

CHANGING CORPORATE PURPOSE: LAW, MANAGERS, AND THE B CORP

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I. INTRODUCTION

The benefit corporation marks a genuine innovation in American law, importing into the core of corporation law a new mandate that business corporations that choose to organize as benefit corporations be run to produce benefits for constituencies beyond shareholders.¹ At the same time, it's a puzzling innovation because it raises questions about the commands of the law, the actions of managers, and the exact relationship between the two.

As Michael Dorff shows us in his excellent new book, at the core of the benefit corporation is the notion that a corporation should be oriented towards a “corporate purpose” beyond just producing economic value for shareholders.² The benefit corporation promises to accomplish this by changing the law. As the story goes, whereas once the law's dictates compelled managers to prioritize “shareholder value” above all, now it will not merely allow but require managers of benefit corporations to pursue some other benefit as well, beyond shareholders' narrow economic interests. (This summary skips over some details.) This new legal form is an attempt to escape both legal and business imperatives that push for-profit corporations toward serving only shareholders.³ Before we celebrate this new departure, however, we should understand how we arrived here in the first place.

II. THE LAW AND CORPORATE PURPOSE

Let's begin with the law. For almost two centuries, the mandate of corporation law has been clear: business corporations should be run to benefit

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

2. *See id.* at 53.

3. One may question whether the benefit corporation is an entirely new form, but if we accept that until now the law has put shareholder benefit above all other goals then it seems the benefit corporation really is a sharp departure from what has gone before. *See id.* at 56-57.

shareholders. Some scholars would disagree, but the evidence is overwhelming that the modern business corporation has always been required by law to serve shareholders. We have to look far back in our history to find a period where the law said anything else. Well before the Civil War, it is true, a corporation would receive a charter from the state only if it promised to provide some public benefit such as building a turnpike or operating a bank.⁴ Even then, though, a fair number of corporations were chartered with no more detailed purpose than pursuing economic growth,⁵ and the requirement that corporations have a public purpose soon disappeared as access to corporate charters became democratized.⁶ While the term “shareholder primacy” was only invented later, it is clear that by the late nineteenth century the proposition that corporations were to be run to benefit shareholders—in other words, it was shareholders’ interests that were to guide managers—was widely accepted, with courts taking this as a given and thus usually finding it unnecessary to explicitly state the rule. Evidence for this abounds. Corporate fiduciary duties, already developed by the 1830s, are rooted in the idea that a corporate board was akin to a trustee with shareholders as the beneficiaries of the trust.⁷ In one 1892 case, the Michigan Supreme Court stated that “the ultimate object of every ordinary trading corporation is the pecuniary gain of its stockholders,”⁸ while two decades later, New York’s highest court refused to allow a corporation to practice a profession because a corporation’s sole guide was “the sordid purpose to earn money for the stockholders.”⁹ We sometimes pin this idea on the famous case of *Dodge v. Ford Motor Co.*, where the Michigan Supreme Court declared that the powers of a corporation’s directors are to be used “for the

4. JOSEPH ANGELL & SAMUEL AMES, A TREATISE ON THE LAW OF PRIVATE CORPORATIONS AGGREGATE 7 (1832) (“[P]ublic benefit is deemed a sufficient consideration of a grant of corporate privileges . . .”).

5. Eric Hilt has noted that while many corporations in the early republic produced infrastructure such as turnpikes or banks, others were simply manufacturing corporations. Eric Hilt, *Early American Corporations and the Public Purpose in THE ORIGINS OF COMPANY LAW: METHODS AND APPROACHES* 161, 170 (Victoria Barnes & Jonathan Hardman, eds., 2024); see also D. Gordon Smith, *The Shareholder Primacy Norm*, 23 J. CORP. L. 277, 295 (1998) (In the early republic, business corporations were valued “[M]erely because they developed business”).

6. See Elizabeth Pollman, *The History and Revival of the Corporate Purpose Clause*, 99 TEX. L. REV. 1423, 1435-41 (2021).

7. See, e.g., *Robinson v. Smith*, 3 Paige Ch. 222, 232 (N.Y. Ch. 1832) (“[D]irectors are the trustees or managing partners, and the stockholders are the cestuis que trust”); (quoted in Robert T. Miller, *Delaware Law Requires Directors to Manage the Corporation for the Benefit of Stockholders and the Absurdity of Denying It*, 48 J. CORP. L. 32, 43 (2023)).

8. *Miner v. Belle Isle Ice Co.*, 53 N.W. 218, 224 (Mich. 1892) (cited in Smith, *supra* note 5, at 314).

9. *In re Co-operative Law Co.*, 92 N.E. 15, 16-17 (N.Y. 1909).

profit of the stockholders,”¹⁰ but *Dodge* wasn’t really an innovative case. It seems to have put into pithy language a notion already widely accepted, and there is little indication that observers at the time thought *Dodge* broke new ground.¹¹

During the rest of the twentieth century, the law continued to be that corporations were to be run to benefit shareholders. The rare exceptions prove the rule. The principle bent very slightly in the 1950s, as shown by the New Jersey Supreme Court’s decision in *A.P. Smith Mfg Co. v. Barlow*, which allowed a corporation to make charitable donations without immediate shareholder benefit.¹² But even there, the court emphasized the long-term benefit that would redound to the corporation from its charitable giving and carefully limited how much corporations could give.¹³ The next time the issue came up in a significant way was during the 1980s when boards adopted anti-takeover measures. There, Delaware courts briefly flirted with allowing boards to make decisions aimed at protecting non-shareholders, notably in its *Unocal* decision, but quickly backtracked in its *Revlon* decision, which said such decisions were only allowable when they were tied to “shareholder benefit.”¹⁴ In the 1990s, many states adopted so-called “other constituency statutes,” which aimed to provide legal cover for boards rebuffing takeovers, but these had little effect.¹⁵

While shareholder primacy has continued as mainly a background assumption in the law, this is likely due to the broad shield provided by the business judgment rule, which protects many decisions from real judicial scrutiny, as well as the fact that no well-advised board should ever admit its decisions were not intended to benefit shareholders. In the rare case when a board’s actions admit no explanation except that they aimed to benefit non-shareholders over shareholders, however, courts, most notably Delaware’s courts, have stepped in to reiterate that the board must unswervingly serve

10. *Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919).

11. It is, for instance, simply incorporated with little comment into a standard treatise published a few years later. HENRY W. BALLANTINE, *BALLANTINE ON CORPORATIONS* 205 (1927); on the case’s limited impact for much of the century, see Robert J. Rhee, *The Neoliberal Corporate Purpose of Dodge v. Ford and Shareholder Primacy: A Historical Context 1919-2019*, 28 *STAN. J. LAW, BUS. & FIN.*, 202, 216-21 (2023).

12. *A.P. Smith Mfg. Co. v. Barlow*, 98 A.2d 581, 586-87 (N.J. 1956) (upholding charitable donations but noting statutory limits on size of donation).

13. *Id.*

14. *Revlon* was a response to the court’s language in *Unocal*, where it the court said a board could weigh a potential takeover’s “[E]ffect on the corporate enterprise . . . [including] the impact on ‘constituencies’ other than shareholders (i.e., creditors, customers, employees, and perhaps the community generally).” *Revlon, Inc. v. MacAndrews & Forbes Holdings, Inc.*, 506 A.2d 173, 182 (Del. 1986); *Unocal Corp. v. Mesa Petroleum Co.*, 493 A.2d 946, 955 (Del. 1985).

15. DORFF, *supra* note 1, at 29.

shareholder interests.¹⁶ Provocative arguments have been made that the law is otherwise, and one can question whether that is what the law should be, but there is no rebutting the fact that, in some form, it is a longstanding *legal* presumption that boards should run business corporations to benefit shareholders.¹⁷ (A prudent lawyer would insert qualifiers like “attempt” and “long-term,” but let’s put that aside¹⁸).

III. MANAGERIAL VIEWS OF CORPORATE PURPOSE

Were we only concerned with legal commands that would end our discussion of corporate purpose and its history. However, lawyers are not the only ones who have wrestled with ideas of corporate purpose and the question of how corporations should be run. Corporate managers and corporations themselves have also, over the past century, made frequent pronouncements about the purpose of corporations and who they are intended to benefit. Surprisingly, for much of this time, the answers managers gave have been very different than those provided by their lawyers.

From the turn of the century until at least the 1980s, when asked, surveyed, or making public pronouncements about how the corporation should be run, those responsible for managing corporations would quite often have replied that their role was not simply to serve shareholders but to run their corporations for the benefit of the wider community. This is one of the strangest aspects of our discourse on corporate purpose, how for decades it was bifurcated between legal and managerial answers to the question, and not until the 1980s was there any great concern about the dissonance between the two approaches. That lawyers gave one answer and managers another was occasionally noted in academic debate but never made any great impact on managerial culture.

The expansive, managerial view of corporate purpose coincided with, and was likely produced by, the growth of truly giant business corporations in the United States, beginning with the railroads in the 1870s.¹⁹ Wielding

16. *E.g.*, *eBay Domestic Holdings v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010) (directors have the duty to “[P]romote the value of the corporation for the benefit of its stockholders”); *see also* *McRitchie v. Zuckerberg*, 315 A.3d 518, 527 (Del. Ch. 2024) (stating that “[D]irectors of a corporation owe duties to the stockholders as investors in that corporation” and rejecting shareholder argument to the contrary).

17. *E.g.*, Lynn Stout, *Why We Should Stop Teaching Dodge v. Ford*, 3 VA. L. & BUS. REV. 163, 173 (2008).

18. *See* JAMES COX & THOMAS HAZEN, *BUSINESS ORGANIZATIONS* Law § 10.1 (5th ed. 2020).

19. One could date this back to the 1850s, but widespread public hostility to giant firms seems to have developed a bit later. *See generally* RICHARD WHITE, *RAILROADED: THE TRANSCONTINENTALS AND THE MAKING OF MODERN AMERICA* (2011).

unprecedented economic power, they soon faced popular protests and political-legal challenges, both actual (Sherman Antitrust Act, Interstate Commerce Act) and potential (Federal corporate chartering).²⁰ In response, a few corporations began to consciously propagate new public images, intended to *rebut* the notion that they pursued only “sordid profits” for their shareholders.²¹ Different corporations developed different ways to present themselves publicly, but tying these different approaches together was the insistence that they were actively serving the public and had taken on public responsibilities. AT&T, for instance, which held a near-monopoly on telephone service, initially emphasized the service it provided through iconic images of employees such as a lineman braving the elements or female operators linking far-flung customers, suggesting that the corporation ultimately served its customers and not merely its shareholders.²² In the 1920s, it publicized its shareholder base, which was then the largest in the nation, but chiefly to show that its shareholding was so widespread that there was no difference between the corporation’s interests and the nation’s.²³ According to the historian Roland Marchand, painting itself as an “investment democracy” was a way for AT&T to challenge those who claimed, “that the corporation served any nucleus of power distinct from the public at large.”²⁴ A somewhat different approach was taken by General Motors, though again in the attempt to fend off the image of the soulless corporation monomaniacally pursuing profit—its institutional advertising described GM as a “family.”²⁵

Pronouncements by management soon echoed this institutional messaging. Assertions that corporate leadership was a kind of “trusteeship” began to appear in the 1920s, as corporate managers started to “define themselves as public trustees” and promote their firms as “institutions” comparable to government, churches, or universities—institutions, it should go without saying, that fulfilled public purposes and were not driven by profit maximization.²⁶ By the end of the decade, GE president Gerald Swope famously stated that the “old notion that the heads of business are paid attorneys of stockholders, to exploit labor and the public in stockholders’

20. RICHARD LANGLOIS, *THE CORPORATION AND THE TWENTIETH CENTURY: THE HISTORY OF AMERICAN BUSINESS ENTERPRISE* 14-20, 35-39 (2023).

21. See ROLAND MARCHAND, *CREATING THE CORPORATE SOUL: THE RISE OF PUBLIC RELATIONS AND CORPORATE IMAGERY IN AMERICAN BIG BUSINESS* 26-35 (1998).

22. *Id.* at 67-69.

23. *Id.* at 76-77.

24. *Id.* at 74-77.

25. *Id.* at 136, 138, 140.

26. *Id.* at 164.

interest is gone.”²⁷ As the historian Kyle Edward Williams puts it, a new theory of corporate management was being put forward in which “the manager was not in any significant sense an agent for shareholders.”²⁸

Such claims were, of course, self-serving, made by men who were still running their firms to make a profit, but they were surprisingly common over the next sixty years. By mid-century, they appeared to reflect the way many managers actually envisioned their roles. Following World War II, the view that corporate leaders should run their corporations not merely for the benefit of shareholders but for society (however defined) became widespread. One well-known 1952 social science study of corporate leaders concluded that their dominant strain of thinking was one in which stockholders were seen as “on a par with other groups that have stakes in, and just claims on, the organization . . .” and that managers’ roles were “mediating among the groups dependent on the enterprise, satisfying just claims and preserving the continuity of the organization.”²⁹ (To be clear, this was the dominant view but not universal.) Similar views were being taught in business schools, including the most prestigious one; students at the Harvard Business School sat through classes in which they were instructed that managers were now statesmen with an “obligation not to represent the interests of either owners or workers—much less of themselves—but to see that the corporation contributed to the general welfare.”³⁰ Whether or not corporations were really being run by corporate statesmen who viewed their task as acting as trustees for a social institution is a question that cannot be answered here, but that is apparently how many managers saw their role.³¹

Only rarely, it seems, was it noticed that corporate managers’ views of corporate purpose were at odds with what the law said. It came up in the 1930s in A. A. Berle and Merrick Dodd’s famous debate in the *Harvard Law*

27. KYLE EDWARD WILLIAMS, TAMING THE OCTOPUS: THE LONG BATTLE FOR THE SOUL OF THE CORPORATION 14 (2024) (quoting *Young Bars Profit as Trade’s Sole Aim*, N.Y. TIMES, May 13, 1932, at 1, 15).

28. *Id.*

29. FRANCIS X. SUTTON ET AL., THE AMERICAN BUSINESS CREED 57-58 (1956).

30. RAKESH KHURANA, FROM HIGHER AIMS TO HIRED HANDS: THE SOCIAL TRANSFORMATION OF AMERICAN BUSINESS SCHOOLS AND THE UNFULFILLED PROMISE OF MANAGEMENT AS A PROFESSION 324 (2007).

31. Even if corporations adopted policies that benefited their workers and communities, that does not mean managers freely chose such policies. They may well have been bending to strong pressure from government and labor unions which wielded significant power at mid-century, in which case their pro-social policies were in fact forced upon them. See, e.g., Steven A. Bank, Brian R. Cheffins & Harwell Wells, *Executive Pay: What Worked?*, 42 J. CORP. L. 59 (2016) (suggesting strong unions helped limit executive pay at mid-century); *id.* at 118, 201.

Review over corporate purpose.³² Dodd, citing GE's Swope, argued that the law should empower managers to "employ [a corporation's] funds in a manner appropriate to a person . . . with a sense of social responsibility without thereby being guilty of a breach of trust."³³ Berle, in response, took a more cynical view of corporate managers and their pretensions to trusteeship, snapping back that, at present, the corporate manager "does not now think of himself as a prince; he does not now assume responsibilities to the community; his bankers do not now undertake to recognize social claims; his lawyers do not advise him in terms of social responsibility."³⁴ (Berle would later change his mind about this.)³⁵ In the 1950s, amidst enthusiasm for corporate statesmanship, Yale Law School Dean Eugene Rostow played the curmudgeon when he insisted at a symposium discussing "The Corporation in Modern Society" that, whatever managers might wish, the law remained "that the board of directors owes a single-minded duty of unswerving loyalty to the stockholders."³⁶ Rostow was probably right, yet through the 1960s and 1970s the rhetoric of most corporate leaders remained resolutely managerial; as late as the early 1980s, the Business Roundtable, an industry lobbying group, would announce that "managers are expected to serve the public interest as well as private profit," with its chair explaining that "[t]he simple theory that management can get along by considering only the shareholder has been left behind."³⁷ (The Roundtable, too would later change its mind about this more than once.)³⁸

IV. THINGS CHANGE

The managerial view of corporate purpose eroded and then largely disappeared during the 1970s and 1980s, but the causes of this did not originate in legal doctrine. The foremost reasons why managers abandoned older notions of corporate statesmanship and "trusteeship" were economic and financial changes. Economic conditions that had shielded American corporations from significant competition disappeared as growing overseas

32. Compare E. Merrick Dodd, Jr., *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1147 (1932), with A. A. Berle, Jr., *For Whom are Corporate Managers Trustees?: A Note*, 45 HARV. L. REV. 1365 (1932).

33. E. Merrick Dodd, Jr., *For Whom are Corporate Managers Trustees?*, 45 HARV. L. REV. 1145, 1161 (1932).

34. A. A. Berle, Jr., *For Whom are Corporate Managers Trustees?: A Note*, 45 HARV. L. REV. 1365, 1367 (1932).

35. ADOLF A. BERLE, JR., *THE TWENTIETH CENTURY CAPITALIST REVOLUTION* 169 (1954).

36. Eugene V. Rostow, *To Whom and for What Ends is Corporate Management Responsible?*, in *THE CORPORATION IN MODERN SOCIETY* 63 (Edward S. Mason ed., 1959).

37. Brian Cheffins, *Stop Blaming Milton Friedman!*, 98 WASH. U. L. REV. 1607, 1626 (2021).

38. *Id.* at 1628.

competition, economic stagnation, and other shocks pushed managers to make their firms more competitive, which made it harder for them to divert corporate resources to constituencies such as employees or the communities in which they were based. Adding to this, powerful institutional investors appeared on the scene with both legal and economic incentives to insist that managers focus their efforts on the share price.³⁹ Reforms of corporate governance produced boards dominated by directors independent of a corporation's CEO and, one presumes, less tied to the interests of managers, employees, or other stakeholders.⁴⁰ Intellectual developments also made a shareholder-centered vision of managerial responsibility more palatable; Milton Friedman's famous editorial "The Social Responsibility of Business is to Increase its Profits" appeared in the *New York Times* in 1970,⁴¹ and a few years later managerial economics was transformed by Jensen and Meckling's seminal paper "Theory of the Firm,"⁴² whose vision of corporate managers as mere agents for shareholders was rapidly incorporated into business curricula.⁴³ Finally, by the early 1980s, financial innovation empowered an active market for corporate control, targeting firms and CEOs perceived to be underperforming.⁴⁴

Whatever the exact course of influence, what matters here is that by the 1980s economic, business, and intellectual changes pushed managers to see their chief job as increasing shareholder value. This did not resolve all disagreements—debates flared about how to pursue this goal, how best to measure shareholder value, and what time frame should be used—but these disputants shared a common assumption: that corporations should be run ultimately to benefit shareholders. After almost a century's divergence, managerial and legal views of the purpose of a corporation had converged. There were, to be sure, rearguard actions along the way, often fought out in the courts as managers cited non-shareholder interests in attempts to fend off takeover attempts, but managers won only limited success.⁴⁵ By 1997, when the Business Roundtable announced its new view that "the principal

39. See Martin Gelter, *The Pension System and the Rise of Shareholder Primacy*, 43 SETON HALL L. REV. 909 (2013).

40. See, e.g., Dorothy S. Lund & Elizabeth Pollman, *The Corporate Governance Machine*, 121 COLUM. L. REV. 2563 (2021); Mariana Pargendler, *The Corporate Governance Obsession*, 42 J. CORP. L. 359 (2016).

41. Milton Friedman, *The Social Responsibility of Business is to Increase its Profits*, N.Y. TIMES, Sept. 13, 1970; but see Cheffins, *supra* note 37.

42. Michael C. Jensen & William H. Meckling, *Theory of the Firm: Managerial Behavior, Agency Costs, and Ownership Structure*, 3 J. FIN. ECON. 305 (1976).

43. See, e.g., KHURANA, *supra* note 30.

44. See WYATT WELLS, AMERICAN CAPITALISM 1945-2000, at 145-53 (2003).

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

objective of a business enterprise is to generate economic returns to its owners,” it was merely stating what had become conventional wisdom.⁴⁶

To sum up this century of developments, if you asked in 2000 what the purpose of the business corporation is—what goal should guide its managers—an overwhelming majority of both managers and corporate lawyers would have answered “shareholder value” (they would have given longer answers, and maybe used different terms, but promoting shareholder interests would have been at the core of their response). Nor was this merely an intellectual commitment; an economic infrastructure had developed that would punish CEOs who did not pursue shareholder value.⁴⁷

What does this history tell us about the relationship between the law and corporate purpose? In sum, it would be that there are legal and managerial discourses over corporate purpose and that sometimes they have been in harmony and sometimes they have not. Changing discourse in one sphere doesn’t necessarily change it in another. I do not wish to suggest there is no connection at all—of course, what the law says is important—but there have been periods when the legal mandate and managers’ conception of their roles were at odds, and the law did not somehow force managerial views “back in line.” All this returns us to the benefit corporation and leaves us with a second question: Will changing the legal rules around corporations change how management will act? I think Professor Dorff has an answer to this question.

V. WHAT WILL THE BENEFIT CORPORATION DO?

Becoming a Public Benefit Corporation suggests that the benefit corporation is best understood as an attempt to lever legal change to support managerial change. Changing the law is not enough, but it can help managers who are already determined to run their firms in a different way. The germ of the benefit corporation, after all, lay not with lawyers but with businesspersons who founded a company that reflected their values and consciously aimed to benefit employees and communities as well as shareholders. When they sold the firm, the new owners soon dumped the progressive policies.⁴⁸ In response, two of the founders founded B Labs,

46. THE BUSINESS ROUNDTABLE, STATEMENT ON CORPORATE GOVERNANCE (1997) https://cdn.theconversation.com/static_files/files/693/Statement_on_Corporate_Governance_Business-Roundtable-1997%281%29.pdf.

47. See Lund & Pollman, *supra* note 40; Jeff Schwartz, *De Facto Shareholder Primacy*, 79 MD. L. REV. 652 (2020) (arguing the securities laws force public corporations to hew to shareholder primacy).

48. DORFF, *supra* note 1, at 1. The company for instance offered generous parental leave and donated a portion of profits to charity.

which was a private response to the problem they perceived.⁴⁹ B Labs would certify firms as “B Corps,” which would presumably have many benefits, such as bolstering a corporation’s culture and allowing consumers to know a business wasn’t engaged in greenwashing. Yet it had no *legal* effect; B Corps were still presumably organized under a state’s business corporation statutes, and if sold, no legal mechanism would prevent the new owners from reverting to profit maximization.⁵⁰ Enter the lawyers, who, over the next few years, sought legal protection for the managers’ goals and drafted and then persuaded many states to adopt what we now call the benefit corporation. They created a new legal framework in which boards had a “legal duty to consider the legal interests of other groups, such as employees, customers, communities, and perhaps even the environment, when making legal decisions.”⁵¹ (The differences among various states’ acts is significant, but I gloss over them here.)

But why turn to the law? If the story told in the first part of this essay is correct, then the problems posed by relentless shareholder value maximization aren’t legal problems at all. True, American corporate law has long presumed that corporations should be run for the benefit of shareholders. For the last century, however, there were long stretches in which corporate managers felt perfectly free to announce they were running corporations to benefit non-shareholder constituencies, and only in a couple of cases with eye-popping facts were they ever rebuked by courts.⁵² It was economic and institutional changes starting in the 1970s that pushed managers to pursue shareholder value—specifically, a high stock price—to the exclusion of all else. Why, then, believe that changes in the law will topple shareholder value?

In part, of course, the answer is that the benefit corporation is the invention of lawyers and that lawyers often overestimate the effects of legal change.⁵³ It’s also true that there will be some situations where the benefit corporation truly provides a legal shield for managers making decisions

49. *Id.* at 2.

50. *Id.* at 2-3.

51. *Id.* at 4.

52. Perhaps only two, *Dodge v Ford* and *Newmark* (eBay), both of which had egregious facts. In contrast, the number of pre-1980s cases where managers appeared to get away with not serving shareholders is notable. *See, e.g., Dodge v. Ford Motor Co.*, 170 N.W. 668, 684 (Mich. 1919); *eBay Domestic Holdings, Inc. v. Newmark*, 16 A.3d 1, 34 (Del. Ch. 2010); *Kahn v. Sullivan*, 594 A.2d 48 (Del. 1991); *Shlensky v. Wrigley*, 237 N.E.2d 776 (Ill. App. Ct. 1968).

53. This is not to say the law has no effect on managerial behavior. Corporate law strictures on self-dealing, for example, have led firms to adopt more robust procedures for evaluating conflicted transactions, *see, e.g., Kahn v. M & F Worldwide Corp.*, 88 A.3d 635 (Del. 2014); while boards have also been incentivized to adopt searching oversight policies for certain activities, *see, e.g., Marchand v. Barnhill*, 212 A.3d 805 (Del. 2019).

specifically to benefit non-shareholder constituencies; if auctioning the company, for instance, the public benefit corporation form will likely allow managers to dodge their *Revlon* duties and not sell to the highest bidder—but this is really only a problem in Delaware, and to avoid such a result the corporation could simply have incorporated in one of many states with constituency statutes.⁵⁴ Nor do the legal rules for benefit corporations compel directors to act to benefit other constituencies; while the board is instructed to balance interests in its decision-making, it is not required to make any particular decision against shareholders' interests.⁵⁵ On top of this, the laws' enforcement mechanisms are weak. Some shareholders (and only some) can file lawsuits if they believe the board has not pursued the corporation's social purpose, but questions remain as to both courts' responses to such suits and whether lawyers can be enticed to file them.⁵⁶ The law by itself will do little.

VI. CONCLUSION

I expect the lawyers who wrote these acts knew of their limitations. The drafters were not, after all, ivory tower pundits but experienced corporation lawyers who no doubt well understand the economic incentives facing many managers of corporations.⁵⁷ Dorff provides a better answer: the legal form is important because it will bolster the culture of the benefit corporation and serve as a constant reminder to those running the firm of the ends they are bound to serve.⁵⁸ Board members will be instructed by the lawyers of their legal obligations, and in the benefit corporation, those obligations will include the obligation to balance shareholders' interests against the corporation's specific public purpose (the Delaware statute) or general public benefit (the Model Act).⁵⁹ They will also oversee the preparation of reports and audits that state publicly how well the corporation has met its purported public goals. The law will almost certainly push board members to seek their lawyers' advice as they do so; as Dorff points out, directors of benefit corporations face a more complex task than directors of ordinary business corporations because they will be asked to engage in "more purposeful thought about the well-being of customers, employees, and suppliers for their

54. DORFF, *supra* note 1, at 143.

55. *Id.* at 57 (Model Act), 69-71 (Delaware Statute).

56. *Id.* at 58-59 (Model Act), 72-73 (Delaware Statute).

57. *Id.* at 2-3.

58. *Id.* at 5.

59. *Id.* at 55.

own sake and not just as profit-producing instruments.”⁶⁰ It is this complex deliberation, mandated by the laws, that can shape the behavior and even the self-conception of those who choose to become directors of benefit corporations. “Adopting the [benefit corporation] form may encourage boards to think more deeply about how their company’s actions affect the community.”⁶¹ After a century in which managerial views developed independently of legal commands and then it seems changed of their own accord to fit more closely with legal doctrine, we find a new twist. The benefit corporation as law is an attempt to use the law to usher in radical change in corporate culture. I hope this experiment succeeds.

60. *Id.* at 57.

61. *Id.* at 82.