benefit Corporation* nicely differentiates the routes by which each form does so, starting with their approach to defining corporate purpose. As noted at the outset, benefit corporations "shall have a purpose of creating a general public benefit."²¹ General public benefit is itself defined as "a material positive impact on society and the environment, taken as a whole, from the business and operations of a benefit corporation as reported against a third-party standard."²² Simply buying into this general statement is a fairly tepid way to express one's values, but the BC form also allows firms to do more. They may also adopt a specific public benefit, and the list of possibilities is long and varied. A firm might commit to "promoting economic opportunity . . . beyond the creation of jobs in the normal course of business" or to "promot[ing] the arts, sciences, or advancement of knowledge."²³ There's even a catchall for "conferring any other particular benefit on society or the

18. See *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986).

19. *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010).

20. See DANA BRAKMAN REISER & STEVEN A. DEAN, *SOCIAL ENTERPRISE LAW: TRUST, PUBLIC BENEFIT, AND CAPITAL MARKETS* 12-13 (2017).

21. DORFF, *supra* note 1, at 53 (QUOTING MODEL ACT § 201(a)).

22. *Id.* (quoting MODEL ACT, § 102).

23. *Id.* at 55 (quoting MODEL ACT, § 102).

environment.”²⁴ This is a clear opportunity to stake out and express one’s values afforded by the benefit corporation form.

The Delaware PBC, as Dorff points out, provides not only an opportunity to adopt a specific public benefit, but a mandate.²⁵ In its certificate of incorporation, every PBC must “identify within its statement of business or purpose . . . one or more specific public benefits to be promoted by the corporation.”²⁶ Again, the definition is capacious.

‘Public benefit’ means a positive effect (or reduction of negative effects) on 1 or more categories of persons, entities, communities or interests (other than stockholders in their capacities as stockholders) including, but not limited to, effects of an artistic, charitable, cultural, economic, educational, environmental, literary, medical, religious, scientific or technological nature.²⁷

Firms seeking to express their values through their corporate form will be well served by the PBC, perhaps even slightly more so than under the BC’s optional approach.

The opportunity for expression is there, though how salient the adoption of one of these forms is and for which audiences remains to be seen. A firm that wants to express its values will find opportunities to do so in the BC and PBC. They might, of course, do so elsewhere too. As these commitments are made in each case through language in the certificate, it is important to consider, as Dorff does, whether a standard corporation might also make similar commitments in its certificate.²⁸ In my view, they certainly can try and would likely face little legal opposition were they to do so.

The prospects for enforcement of a social commitment contained in a standard for-profit corporate certificate, however, are uncertain. Dorff and I agree that the enforceability of such a certificate provision has not yet been tested, and he suggests the BC and PBC provide a safer course.²⁹ I am less sure. The route to enforcing a social commitment contained in a standard for-profit corporate certificate would seem thorny indeed. But, as Dorff rightly concludes, the BC and PBC forms also “do not provide adequate enforcement tools to endure that these entities actively pursue their social goals.”³⁰

24. *Id.* at 55 (quoting MODEL ACT, § 102).

25. *Id.* at 67-69.

26. DEL. CODE ANN. tit. 8, § 362(a)(1) (2024).

27. *Id.* §362(b).

28. *See* DORFF, *supra* note 1, at 124.

29. *See id.* at 124-26.

30. *Id.* at 124.

Firms also make social claims and commitments outside their organic documents all the time and in all kinds of ways. From product branding to carbon reduction targets to corporate social responsibility (CSR) or environmental, social and governance (ESG) webpages and investor reports, there is hardly a corner of corporate operations where addressing firm values is off-limits. Whether or not there are other routes to express a firm's values, though, the BC and PBC forms offer another and quite structured opportunity to do so. And they place these commitments at the heart of a firm's organizing documents. They surely provide a greater venue for expressing values (other than profit) than a standard for-profit corporation organized to "pursue any lawful purpose," run by leaders practically committed to a goal of maximizing shareholder value.

III. ENERGIZING YOUR STAKEHOLDERS

The BC and PBC forms can also help energize stakeholders, but not by giving them enforcement powers or a mandatory role in firm governance. As Dorff candidly and repeatedly acknowledges, despite offering firms a range of opportunities to express their social and environmental commitments, the BC and PBC forms offer little in the way of enforcing them.³¹ Derivative litigation remedies will be hampered by the application of the business judgment rule and the frequent statutory or practical unavailability of damages in the BC context.³² What's more, only shareholders are empowered to sue, while members of other constituencies would be much more likely claimants to challenge a BC or PBC's failure to live up to its social or environmental commitments.³³

As currently framed, the BC and PBC disclosure regimes provide no more promising an avenue for enforcement. Both statutes require reporting on the public benefits they provide.³⁴ For BCs, these reports must be made public,³⁵ while in the PBC, they need only be provided to shareholders.³⁶ In both cases, though, narrative statements will suffice, and there is no required structure for these disclosures that would make them more comprehensible and comparable. The BC form requires firms to adopt disclosures, called "benefit reports," to assess their performance with respect to an independent

31. *Id.* at 125.

32. *Id.* at 107-09.

33. *Id.* at 105-07.

34. *See* DORFF, *supra* note 1, at 109.

35. *See id.* at 60 (quoting MODEL ACT, § 401(a)).

36. *See* DEL. CODE. ANN. tit. 8 § 366 (2024).

third-party standard.³⁷ But the firm itself applies that standard; no external review is required. Moreover, only a single state's BC statute (Minnesota's) provides penalties for noncompliance with the benefit report requirement.³⁸ Unsurprisingly, in the remaining jurisdictions, including Delaware, where no penalties apply, early studies show dismal compliance rates.³⁹ I join Dorff's praise for Minnesota's inclusion of penalties and his admonition that other jurisdictions should follow suit.⁴⁰ For now, BC and PBC disclosure provisions are weak tea indeed.

For those few large, publicly traded BC or PBC firms to which they would apply, even securities fraud claims prove inapt to discipline (and therefore deter) faithless claims of public benefit. Dorff's sustained discussion of how securities law would intersect with BC or PBC law for publicly traded firms taking these forms is damning,⁴¹ and right on target. Under current jurisprudence, securities law is not likely to bolster enforcement of BC or PBC commitments to public benefit.

While good enforcement tools are lacking in BC and PBC statutes, as Dorff opines throughout the book, the legal forms they provide "are good reinforcement tools."⁴² I wholeheartedly agree. If an entrepreneur, a growing business, or even a publicly traded company is looking for a way to operationalize their firm's social commitments, the BC and PBC forms provide helpful mechanisms to keep them on track.

BCs and PBCs can use these tools as frameworks to engage stakeholders. As noted in Part II, both forms offer firms the opportunity to designate a specific public benefit to which their firms will direct their efforts. Articulating this position requires at least some minimal engagement around the values the firm holds dear, in which various stakeholders may take part.

But the forms do not stop there. The disclosure requirements to which BCs and PBCs are nominally subject create another venue to energize stakeholders. BCs and PBCs dedicated to stakeholder engagement can request their input in crafting disclosures and their feedback on improvements in response to the reports they issue.⁴³ Benefit corporation statutes even envision creating specific organizational roles to guide the

37. DORFF, *supra* note 1, at 60-62.

38. MINN. STAT. § 304A.301(5) (2024).

39. *See* DORFF, *supra* note 1, at 112.

40. *Id.*

41. *See* DORFF, *supra* note 1, at 204-06 (relying in part on Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 SEATTLE U. L. REV. 611, 641-45 (2017)).

42. *Id.* at 5

43. *See id.* at 111.

development of disclosures. Those filling such roles could easily be tasked to solicit stakeholder input and reactions; doing so would be a natural and effective way to accurately self-assess.

Dorff's work also shows how the modified fiduciary duties created by BC and PBC legislation provide venues for stakeholder engagement. Both statutes speak directly to directors' fiduciary obligations and define them in ways that diverge from definitions of fiduciary duty in standard for-profit corporate statutes.⁴⁴ Benefit corporation directors are instructed to "consider" the interests of a broad range of stakeholders: employees, customers, shareholders, communities . . . and the list goes on.⁴⁵ When combined with the overall requirement of a purpose to create a material positive impact on society and the environment, in Dorff's view, this essentially requires directors to balance these various interests over time. Consistently favoring one constituency – especially shareholders – over all others would "raise a red flag,"⁴⁶ but good faith consideration and balancing would suffice.

PBC legislation speaks expressly in terms of balancing.

The board of directors shall manage or direct the business and affairs of the public benefit corporation in a manner that balances the pecuniary interests of the stockholders, the best interests of those materially affected by the corporation's conduct, and the specific public benefit or public benefits identified in its certificate of incorporation.⁴⁷

Becoming a Public Benefit Corporation explores three strategies actual BC and PBC boards might adopt to engage in this kind of balancing.⁴⁸ They could set minimum thresholds for profit and social purpose, embracing the type of social purpose to which they would commit, adopting a metric to assess it, and holding themselves accountable for achieving a minimum level of success, much in the way firms might set earnings or profit goals.⁴⁹ They might alternatively establish a ratio at which they were willing to trade off profit for purpose or vice versa.⁵⁰ Dorff recognizes the measurement and commensurability challenges inherent in this approach, but at least some firms pursuing some purposes could set such a ratio and track and pursue it over time.⁵¹ A third option would be to commit to maximizing profit or

44. *See id.* at 56-57.

45. DORFF, *supra* note 1, at 56 (quoting MODEL ACT, § 301(a)(2) (B LAB 2016) (on file with Michael Dorff)).

46. DORFF, *supra* note 1, at 58.

47. DEL. CODE ANN. tit. 8, § 365(a) (2024).

48. *See* DORFF, *supra* note 1, at 175-78.

49. *See id.* at 182-84.

50. *Id.* at 185-86.

51. *Id.*

purpose or both but against identified constraints.⁵² None of these systems are perfect, but this kind of deep engagement with the challenging task of how to operationalize BC and PBC fiduciary duty is both admirable and compelling.

A remaining weakness of the BC and PBC forms, however, and one Dorff recognizes, is their lack of any expectation that non-shareholder stakeholders participate in firm governance.⁵³ But the book's careful work on operationalizing balancing reveals how the BC and PBC mandates for directors to engage in stakeholder consideration or balancing their interests may prod them to engage with constituencies beyond shareholders more deeply. To develop the kinds of metrics required to implement minimum thresholds, tradeoff ratios or maximization against constraints, directors would benefit from consulting with employees, consumers, and suppliers, just as directors of traditional corporations find it valuable to engage with shareholders. While Dorff quite reasonably expects this type of careful implementation of expanded directorial duties only from "earnest" BC and PBC directors,⁵⁴ it is certainly the kind of effort likely to energize the stakeholder groups with whom they consult.

Firms that opt into private B Corp certification obtain even more tools for engaging stakeholders, it must be said, and neither becoming a BC nor a PBC requires B Corp certification.⁵⁵ BCs must only self-assess against an independent standard, of which B Lab's impact assessment is but one possibility. The PBC statute makes an external standard for self-assessment entirely optional. But for firms, founders and leaders that buy into the model of blending profit and purpose, BC and PBC forms offer many ways to engage stakeholders in operationalizing that model.

A roadmap for living your values is not quite the same as one to galvanize your stakeholders, but extensions and operationalizations of the kind Dorff envisions are made possible by the BC and PBC forms in helpful and accessible ways. As far as it goes, this assistance is no doubt a welcome development.

IV. MAKING THE WORLD A BETTER PLACE

The final claim *Becoming a Public Benefit Corporation* advances targets a loftier goal: making the world a better place.⁵⁶ This idea, of course, can be

52. *Id.* at 186-89.

53. See *id.* at 106-07.

54. *Id.* at 181.

55. *Id.* at 113-14.

56. *Id.* at xi.

pitched narrowly or broadly. The narrow conception takes the individual entrepreneur as its target, which Dorff most often appears to do. At this level, the argument is persuasive but small stakes. It is easy to accept as far as it goes, but *Becoming a Public Benefit Corporation* seems to want to go further. Dorff's broader claim about "making the world a better place" looks beyond the impact of the BC and PBC forms to enable a single firm's ability to deliver on its prosocial inclinations and contemplates these forms bettering the world by supporting the growth of such firms as a category.⁵⁷ Here, I see where Dorff is leading but am not yet persuaded to follow.

To be persuaded that any given entrepreneur's adoption of the BC or PBC form will make the world a better place, one must accept that this choice of form will help adopting firms commit to a public benefit orientation and to keep their commitments over time. This logic takes as given that all public benefits to which firms might commit are socially beneficial, or the aggregate of such commitments will be beneficial over time. While I am quite sure there are social entrepreneurs with visions I might not admire – or even deplore – I share Dorff's preference for a big tent definition of public benefit.⁵⁸ A corporate statute cannot hope to conclusively resolve the dilemma of "what is good" and would actively do harm should it try. Assuming any public benefit commitment honored moves the world betterment ball forward, BC and PBC forms surely advance this goal by providing mechanisms to express and operationalize this orientation.

For the BC and PBC forms to assist in the proliferation of firms seeking to better the world, they will need to resolve a fundamental tension. Legal reforms creating identifiers for firms pursuing a blended social and profit-making vision can support their growth in at least two ways. They can design the legal form or certification to bolster trust in the organizations that adopt or qualify for it, helping to tamp down concerns about disingenuous social commitments and purpose washing. They can also design identifiers with an eye to enhancing adopting firms' access to capital, enabling them to scale.

The BC and PBC, like most other attempts to create these identifiers around the world, try to do a little of both. And like these attempts, the mix they seize upon ultimately has to weigh in one direction or the other.⁵⁹ BCs and PBCs provide a fairly weak signal of trustworthiness, requiring buy-in to a broad social purpose idea but offering little to enforce that commitment. This signal is broadcast alongside a framework designed to appeal to private capital. The BC and PBC statutes, their advocates, and *Becoming a Public*

57. See generally, DORFF, *supra* note 1.

58. See BRAKMAN REISER & DEAN, *supra* note 20, at 34.

59. See Dana Brakman Reiser, *Trust and Scale in Social Enterprise Law*, STAN. SOC. INNOVATION REV., Spring 2024, at 39, 40, 44-45.

Benefit Corporation aspire to attract the largest capital markets to finance social enterprise firms at scale.⁶⁰

Trust too, though, is a key piece to executing a blended profit-making and social vision. Indeed, the ease of reassurance through non-legal methods may explain the growth of BCs and PBCs primarily among small and medium sized businesses and true believers. The recent uptake by some larger firms highlights the risks of purpose-washing to degrade trust.⁶¹ After all, what use is scale in making the world a better place if scaling firms can be expected to skirt or cheat on their social commitments?⁶² Legal reformers trying to boost the social economy have a choice of fuel mixtures available to them. The BC and PBC represent a preference for scale, but other legal forms and certifications in a host of non-U.S. jurisdictions instead center trust.⁶³

Legal identifiers that emphasize reassuring employees, consumers, and communities that the firms that adopt them can be trusted to serve their social ends often impose partial limits on distributions to investors. The United Kingdom's community interest company (CIC)⁶⁴ and social cooperatives in a host of European countries lock assets contributed to adopting firms into pursuing social purpose, blocking distributions of residual assets altogether.⁶⁵ The CIC also caps dividends to investors, as do Danish registered social enterprises and social cooperatives in Belgium.⁶⁶ Romanian social enterprises and Australian certified social traders face reinvestment mandates, requiring a fixed percentage of profits to be devoted to the social purposes qualifying firms identify.⁶⁷

Each of these non-U.S. legal identifiers focuses on signaling trustworthiness by limiting distributions, but with predictable effects on

60. See DORFF, *supra* note 1, at 154-67.

61. *Id.* at 100-01.

62. See *id.* at 114-15.

63. See Dana Brakman Reiser & Steven A. Dean, *The Social Enterprise: A New Form of the Business Enterprise?* in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, at 14-23 (Dana Brakman Reiser et al. eds., 2023).

64. Nina Boeger, *Social Enterprises in the United Kingdom*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW *supra* note 63, at 577, 585.

65. See *id.* at 586; Andrea Fusaro, *Social Enterprises in Italy*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW *supra* note 63, at 325, 335.

66. See Boeger, *supra* note 64, at 586; Sofie Cools & Maxime Verheyden, *Social Enterprise in Belgium*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, *supra* note 64, at 81, 98; Karsten Engsig Sørensen, *Social Enterprises in Denmark*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, *supra* note 63, at 203, 215, 217.

67. See Victoria Schnure Baumfield, *Social Enterprises in Australia*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, *supra* note 63, at 57, 73; Lucian Bercea, *Social Enterprises in Romania*, in SOCIAL ENTERPRISE LAW: A MULTIJURISDICTIONAL COMPARATIVE REVIEW, *supra* note 63, at 457, 463.

scale. This tool to enhance trust will simultaneously dampen adopting firms' appeal to private investors – at least for “profit-only” investors who comprise the deepest pool of private capital.⁶⁸ Favoring private capital formation and the scale it can enable, the BC and PBC understandably reject the idea of cementing trust by limiting distributions out of hand.

This preference for attracting private capital is ambitious and exciting and perhaps culturally very American, but it is not the only way to resolve the tension between trust and scale. Some non-U.S. legal forms and certifications that limit distributions also qualify adopting entities for public incentives.⁶⁹ Procurement preferences, tax benefits, and direct funding are virtually non-existent for BCs and PBCs, as well as innovations in many other jurisdictions that follow their approach favoring scale. Where limited distributions are in place, jurisdictions are beginning to experiment with offering these public incentives, another way to enable capital formation.

V. A WORTHY GOAL

The benefit corporation and public benefit corporation forms are doing useful work for firms, founders, and leaders looking to operationalize their social and environmental commitments. They provide a means to express these values in a firm's seminal structural document. They also provide useful tools for engaging stakeholders in living those values. *Becoming a Public Benefit Corporation* provides a clear guide to how the forms work and how to harness them for this useful “reinforcement” function.⁷⁰ To the extent making such firms more effective in achieving their aims when their leaders and owners are committed to them will better the world, adopting either form can add value.

As to BC and PBC forms' capacity to make the world a better place by promoting such firms as a category, I remain uncertain. As experiments in the U.S. and abroad play out, new data will shed light on the impact of various legal innovations designed to promote businesses that pursue social and environmental purposes alongside profit. Legal forms that emphasize scale, like the BC and PBC do, may drive more social and environmental improvement. Or a greater emphasis on trust may be needed for legal forms to make firms with a blended vision effective and impactful. Both may work, or neither. One approach may flourish in some economic and political environments, the other in others. And the challenge in measuring their

68. See DORFF, *supra* note 1, at 156.

69. See Brakman Reiser, *supra* note 59, at 44-45.

70. DORFF, *supra* note 1, at 125-26.

progress cannot be understated.⁷¹ Like Dorff, I applaud the legal reformers aspiring to try and the firms “daring” enough to participate in their experiments.⁷² Making the world a better place through legal reform is a tall order but also an indisputably worthy goal.

71. *See id.* at 177-79; BRAKMAN REISER & DEAN, *supra* note 20, at 124-41.

72. *See* DORFF, *supra* note 1, at 6.