

FOREWORD: TOWARD A MORE COMPREHENSIVE UNDERSTANDING OF THE BENEFIT CORPORATION

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In *Becoming a Public Benefit Corporation*,¹ Professor Michael Dorff has done what so many of us who write practical applied legal scholarship aspire to do: write a lucid, accessible book that translates a hard-earned knowledge of legal doctrine, theory, policy, and practice into pragmatic support and advice for the boots-on-the-ground stakeholders we desire to serve. This book is a useful resource for business entrepreneurs, investors, students, researchers, practitioners, and policy makers alike, especially for those desiring answers to the book’s two foundational (referred to by Professor Dorff as “bottom line”) questions relating generally to the utility of the benefit corporation as a legal form of entity. In *Becoming a Public Benefit Corporation*, Professor Dorff first seeks to assess whether benefit corporations are “a reasonable legal form for entrepreneurs and investors.”² Next, he desires to evaluate whether “these new legal forms produce companies that do a better job of internalizing their negative externalities and producing positive externalities, resulting in an economy that works better for people and the planet.”³ Both objectives are a relatively tall order as deliverables. As those who read to the end of the book well know, Professor Dorff offers a characteristically enthusiastic and positive response to the first question, but he is more equivocal and nuanced in his response to the second.⁴

This *Foreword* offers a brief introduction to the *Southwestern Law Review*’s symposium issue dedicated to Professor Dorff’s book. It starts with

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

2. *Id.* at 213.

3. *Id.* at 214.

4. *Id.*

an overview designed to contextualize the issues fundamental to Professor Dorff's work based on my own research and reflections on benefit corporations. A summary of the individual contributions made by fellow law scholars to the symposium issue, many of which were presented in a November 1, 2024 online symposium hosted by the *Southwestern Law Review*, follows. The *Foreword* ends with a brief conclusion.

I. OVERVIEW

Although Professor Dorff publicly denies it, I am a bit of an odd choice as an author for this *Foreword* to a law review symposium issue that honors his book. As Professor Dorff knows, I hesitate to recommend the benefit corporation⁵ form to entrepreneurs and small business promoters and owners. The basis for this hesitation—which the authors represented in this edition of the *Southwestern Law Review* likely know well—is that I have determined (and shared in my own work) that benefit corporations are unnecessary and potentially suboptimal additions to the choice-of-form arsenal for business entity formation.⁶ I have communicated my view that for-profit corporate law “largely offers what sustainable social enterprise needs”⁷ and have observed that “new social enterprise entities arguably add unnecessary complexity to the choice of entity equation.”⁸

Admittedly, I ask and answer different questions in my work than those asked and answered in Professor Dorff's book. My work in this area focuses principally on the need for the form itself rather than the issues raised by Professor Dorff's bottom-line questions. In essence, I argue that there is no need to switch away from a statutory form of entity that works and has a long track record of judicial interpretation to a new form that introduces uncertainties and unnecessary costs. Having said that, reading *Becoming a Public Benefit Corporation* led me on a journey to answer, for myself, Professor Dorff's two bottom-line questions. That journey allowed me to step back and take a different, yet ultimately synergistic, view. My journey was augmented by the commentaries of my law scholar colleagues

5. I use the term “benefit corporation” generically in this *Foreword* to refer to a benefit corporation, a public benefit corporation, and any other hybrid form of legal entity designed for use by social enterprise firms.

6. Joan MacLeod Heminway, *Let's Not Give Up on Traditional For-Profit Corporations for Sustainable Social Enterprise*, 86 UMKC L. REV. 779, 801 (2018) [hereinafter *Let's Not Give Up*] (“[B]ut for a limited number of judicial opinions—exemplified most recently and clearly in the Delaware Court of Chancery's opinion in the *eBay* case—there should not have been and would not be a need for legislative action to adopt new social enterprise forms of entity” (footnote omitted)).

7. *Id.*

8. *Id.*

contributing to the *Southwestern Law Review*'s symposium issue to which this is the *Foreword*.

In evaluating the reasonableness of the benefit corporation form, I start with an ethical principle at the heart of the medical profession: that one should do no harm.⁹ This starting point emanates from my determination that traditional for-profit corporations or nonprofit corporations are effective legal business forms for social enterprise. With that fundamental value in mind, I ultimately have come to conclude that the benefit corporation is not an unreasonable legal form; but I cannot unqualifiedly characterize the benefit corporation form as reasonable. Benefit corporation statutes do not intentionally harm; in fact, an altruistic impulse primarily fueled their creation: the desire to enhance the capacity of business firms to do environmental and social good.¹⁰

However, the choice to organize as a benefit corporation requires that both the business and its actual and prospective funders understand the alternatives and the comparative benefits and detriments of the benefit corporation form.¹¹ And there are both benefits and detriments of the benefit corporation form, as Professor Dorff notes in Chapter 6 of *Becoming a Public Benefit Corporation*.¹²

On the one hand, the avoidance of a pure shareholder wealth maximization legal requirement is often cited as a positive differentiator.¹³ I would classify that benefit as relatively weak. In most circumstances (other than certain merger or acquisition transaction scenarios), I would not categorically advise members of the board of directors of a traditional for-

9. B.M. Dickens, *Patients' Rights*, in *ENCYCLOPEDIA OF APPLIED ETHICS* 371, 376 (Ruth Chadwick ed., 2d ed. 2012) ("The principle to 'do no harm' is sometimes considered an element of beneficence, and it is described as the first rule of medicine.").

10. *See, e.g.*, DORFF, *supra* note 1, at 53 ("The whole point of the BC is to reverse the shareholder primacy rule in an effort to harness capitalism to solve social problems, some of which capitalism helped create.").

11. *See* Joan MacLeod Heminway, *Lawyering for Social Enterprise*, 20 *TRANSACTIONS: TENN. J. BUS. L.* 797 (2019) [hereinafter *Lawyering*] (arguing generally that creative, nuanced legal advice is necessary in social enterprise contexts).

[T]he complex decision-making involved in lawyering for social enterprise presents obvious challenges for business venturers and their legal counsel that involve not only baseline professional responsibility matters of competence (comprising doctrinal knowledge and solid, rational legal analysis), diligence (by offering patient and perceptive insights in helping the client to choose from among available alternatives), and communication (with the goal of ensuring informed client decision-making), but also the exercise of appropriate discretion and professionalism that requires the savvy built from doctrinal, theoretical, and practical experience and leadership capabilities.

Id. at 813.

12. *See* DORFF, *supra* note 1, at 129-47.

13. *See id.*; *see also, e.g.*, Heminway, *Lawyering*, *supra* note 11, at 808 ("The benefit corporation arose in major part from a desire to offer a for-profit corporate form of entity in which management would not be required to maximize shareholder wealth in every decision made.").

profit corporation that they are required to maximize shareholder wealth in each decision the board makes.¹⁴

On the other hand, I remain concerned that benefit corporation law places an undue burden on benefit corporations and their directors and officers to engage in extra reporting and governance activities—activities beyond those required of traditional for-profit corporations and their officers and directors—merely (or primarily) to facially market the corporation’s brand as a social enterprise.¹⁵ These additional responsibilities generate costs that may exceed the attendant benefits. As a result, I continue to advocate for the use of a traditional nonprofit or for-profit corporation as an organizational form for social enterprises.

I also have questions about the efficacy of the benefit corporation as a means of creating a healthy, sustainable economic force for environmental and social good. Although benefit corporation status undoubtedly has signaling power in social enterprise communities, I am a bigger fan of B Corp certification for business firms that want to credibly signal and optimize their social enterprise status. Professor Dorff’s analysis in *Becoming a Public Benefit Corporation* acknowledges some of that.¹⁶ Among other things, he notes that “[i]ncreasing numbers of companies find B Lab’s logo to be a valuable branding tool.”¹⁷

II. CONTRIBUTIONS TO THE SYMPOSIUM

My benefit corporation knowledge and wisdom have been further enriched through my review of the scholarly works featured in this special symposium edition of the *Southwestern Law Review*. These commentaries approach the subject matter addressed in Professor Dorff’s book in several ways. I value the contributions for their thoughtful breadth and depth. The contributions organize themselves into two main categories: (1) reviews of

14. Compare Joan MacLeod Heminway, *Shareholder Wealth Maximization As A Function of Statutes, Decisional Law, and Organic Documents*, 74 WASH. & LEE L. REV. 939, 955 (2017) (“[I]t would be over-claiming to assert that U.S. state decisional law—any more than U.S. state statutory law—articulates a clear, legally enforceable shareholder wealth maximization norm as a matter of substantive corporate doctrine.”) with DORFF, *supra* note 1, at 28 (“*Revlon* and *eBay* seem quite clear: shareholder primacy is the law in Delaware for traditional corporations.”).

15. See, e.g., Heminway, *Lawyering*, *supra* note 11, at 809 (describing obligations placed on directors under benefit corporation law that do not exist for directors of social enterprises organized as for-profit corporations); Heminway, *Let’s Not Give Up*, *supra* note 6, at 798 (“The immutable rules specific to benefit corporations create additional costs—costs associated with, e.g., extra reporting requirements and mandatory, untested structural and governance rules—that may not provide a net benefit to shareholders and other investors.”).

16. See DORFF, *supra* note 1, at 113-116 (describing B Corp status and its strengths and weaknesses).

17. *Id.* at 114.

and responses to the book's specific theses and observations and (2) analyses of specific aspects of benefit corporations, benefit corporation law, and alternative approaches stemming from observations made by Professor Dorff in the book. I describe the contributions in each category briefly below.

A. Book Reviews & Responses

Can Entity Law Cure Corporate Social Irresponsibility? A Response to Becoming a Public Benefit Corporation By Michael Dorff,¹⁸ fits neatly into the first category as a response to Professor Dorff's second bottom line question. In his essay, Professor Thomas W. Joo expresses his view that "[a]t best, the BC statute [Model Benefit Corporation Act] enables and facilitates socially responsible behavior by those corporations that *wish to pursue it*."¹⁹ He contests claims that corporate directors have a legal obligation to maximize the corporation's shareholder wealth in their decision making.²⁰ However, he agrees with former Delaware Supreme Court Chief Justice Leo Strine's determination that social responsibility, exercised through the corporate form, is enforced through "externality regulation"—the regulation of business firms organized as corporations by legal forces outside the corporate law statutes themselves (including, e.g., environmental and labor law).²¹ He concludes that benefit corporation law is unlikely to have a key role in effective social enterprise.²²

In his contribution, *Unbecoming Public Benefit Corporations*,²³ Professor Brett McDonnell effectively argues that Professor Dorff may oversell the benefit corporation form in *Becoming a Public Benefit Corporation*.²⁴ Professor McDonnell's essay offers a helpful synthesis of larger points made by Professor Dorff in the book, including the costs and benefits of the benefit corporation form to entrepreneurs.²⁵ He largely acknowledges the accuracy of Professor Dorff's observations and their utility to the entrepreneurs and investors that are the primary audiences for his book;

18. Thomas W. Joo, *Can Entity Law Cure Corporate Social Irresponsibility? A Response to Becoming a Public Benefit Corporation By Michael Dorff*, 54 SW. L. REV. 90 (2025).

19. *Id.* at 90.

20. *Id.* at 92.

21. *Id.* at 101-02.

22. *Id.* at 102.

23. Brett McDonnell, *Unbecoming Public Benefit Corporations*, 54 SW. L. REV. 117 (2025).

24. *Id.* at 124 ("If anything, Dorff does too good a job of selling the benefit corporation.").

25. *Id.* at 124-25.

however, Professor McDonnell is more pessimistic in his conclusions than Professor Dorff.²⁶

Professor Dana Brakman Reiser's *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)*²⁷ is a conventional book review that examines and comments on Professor Dorff's two bottom-line questions. The essay ultimately concludes that benefit corporations "are doing useful work for firms, founders, and leaders looking to operationalize their social and environmental commitments."²⁸ Nevertheless, as to the capacity of benefit corporations to make the world a better place, she joins me (and to some extent Professor Dorff himself) in being somewhat uncertain.²⁹

Professor Harwell Wells also contributes a book review essay. His review—*Changing Corporate Purpose: Law, Managers, and the B Corp*³⁰—averts that "it is a longstanding *legal* presumption that boards should run business corporations to benefit shareholders," although he disputes that presumption as a matter of legal doctrine.³¹ However, he agrees with Professor Dorff that the benefit corporation, as a legal business form, is important as a way of reinforcing the culture of a social enterprise business and serves "as a constant reminder to those running the firm of the ends they are bound to serve."³² Overall, Professor Wells voices hope for the success of the benefit corporation "experiment."³³

Finally, Professor David Yosifon's *Director Primacy to the Hilt in the Public Benefit Corporation*³⁴ categorizes benefit corporation statutes as sources of "advanced director primacy."³⁵ Specifically, he observes that

26. *Id.* at 117 ("I think all these points are largely correct. And yet, I think they tell a story that is more dispiriting for the usefulness of benefit corporation statutes than Dorff believes."); *id.* at 8-9 ("Ultimately, my take on benefit corporations is less positive than Dorff's, although I think it is an extremely well-done book, and I disagree with very few of the specific points he makes.").

27. Dana Brakman Reiser, *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)*, 54 SW. L. REV. 11 (2025).

28. *Id.* at 20.

29. *Id.*

30. Harwell Wells, *Changing Corporate Purpose: Law, Managers, and the B Corp*, 54 SW. L. REV. 143 (2025).

31. *Id.* at 145.

32. *Id.* at 151.

33. *Id.*

34. David Yosifon, *Director Primacy to the Hilt in the Public Benefit Corporation*, 54 SW. L. REV. 155 (2025).

35. *Id.* at 157 ("The public benefit corporation evinces 'advanced director primacy' in multiple ways.").

“[t]he legal and conceptual result [of benefit corporation law] is to broaden the prescribed goal of corporate activity from that which is seen in ordinary corporations while expanding to a maximum degree the latitude directors enjoy to pursue that goal without interference.”³⁶ As a result, he notes that benefit corporations allow directors to manipulate governance to efficiently attract multiple stakeholders to the firm.³⁷ In effect, Professor Yosifon finds the benefit corporation form useful, even if it is not effective in holistically stimulating social enterprise objectives.³⁸

B. Additional Benefit Corporation Commentary

In *Can the SEC Mandate Disclosures that Contain Both Financial and Social Information? The Case of Human Capital Management Disclosures*,³⁹ Professor Patrick M. Corrigan offers information and commentary on human capital disclosures, including those prompted by mandatory disclosure rules adopted by the U.S. Securities and Exchange Commission.⁴⁰ Professor Corrigan builds on the work of Emory Law’s George Georgiev on human capital disclosures.⁴¹ Specifically, his article reports on a study of human capital disclosures made by publicly traded business firms, including benefit corporations.⁴² In the aggregate, the article assesses deficiencies in human capital disclosures, describes investor desires for enhanced human capital

36. *Id.*

37. *Id.* at 162 (“[A] PBC can credibly commit to serving multiple stakeholder interests in the boardroom, thus attracting consumers, workers, and other factors more cheaply than can shareholder primacy firms.”).

38. *Id.* at 161 (“Properly understood, the Public Benefit Corporation should not be regarded as promoting a more socially beneficial form of corporate governance than does the shareholder primacy firm Rather, the PBC should be regarded as an institution that promotes pluralism, creativity, and dynamism in the conception and pursuit of social benefit.”).

39. Patrick M. Corrigan, *Can the SEC Mandate Disclosures that Contain Both Financial and Social Information? The Case of Human Capital Management Disclosures*, 54 SW. L. REV. 24 (2025).

40. 17 C.F.R. § 229.101(c)(2)(ii) (2024); *see also* Joan MacLeod Heminway, *The Materiality of ESG Information: Why It May Matter*, 84 LA. L. REV. 1365, 1380 (2024) (quoting from the human capital disclosure rule and referencing an attached example). Professor Corrigan also invokes and addresses recent challenges to the SEC’s authority to impose mandatory disclosure rules, long a staple of federal securities regulation in the public company context. *See* Corrigan, *supra* note 39, at 33-34.

41. *See* George S. Georgiev, *The Human Capital Management Movement in U.S. Corporate Law*, 95 TUL. L. REV. 639 (2021).

42. *See* Corrigan, *supra* note 39, at 67 (“The analysis supports proposals that would require standardized, comparable, and mandatory disclosures of human capital information. The Article argues that the SEC already has the authority to promulgate this rule and explains why such proposals have policy merits.”).

disclosures, and offers support for an improved human capital disclosure framework.⁴³

Professor Darryll K. Jones raises and interrogates a core issue underlying the benefit corporation's potential for success in his essay, *Public Benefit and Private Profit*.⁴⁴ The issue? Whether we, as humans can temper our tendency to behave in a self-interested manner so that we can act for the benefit of something greater—for example, the environment or society as a whole.⁴⁵ To illustrate the strong pull of human self-interest, Professor Jones uses (among other things) the history of Open AI.⁴⁶ He ultimately expresses doubt that self-interest can be sufficiently overcome, observing that “[i]t requires an abiding faith in the human character to convincingly extoll the efficacy of benefit corporations”⁴⁷ Nevertheless, Professor Jones does not support abolishing the benefit corporation form, citing its potential in nudging investors toward integrating public benefit metrics into their investment objectives.⁴⁸

Compensating a Public Benefit Corporation,⁴⁹ Professor Sung Eun (Summer) Kim's symposium piece, examines the relationship between executive compensation and “purpose washing” (the social enterprise equivalent of environmental greenwashing), focusing on specific types of performance-based pay (relating to environmental, social, and governance and corporate social responsibility metrics) as a recent trend in benefit corporations. Professor Kim is concerned about these performance-pay initiatives, and, as a result, she suggests changes to compensation-related disclosures and an empirical investigation of the interaction and actual environmental impact. In the process of her analysis, Professor Kim references both *Becoming a Public Benefit Corporation* and Professor Dorff's earlier book (*Indispensable and Other Myths: Why the CEO Pay Experiment Failed and How to Fix It*⁵⁰) on executive pay.

43. *See id.* at 38.

44. Darryll K. Jones, *Public Benefit and Private Profit*, 54 SW. L. REV. 77 (2025).

45. *Id.* at 77 (“Can instinctive physical selfishness really be tempered by conscientious intellectual selflessness?”).

46. *Id.* at 83-84.

47. *Id.* at 77.

48. *Id.* at 88 (“[T]he effort to encourage investors to mediate profit seeking with public benefit still seems worthwhile even if the effort is ultimately based on an enduring faith”).

49. Sung Eun (Summer) Kim, *Compensating a Public Benefit Corporation*, 54 SW. L. REV. 108 (2025).

50. MICHAEL B. DORFF, *INDISPENSABLE AND OTHER MYTHS: WHY THE CEO PAY EXPERIMENT FAILED AND HOW TO FIX IT* (2014).

Professor James J. Park's contribution, *Will Public Benefit Companies Commit Securities Fraud?*,⁵¹ examines recent court proceedings to assess whether publicly traded benefit corporations ("PBCs") "can be expected to maintain their commitment to social purpose when they become subject to the pressures of public company status."⁵² Professor Park unsurprisingly finds that publicly traded benefit corporations, like their traditional for-profit counterparts, may engage in fraud or make misrepresentations that have roots in a perceived desire to enhance financial performance.⁵³ "The allegations of material misrepresentations against public PBCs," he observes, "show that good intentions by themselves are not enough to create lasting market value."⁵⁴

III. CONCLUSION

Professor Dorff's *Becoming a Public Benefit Corporation* is a book on benefit corporations that is directed principally at entrepreneurs and investors (as well as students).⁵⁵ It amply serves its purpose, meeting its commitment to "provide practical guidance . . . without descending into too much technical jargon."⁵⁶ Specific chapters at the heart of the book address whether entrepreneurs should choose to organize their businesses as benefit corporations and whether investors should support benefit corporations.⁵⁷ As a law professor who values the provision of quality information about legal and law-related matters to the entrepreneurial and small business communities, I applaud this work.

Yet, the contributions to the *Southwestern Law Review*'s symposium underscore the further significance that *Becoming a Public Benefit Corporation* has to academic audiences. Through its pragmatic approach and accessible text, it has stimulated critique and inspired creative commentary of various kinds on the social context of business. The contributors are notable business law scholars. In turn, this collection of work has encouraged

51. James J. Park, *Will Public Benefit Companies Commit Securities Fraud?*, 54 SW. L. REV. 128 (2025).

52. *Id.* at 128-29.

53. *Id.* at 132. My own work anticipated causes of action for securities fraud and misrepresentations against publicly traded benefit corporations. See Joan MacLeod Heminway, *Corporate Purpose and Litigation Risk in Publicly Held U.S. Benefit Corporations*, 40 SEATTLE U. LAW REV. 611, 640-45 (2017).

54. Park, *supra* note 51, at 139.

55. See DORFF, *supra* note 1, at 6 ("This book is designed to be easily accessible to entrepreneurs, investors, and students without any legal background, while remaining precise enough for lawyers seeking information about these new forms.").

56. *Id.*

57. *Id.* at 127-67.

my own inquiries and reflections as a law academic who has published work on benefit corporations over a period of years. I have no doubt that the book and symposium contributions will stimulate observations from and action by others—both those who have researched and written in this area and those who engage in related research or advise entrepreneurs and start-ups on choice of entity or board or management decision making. Legislators also can benefit from Professor Dorff's analyses and wisdom. His learned processing of information about the benefit corporation form is useful to many audiences.

It is an axiom of business success that one should under-promise and over-deliver. Professor Dorff has (albeit perhaps inadvertently) done that here. His work in researching, authoring, and publishing *Becoming a Public Benefit Corporation* and the inspiration his work has provided in stimulating a reflective symposium issue of the *Southwestern Law Review*, taken together, provide much food for thought on the benefit corporation as a legal business form and on choice-of-entity decision making for social enterprises more generally. The book and the symposium issue are recommended reading for entrepreneurs, investors, students, researchers, practitioners, and policy makers alike.