Shaping the Corporate Landscape

Towards Corporate Reform and Enterprise Diversity

Edited by
Nina Boeger and Charlotte Villiers

• HART •
PUBLISHING
OXFORD AND PORTLAND, OREGON
2018

Hart Publishing
An imprint of Bloomsbury Publishing Plc

Hart Publishing Ltd
Kemp House
Chawley Park
Cumnor Hill
Oxford OX2 9PH
UK

Bloomsbury Publishing Plc
50 Bedford Square
London
WC1B 3DP
UK

www.hartpub.co.uk
www.bloomsbury.com

Published in North America (US and Canada) by
Hart Publishing
c/o International Specialized Book Services
920 NE 58th Avenue, Suite 300
Portland, OR 97213-3786
USA

www.isbs.com

First published 2018

British Library Cataloguing-in-Publication Data
A catalogue record for this book is available from the British Library.

ISBN: HB: 978-1-50991-430-2
ePDF: 978-1-50991-431-9
ePub: 978-1-50991-432-6

Library of Congress Cataloging-in-Publication Data

Names: Boeger, Nina, editor. | Villiers, Charlotte, editor.

Title: Shaping the corporate landscape : towards corporate reform and enterprise diversity / edited by Nina Boeger and Charlotte Villiers.

Description: Oxford [UK] ; Portland, Oregon : Hart Publishing, 2018. | Includes bibliographical references and index.

Identifiers: LCCN 2017050355 (print) | LCCN 2017051853 (ebook) | ISBN 9781509914326 (Epub) | ISBN 9781509914302 (hardback : alk. paper)

Subjects: LCSH: Corporate governance—Law and legislation—Great Britain. | Corporation law—Great Britain. | Stockholders—Legal status, laws, etc.—Great Britain. | Social responsibility of business—Law and legislation—Great Britain. | Great Britain. Companies Act 2006.

Classification: LCC KD2079 (ebook) | LCC KD2079 .S525 2018 (print) | DDC 346.41/066—dc23

LC record available at https://lccn.loc.gov/2017050355

Typeset by Compuscript Ltd, Shannon
Printed and bound in Great Britain by TJ International Ltd, Padstow, Cornwall

To find out more about our authors and books visit www.hartpublishing.co.uk. Here you will find extracts, author information, details of forthcoming events and the option to sign up for our newsletters.

PREFACE

The contributions in this book span a wide range of topics and issues related to corporations and corporate behaviour. Several chapters include critical appraisals of the prevailing shareholder primacy norm and the consequences of corporate malfeasance, as well as various specific proposals for reforming the corporate law and governance. Other contributions consider the existence and emergence of alternative forms of the business enterprise, including social enterprises, cooperatives and solidarity-based corporate models as possibilities of developing a more diverse and sustainable corporate landscape. Each individual chapter offers readers insight into the development of critical corporate governance scholarship and its possibilities. However, in compiling these contributions into one single volume, our specific aim has been to highlight how the combined impact of these contributions amounts to more than the sum of its parts. This volume is concerned with highlighting the relevance of multi-disciplinary critical scholarship that challenges the structural foundations of the corporate form from a variety of perspectives, and its resonance in both policy and practice.

We aim to give readers a sense of the variety of the individual contributions in this debate on the evolving corporate landscape, but at the same time emphasise the sense of urgency that runs as a common theme through these various contributions: there is real concern that 'business as usual' is not a sustainable option for corporate governance today. As a way of making these features apparent, and mapping out the individual contributions to this debate, we have included a short summary of each of the substantive chapters in this volume on the following pages.

Chapter 1: Corporate Schizophrenia: The Institutional Origins of Corporate Social Irresponsibility

Paddy Ireland

In recent years, shareholder-value ideology has receded without any noticeable impact on corporate behaviour. Indeed, placing too much emphasis on its baleful effects risks causing us to overlook the more deeply rooted institutional foundations of corporate irresponsibility. This paper explores these foundations. The potential for irresponsibility, it argues, is inscribed in the corporate legal form as currently constituted and

thus in the property rights structures of contemporary capitalism. Paradoxically, it suggests, so too is the possibility of more 'socialized' corporations. While, therefore, experimentation with alternative organizational forms is vitally important to social transformation, with so many key productive resources under the direct or indirect control of corporations, so too is radical reform of the corporate legal form.

Chapter 2: Destruction by Ideological Pretence: The Case of Shareholder Primacy

Gordon Pearson

The world is facing many problems which can be abstractly summarised in the word sustainability. Technologies, knowledge and understanding, initiated by business, present the possibility of resolving all these problems. However, the dominant economic ideology is directing business on a collision course with their resolution. That ideology, based on the simplistic idea of self-interest maximising humanity, holds that free markets with open access, minimised regulation and taxation, will provide best allocation of resources for the economy as a whole. It directs business to grant the shareholder primacy over all other considerations. The ideology has been falsified many times, but nevertheless remains dominant as a belief system, promoted by and serving the interests of 'organised money. The ideological pretence which accepts that belief system, is heading the world towards destruction. The essential and now urgent reversal of strategy will require a fundamental change of culture and economic belief in order to enable the essential systemic correction.

Chapter 3: The Separate Legal Entity and the Architecture of the Modern Corporation

Jeroen Veldman

This chapter focuses on the separate legal entity as the defining element of the architecture of the modern public corporation. As a highly specific legal construct, the separate legal entity provides the basis for a structure of rights and obligations between corporate constituencies and for the circumscription of the function and mandate of the board. This analysis is used to explain how the currently dominant notion of the corporation as a nexus of contracts ignores both the problematic status of the separate legal entity and the specificity of corporate architecture. The chapter argues that this negation is the basis for the prioritization of claims by particular constituencies and puts the legitimacy of the use of the modern public corporation and its effects in question.

Chapter 4: Dismantling the Legal Myth of Shareholder Primacy: The Corporation as a Sustainable Market Actor

Beate Sjåfjell

The achievement of the UN Sustainable Development Goals, which may be said to epitomise the overarching goals of the global society, is unlikely. A fundamental transition away from 'business as usual' and onto a sustainable path is necessary. Such a fundamental transition requires sustainable market actors. This chapter focuses on what this means for business and more specifically, for the dominant business form of the corporation. In a time where social entrepreneurship in various shapes and sizes receives much (and undoubtedly warranted) attention, whether and how the dominant business form of the corporation fits into a sustainable future also needs to be discussed. This can be rephrased as a question of how to achieve corporate sustainability. Corporate sustainability is here defined as when businesses (or more broadly, market actors) in aggregate create value in a manner that is (a) environmentally sustainable in the sense that it ensures the long-term stability and resilience of the ecosystems that support human life, (b) socially sustainable in the sense that it facilitates the respect and promotion of human rights and of good governance, and (c) economically sustainable in the sense that it satisfies the economic needs necessary for stable and resilient societies.

Chapter 5: Climate change, Business transformation

Mick Blowfield

Can we beat climate change? For business, there are two sides to answering that question. On the one hand, there are the consequences for business of actions to avoid a rise in global average temperatures. On the other hand, there are the consequences for business if it becomes apparent that the 2oC target will not be met, and therefore companies will inhabit an environment characterised by climate instability. In both cases, climate change challenges will make a fundamental difference not only to the way business operates, but also to governance, notions of value, the kinds of company that prosper, and the definition of a successful business. This chapter explains how climate change will fundamentally alter business, and sketches out what business needs to do—as well as what needs to be done to business—in order to ready commercial enterprise for the new era. It pays attention to the implications for governance—both governance by business and the governance of business. As well as identifying what aspects of business will be affected, it also asks what transformations are possible given the timeframe within which climate change action will take place.

Chapter 6: Capitalism: Why companies are unfit for social purpose and how they might be reformed

Lorraine Talbot

This chapter argues that the neoliberal policies of successive western governments (in both their pure and third-way forms) have exacerbated the endogenous drive of capitalism to increase social and economic inequalities. It is argued that governments and multistate forums have hamstrung their ability to redress inequalities and enable social progress because they have integrated business in its own regulation by encouraging lobbying, corporate involvement in rule making and corporate control over regulatory gatekeepers. Corporate social responsibility too, represents a failure of governments to intervene in the interests of social need. The chapter concludes with some proposals to re-adjust the balance of power between corporate capital and people, making companies more fit for social purpose, while being cognisant that the primary problem is reliance on an economic system which is driven only by profit.

Chapter 7: Section 172 of the Companies Act 2006: Desperate times call for soft law measures

Georgina Tsagas

Section 172 of the Companies Act 2006 has been afforded much attention during Parliamentary discussions on the codification of directors' duties and has since the enactment of the Companies Act 2006 occupied much space in discussions among scholars who share an academic interest in the shareholder/stakeholder debate, in policy documents on law reforms following a series of corporate failures, as well as in company law lecture notes provided by Law Schools across the UK. With the UK leaving the EU, it is a critical time to discuss enlightened decision-making on boards, considering that, arguably, one of the key benefits of joining the EU with regard to UK company law, was that the UK was prompted to consider incorporating provisions affording a certain level of protection to the interests of other constituencies across a wide range of company and securities law Acts and regulations. What often escapes the attention of participants in discussions surrounding s. 172 CA 2006, is the section's limitations not so much in terms of it prioritising the interests of shareholders over the interests of other constituencies, but with regard to its enforcement and utility overall. The purpose of this chapter is twofold. First it aims to shed some light on the background and function of section 172 CA 2006. Secondly, after considering the challenges, shortcomings and dilemmas surrounding the function of this section, it suggests ways forward by proposing a change in the mode of regulating this aspect of managerial conduct. Ample evidence suggests that section 172 CA 2006 in its hard law form will not facilitate the goal of promoting the 'good governance' of companies

that have a high impact on society in terms of enlightened decision-making. Thus, the chapter aims to advance an important aspect of UK corporate law in the making: namely suggest the use of alternative means available in the soft law sphere, that could support a more pluralistic and democratic formation of corporate decision-making.

Chapter 8: Corporate Governance, Responsibility and Compassion: Why We Should Care

Charlotte Villiers

This chapter argues that a key barrier to responsible corporate governance practice is the hierarchical structure of 'traditional' large corporations. This hierarchy, coupled with an individualistic, profit seeking approach, obstructs the broader goals and possibilities of corporate governance. Feminist literature and positive organization scholarship are explored as possible theoretical territories in which solutions to the problems might be found. The ethic of care has a relational focus which recognizes the interdependencies existing inside and outside the organization. Similarly, a literature has grown emphasizing compassion as a behavioural principle. This dual focused approach gives rise to a preference for a more horizontally structured organization—rather than a bureaucratic and hierarchical form—to nurture the relationships involved, with greater care and compassion. This approach, it is argued, offers more fertile ground for positive corporate behaviour.

Chapter 9: Beyond Shareholder Primacy—the case for workers' voice in corporate governance

Janet Williamson

This chapter discusses the flaws of shareholder primacy and makes the case for workers' voice in corporate governance. It sets out the Trades Union Congress' (TUC's) proposals for corporate governance reform, including revising directors' duties and establishing the representation of workers on company boards. The TUC is calling for all companies with 250 or more staff to be required to include worker directors, elected by the workforce, on their boards. Worker directors should comprise one third of the board and would share the same legal directors' duties as other company directors.

Chapter 10: The New Corporate Movement

Nina Boeger

This chapter explains the worldwide growth of social and cooperative enterprises as a counter-movement to global shareholder capitalism, at a time when traditional

democratic structures suffer from systemic blockages (linkages between formal political process and global economic power organised in the shareholder corporate model). The underpinning framework follows Polanyi's understanding of the relationship between markets and politics, as well as Touraine's sociological work on what drives people to become social activists. The new corporate movement, this chapter argues, is a mode of social contestation characterised by entrepreneurial activism: it instrumentalizes economic freedom—the capacity to undertake economic actions—to transform the existing liberal into a more social market order.

Chapter 11: Recognising Facts in Economic Democracy

David Erdal

Neoliberal predictions for democratically structured businesses are contrasted with empirical evidence showing them to be false. The case of the democratic constitution of the John Lewis Partnership, and the wider economic effects of its implementation are examined. Working in a democratic business seems to have positive effects on social life and health. Economic democracy is significantly closer than the modern corporation to the social environment to which we are tuned by evolution. Wider economic democracy is likely to produce excellent results, both economically and socially.

Chapter 12: Can reduced shareholder power enable corporate stakeholder accountability? The case of Triodos Bank

Stuart Cooper

This chapter seeks to contribute to the debate on corporate stakeholder accountability. It draws upon key literature that theorises corporate stakeholder accountability as consisting of 'three critical components': 'clarity of relationship'; 'transparency'; and 'power of accountees' (Tello et al., 2016). This chapter argues, however, that for corporate stakeholder accountability to be realised transparency must enable evaluation, and 'productive' discussions with stakeholders (see Roberts, 1996) must 'converge on a conclusion or course of action' (Senge, 1990, p. 247). It is further contended that the primary obstacle to corporate stakeholder accountability is the power differentials that exist in stakeholder relationships. In this context, this chapter explores the post-financial crisis reporting of Triodos Bank. It is argued in this chapter that Triodos Bank's unusual share ownership and governance arrangements are such that the power differentials are reduced, and the consequences of this for the Bank's stakeholder accountability are examined.

Chapter 13: The arrival of B Corps in Britain: another milestone towards a more nuanced economy?

David Hunter

This chapter considers the introduction of the B Corp designation into the United Kingdom in 2015. In addition to looking at what B Corps are, and how and why a business might choose to become one, it identifies both the growth of social enterprise in recent years and residual concern with corporate excesses as the context for the rise of the B Corp and whether this may be one more step on a longer journey to a corporate culture and economy with a focus on meeting broader stakeholder, rather than narrow shareholder, interests as the primary motivation and measure of success.

Chapter 14: Danish Foundations and cooperatives as forms of corporate governance: origins and impacts on firm strategies and societies

Peer Hull Kristensen and Glenn Morgan

This chapter seeks to recover the idea of a diversity of organizational forms by examining the experience of Denmark, a country where other forms of ownership, particularly cooperatives and industrial foundations, are common. The aim is not just to describe the Danish system but to explore the social origins and social consequences of these forms. In particular, the chapter returns to the idea that collective forms of organization are responses to the challenges that face actors in particular circumstances and under particular institutional constraints and enablers.

Chapter 15: What's in a name? Reflections on the marginalisation of the co-operative as an organisational form

Anita Mangan

The co-operative organisational form has never been more successful in the UK, with co-operatives contributing over £37 billion across all sectors of the economy in 2015 (Mayo 2015). The economic data would suggest that co-operatives are in rude health as they continue to grow in popularity. This chapter, however, argues that these figures might mask a more deep-rooted issue related to a decline in public knowledge about co-operatives. Drawing on my experiences of participating in two community-focused social innovation workshops, it is argued that co-operative principles and organisational structures are almost unknown outside those who already engage with co-operatives (either as member-owners, employee-owners or activists).

Although there has been a surge of enthusiasm for terms such as co-production, co-creation, co-design and collaboration in recent years, the terms 'co-operate', 'co-operation' and 'co-operative' rarely feature in conversations about social innovation and social change. Social enterprise and collaboration seem to be the preferred terms in use. The chapter explores differences between co-operatives and social enterprises as organisational forms, arguing that the co-operative principles of principles of education and training for members, co-operation among co-operations and concern for the wider community offer a broader range of possibilities for creating social action, social justice and social innovation.

Chapter 16: The internationalisation of the FairShares Model: where agency meets structure in US and UK company law

Rory Ridley-Duff

This chapter is a reflexive analysis of factors that are affecting the internationalisation of the FairShares Model (FSM) in the US and UK. The goal of the paper, however, is to explore how Giddens' (1984) structuration theory offers insights into the formation of social enterprises that deploy alternative approaches to incorporation. Between September 2015 and January 2016, three social entrepreneurs used the FSM to constitute two new companies in the UK and US. A study of FSM early adopters provides an opportunity to explore how agents (social entrepreneurs) rewrite structures (Articles of Association) when they form a new social enterprise. By examining how the Articles of Dojo4Life Ltd (UK) and AnyShare Society (US) changed during debates about incorporation, the dialectical relationship between social entrepreneurial agency and institutional structures can be theorised.

Chapter 17: The Politics, Policy, Popular Perception and Practice of Social Enterprise in the 21st Century

Dan Gregory

This chapter is an informal, discursive attempt to review the development of the social enterprise movement in the UK over the last two decades, in four respects. First, it considers the politics of social enterprise, in terms of its relationship to more macro political tides and sentiments, and emerging ideological currents. Second, social enterprise policy at the more functional level of Whitehall, through government departments, programmes and initiatives (mainly England focused but sometimes UK-wide). Third, it explores how popular perception of social enterprise has evolved over the same period; in the press, media and among the public at large. Finally, it assesses the more practical progress of social enterprise in our economy; in towns, cities and villages across the UK. Evidence and data is provided at various points occasionally

throughout this chapter but, to a significant degree, the observations here represent a rather personal assessment of where we are in the UK with social enterprise as a movement. The author has spent most of the 21st Century working in and around the social enterprise sector in roles which have concerned themselves with policy, politics and public perception of social enterprise. So, while this experience hopefully allows first-hand, expert insight to emerge, it also inevitably renders this chapter inherently rather subjective.

Chapter 18: Lessons from the Community Interest Company

Nina Boeger, Sara Burgess and Julie Ellison

While not without its limitations, the operation of the UK's Community Interest Company (CIC) model for more than ten years has produced important lessons on how social enterprises operate, on how to make them successful and how to regulate them. The introduction of the model, that necessitates a particular type of governance, has played a role in the development of the social enterprise movement in the last ten years, and in the continuing consideration of running business without losing sight of the wider community. Building on these insights, this chapter considers some of the lessons concerning the governance and funding of social enterprises, and their ability to demonstrate social impact, which the operation of the CIC model has revealed.

Introduction

NINA BOEGER AND CHARLOTTE VILLIERS

This book brings together a collection of chapters that identify and address fundamental problems with the activities of large companies. So many and so serious are these problems that we are led to question the plausibility of a future for the existing corporate governance frameworks in the UK, Europe and beyond. The established influence of a neoliberal ideology that underlies numerous failures has led to serious questions being asked of the system and whether or not it remains tenable. This book contains a variety of suggestions for repairing and renovating the broad existing framework as well as discussing alternative business forms that step outside of that framework and provide at least a parallel if not a replacement model of economic functioning. The chapters are the product of and responses to a symposium held at the University of Bristol Law School in June 2016 at which the authors presented and discussed the papers. Numerous themes emerged at the symposium and in this introduction we seek to bring out those themes that will then be elaborated upon in further detail within the individual contributions. First, we describe the problems that have been identified with corporate activity and how such activity is regulated. Second, we put forward some of the conceptual transformations that might be necessary to deal with the problems identified. Third, we introduce the alternative business forms that have been established and which are explored more fully by the authors. Fourth, we make some suggestions for different behavioural and organisational approaches that in turn challenge the existing ideologies that currently dominate the economic and regulatory hegemonies. Fifth, we recognise the continuing institutional and political obstacles but we point out that by meeting these challenges we have the potential for a more democratic and positive economy.

I. Contextual Challenges

We are in the midst of serious social and environmental challenges, including climate change threats, mass migrations and major levels of income and wealth inequality. These challenges are deepened as significant political changes are in

progress as the Brexit process is now under way and we are noting increasing signs of economic protectionism across the globe, not least since the inauguration of President Donald Trump in the US. One of the challenges lies in the rising levels of public distrust as citizens observe abuse of wealth and power by the 'elites' of the business and political circles. Numerous authors in the book refer to the Panama Papers leak that exposed a system in which secretive offshore companies have hidden crime, corruption and wealth details of business and political leaders and the super-wealthy (Hunter, Sjåfjell, Villiers). Many of the world's problems have been linked to the activities of large corporations and their involvement has created suspicion and distrust. Despite attempts by corporate actors to ensure, or at least to give an impression of, better behaviour, there has grown widespread criticism of corporate social responsibility and of well-established corporate norms and concepts such as the shareholder primacy norm. Hunter, for example, tells us that 'CSR has been co-opted by some businesses, making it part of their marketing and branding and obfuscating the more detrimental aspects of their activities.'

We are currently facing a legitimacy crisis of corporations and executives. This legitimacy failure arises out of the opaque nature of shareholdings and the impact of shareholders' decisions in general meetings. Shareholders and managers appear to have abandoned their fiduciary duties to the corporation and have extracted value for coupon holders and themselves (Ireland). This has been encouraged by the shareholder primacy model that has the effect of prioritising shareholder interests and giving precedence to short term, profit-oriented goals rather than long term objectives that comprise a broader set of aims, leading to value extraction, or rent extraction (Williamson). This shareholder primacy model is at the heart of the destructive forces of financialisation, which has become a key word for the crisis of capitalism and for economic failures and resulting austerity programmes. The shareholder primacy model has been identified by critics of corporate governance as the fundamental problem because it rests on false assumptions about the role of the shareholders as 'owners' of the company. Williamson describes the model as 'dysfunctional'. As Pearson tells us, shareholder primacy 'is not a valid theory, nor a clear legal relationship; it is a wilfully blind belief system' with a false theoretical base and ambiguous legality since there is very little real legal support for it. Despite its mistaken legal underpinnings, 'though widely falsified, shareholder primacy remains as a belief system shaping human behaviour across the corporate landscape and beyond.' It is clear to many scholars contributing to this book that we need to reduce the force of the shareholder primacy model. As Sjåfjell tells us, 'the social norm of shareholder primacy must be identified and mitigated' and Pearson is clear that 'escape from its grip is essential if this generation is to fulfil its duty to bequeath a planet as viable as the one it inherited'.

A connected problem rests in the hierarchical structures of our political economy and our traditional large corporations which present barriers to more

democratic ways of running businesses and that result in exploitation of the lower ranked workers. Kristensen and Morgan observe that

> institutional path dependencies arise where actors are already organised hierarchically with strong social and economic distinctions between rich and poor, between those who hold forms of capital which are fungible and transferable across different assets and those who survive only by virtue of their labour power. In these situations, the responses to the challenges of large-scale organisation are likely to be dominated by the more powerful actors who seek to create organisational forms which reproduce and extend their status and position in control of both the firm and the society. Such contexts encourage the joint stock limited liability company where power over the purpose of the corporation is defined in terms of the benefits generated firstly for those rich enough to invest or own collective enterprises and secondly for those who act as their agents in the running of the company, ie senior managers.

Erdal points out that despite efforts to create more egalitarian arrangements,

> nonetheless when we go to work we are thrust back into the more ape-like conditions of hierarchy, dominance and tricks like the employment contract that remove the democratic rights altogether: we have no right to participate except as instructed by the dominant hierarchy; we have no influence on decisions nor on who takes the decisions; and far from receiving a fair share of the wealth we create, we see it removed and passed to the 'owners'.

Again, these problems are exacerbated by the continued adherence to the free market ideology by 'the leaders of business in the real economy, of finance, the media, relevant academia and much of the political sector—what Roosevelt referred to as 'organised money' (Pearson). This domination by the free market ideology 'only accelerates and multiplies the problems, rather than hastening their correction' (Pearson). Even the policies developed to meet the significant threat of climate change appear to be based on the assumption of a modified business as usual (Sjåfjell, Blowfield) replacing fossil fuels with low carbon or low energy fuel, and markets as prime (Blowfield). Some authors question this approach and are clear that 'the "business as usual" path that market actors in aggregate are following is not an option for sustainability; it is a very certain path towards a very uncertain future' (Sjåfjell). Indeed, to the authors brought together in this book, it is abundantly clear that we cannot do business as usual, and that our political and economic futures are uncertain. Moreover, we can only be certain that if we carry on as usual our environmental and social futures will be hugely difficult. The Brexit vote and Trump's instatement to the US Presidency, born upon a tide swell of populism and protectionism, could be viewed as Polanyian backlashes against the political establishment and the economic hegemony of the free markets and labour exploitation (Talbot). Climate change and other crises represent 'a transformation challenge for business' (Blowfield) necessitating new legal requirements such as the Sustainable Business Plan proposed by Sjåfjell, and alongside these challenges the fast pace of development in technology brings with it threats and opportunities (Pearson).

This convergence of potential crises that we are facing requires us to look for new ways of conducting business and trade and for the organisational vehicles that we use to be able to meet these challenges. These critical issues force us to consider and redefine the corporate purpose and to identify what must signify the role and duties of the board and the shareholders in general meeting (Sjåfjell) as well as to look beyond the conventional corporate form and, taking inspiration from existing alternatives such as cooperatives and social enterprises, we might find lessons in those examples of other business to find new ways of organising to benefit the entrepreneurs and the global society more generally. We must challenge as a 'powerful but inaccurate myth' the idea that there is only one appropriate form of organising collective economic activity and that it corresponds to the shareholder driven model of the limited liability (Kristensen and Morgan). We need a corporate law that is fit for purpose in the twenty-first century (Sjåfjell). As Blowfield reminds us, the other institutions that shape business actions (public policy, legislation, investor decisions, financial risk regulations and consumer behaviour) are not providing an environment that supports purposeful change (similarly, Boeger). This book seeks to lay down the foundations for a set of alternative ways of doing business by challenging the current hegemony and by presenting examples of already existing alternatives and, through these examples, suggesting better objectives, behaviours and structures.

II. Accountability

The first step towards building trust in business is to establish stronger accountability to the stakeholders. This requires clarity of relationships, transparency, power of accountees, and transparent information and productive discussions. Indeed, power in stakeholder relationships may be an important influence (Cooper). Current power differentials have the effect that corporations are not accountable to their less powerful, more vulnerable stakeholders (Cooper). One way to address this may be to create worker representation among directors in UK company boardrooms. Several authors in this collection point to the problem of hierarchical structures (Cooper, Kristensen and Morgan, Villiers, Ridley-Duff). Erdal notes that 'in a corporate hierarchy, the people at the bottom are not acknowledged as what they are: independent and potentially creative individuals cooperating voluntarily.' Villiers suggests that hierarchy leads to 'a less beneficent culture.' These authors express a preference for flatter, more holarchic structures (Ridley-Duff). As Cooper explains, 'an essential component of corporate accountability is the ability for stakeholders to enter into discussions and to influence decisions' but 'the presence of hierarchical power destroys the possibility of such accountability'. Another key ingredient for achieving accountability is transparency. Cooper's chapter explores the role of transparency in stakeholder accountability and notes that, alongside reducing power differentials,

'transparency must enable evaluation', and 'productive' discussions with stakeholders must 'converge on a conclusion or course of action.'

III. A Variety of Different Business Forms

This book identifies a variety of different business forms and confirms that the conventional corporate entity structure with a board of directors relating to the shareholders in general meeting does not have to be the only way of collective business activity for profit. In fact the range of different forms available highlights the possibility of and opportunities for innovation. These different forms also show that it is possible to emphasise goals other than profit maximisation and short term shareholder satisfaction. As Kristensen and Morgan argue,

> these different forms are associated with different corporate objectives because they do not have obligations to outside shareholders and this reinforces to a degree their origins in a more stakeholder oriented concept of collective economic activity. These structures, together with the welfare state, mitigate inequalities … and reinforce the idea of corporations serving a 'social good' whilst at the same time facilitating innovation and competitiveness by developing a highly skilled and trained workforce.

Some common features among these different business formats include common ownership, mutual self-help, democratic control and allowing workers and consumers to take control of production and consumption. The increasing levels of success of social enterprises, for example, demonstrate that a social solidarity economy is possible (Gregory, Ridley-Duff). Moreover, we can already observe a shift from a binary company/charity economy model to a much more varied economic landscape that comprises a range of different forms, including Community Interest Companies (Boeger, Burgess and Ellison), cooperatives, 'bencorps' and 'B corps' (Hunter). This variety of business formats could broaden the discussions beyond a focus on shareholder primacy or shareholder versus stakeholder debates and could support more democratic approaches to business and enterprise because they might accommodate a bigger set of interests. In addition, some of these newer corporate forms, such as social enterprises or B corps, favour a 'profits for a purpose' approach (Hunter). In Denmark cooperatives and industrial foundations have been very successful (Kristensen and Morgan) and elsewhere cooperatives have had an important influence within the debates and this is reflected within this book (eg Erdal, Villiers). Cooperatives offer more egalitarian and democratic arrangements because their structures are flatter and tend to operate on a partnership system in which the workers are partners. Erdal, for example, highlights the Mondragón cooperative network and the John Lewis Partnership, the key features of these being right to information, right to representation and right to share in the results. Similarly, Cooper describes the positive features of the Triodos Bank with its flatter structure and regular

opportunities for employees to have discussions. A question that arises is why cooperatives, with their apparent benefits, have not been adopted more widely and why are they not more influential in practice?

The many different positive examples presented in the chapters of this book lead to the question of how they might become more influential and how their positive features can be adopted more broadly. Given the potential benefits to society, some authors look for the possibilities of 'cross pollination' (Hunter). One potential for such cross pollination might arise through innovation in legal reform. Section 172 of the Companies Act 2006, which is seen as a problematic provision (Tsagas), has suffered through ambiguity and does not facilitate good governance or enlightened decision-making. Some modifications could be made, taking into account experiences from alternative arrangements. Williamson suggests emphasising pursuit of strategies for long term success. Hunter notes the variation on section 172 of the Companies Act 2006 used in the legal test for a B corp. This requires the adoption of wording in the constitutional document which repeats section 172 (1) of the Companies Act 2006, with some small but significant alterations:

> The purposes of the Company are to promote the success of the Company for the benefit of its members as a whole and, through its business and operations, to have a material positive impact on society and the environment, taken as a whole.
>
> A Director shall have regard (amongst other matters) to:
>
> — the likely consequences of any decision in the long term,
> — the interests of the Company's employees,
> — the need to foster the Company's business relationships with suppliers, customers and others,
> — the impact of the Company's operations on the community and the environment,
> — the desirability of the Company maintaining a reputation for high standards of business conduct, and
> — the need to act fairly as between members of the Company,
>
> (together, the matters referred to above shall be defined for the purposes of this Article as the 'Stakeholder Interests').
>
> For the purposes of a Director's duty to act in the way he or she considers, in good faith, most likely to promote the success of the Company, a Director shall not be required to regard the benefit of any particular Stakeholder Interest or group of Stakeholder Interests as more important than any other.
>
> Nothing in this Article express or implied, is intended to or shall create or grant any right or any cause of action to, by or for any person (other than the Company).
>
> The Directors of the Company shall for each financial year of the Company prepare a strategic report as if sections 414A(1) and 414C of the Companies Act 2006 (as in force at the date of adoption of these Articles) applies to the Company whether or not they would be required to do so otherwise than by this Article.

Hunter asks if this wording might be adopted more broadly for all corporate organisational forms. This would perhaps address the problem of limiting the

capacity of companies to the goal of seeking profit. This narrow goal leads to a false perception that companies, whether limited by guarantee or shares, may not operate with objects that promote purposes other than maximising shareholder benefit. As Hunter observes,

> there is still a perception that unless you are a distinct legal form, such as a CIC, or charity or community benefit society, then you are a company and therefore exist to maximise profit. This remains potentially damaging, in that this default expectation of most limited companies inevitably influences behaviours.

This limitation is exacerbated by the fact that there is no guidance for directors on what promoting a company's purposes other than shareholder maximisation means in practice in terms of their duties. As Hunter observes further,

> there is no reporting framework—as there is for CICs and B Corps—around delivery of community benefit or social impact. And there is no way to recognise instantly such a company with a social purpose distinctly from other companies generally as, again, there is with those enjoying the CIC suffix, and/or the B Corp certification.

A starting point towards broadening the scope of a company's objectives—whatever the type of organisational form—might be to alter the wording of the legislation to make it more explicitly understood that a company director can and should think beyond shareholder maximisation in order to fulfil his or her duties.

The existence and success of these alternative organisational forms, with their goals that step beyond profit maximisation, make possible other motives for all business forms. Hunter, for example, advocates love rather than power as the motive:

> [A]n economy and a business that embraces love as a positive force, rather than excluding it as irrelevant, has more prospect of retaining a focus on purpose and achieving success in delivering that purpose. It is the sort of success that has wide reaching benefits. It can contribute to reducing inequality; can avoid exploitation of workers, supply chains, customers and the environment.

Indeed, Hunter proposes looking for ways to 'create a virtuous circle in investment terms'. A more compassionate and caring approach might be required and Villiers provides advice inspired by the feminist ethic of care and the positive organisation studies schools of thought with an emphasis on relational connectedness and collective power.

IV. Alternative Business Goals

The chapters in this book, by highlighting the different organisational forms and showing their potential for continued success, indicate that we do not have to be restricted by the mainstream business orthodoxies. Indeed, almost all the authors are clear that we must not continue with the 'business as usual approach' and that rather, we need to move away from narrow minded business school and management school thinking. Semantics are relevant, as Parker suggests, and he proposes

that we should recognise the political nature of organisations and provide space for a much broader range of possibilities in terms of format, goals, activities and behaviours. Similarly, Mangan argues that we must bring cooperatives back into the picture. She suggests that social enterprise and 'collaboratives' have come to dominate the 'alternative' enterprise terrain and by allowing this to happen we have lost sight of what cooperatives have to offer. She advocates that we could view cooperatives more meaningfully. This observation reminds us that we need to be clear about the alternatives that are available and how they might provide a positive influence on the business and enterprise landscape. This requires us to clarify our understanding of some of those alternative formats. For example, B corps are a relatively new phenomenon and the definition of a B corp is still not fully clear beyond the three tests—performance, legal and interdependence declaration. Gregory also notes that social enterprise is 'a somewhat vague and contested term, with no formal, legal basis, at least in the UK.' We require greater clarity on these and on what they do in practice, but also we must understand what drives the entrepreneurship that leads to their emergence (Boeger).

V. A New Cooperative Solidarity

It is clear from the increase in the number of alternative enterprises that there is a desire for a more effective economy that meets societal need, suggesting these initiatives are beginning to take on the character of a wider movement (Boeger). The level of activity also indicates a wide recognition that the neoliberal doctrine has failed. The development of these different, more democratic organisations is part of a drive towards alternative wealth distribution, more egalitarian distribution of surplus, strong community commitments and contributors of all types with voice in governance and a share in economic and social returns. For example, Fairshares Management has links to cooperatives and social enterprise is representative of a social solidarity economy. In a similar vein, Cooper suggests that the 'communicative action' (per Habermas, 1984) style of deliberation with stakeholders adopted in the Triodos Bank signals a requirement for enhanced accountability. This form of deliberation is also necessary for stakeholders to be able to enter into a discussion with a corporation's management and other stakeholders (Cooper).

VI. Continued Contextual Challenges

This book delivers an optimistic vision of our potential future corporate landscape but within it there is also a recognition that there are many challenges and hurdles that need to be met before such a future is achieved. As Ireland reminds

us, corporations still hold many important resources and products and so we need to examine ways for making these operate in more acceptable and effective ways. Alongside corporations, the potential for success in the social enterprise movement is evident. Gregory narrates the achievements of the social enterprise movement in the UK and Erdal notes the greater success of the John Lewis Partnership compared to Marks and Spencer, and he observes the spread of positivity through the wider economy. Similarly, Kristensen and Morgan highlight the successful cooperatives and industrial foundations in Denmark. However, despite these successes, the political context remains problematic following earlier mistakes. The previous neoliberal project led companies and organisations to outsource with a resultant loss of production and reliance on financial services. This led to a debt economy which was forced then to concentrate on pleasing the shareholders who were providing the finance capital. Talbot reminds us that capitalism itself is a major problem as it encourages profit focus and short termism manifested by exploitation of the environment, employees and the global workforce:

> [C]apitalism is in a destructive spiral. Corporations exploit the environment to ruinous degrees. Legal mechanisms ensure shareholders claim value from the productive activity of company employees and from exploited workers in global value chains. Corporations lobby for, and get, favourable regulation. They hire law firms and accountants to extract value, to hide liabilities and to avoid tax.

The consequent institutional framework that surrounds our businesses remains problematic. Indeed, Blowfield warns of the hostile surrounding environment: 'the other institutions that shape business' actions are not providing an environment that supports purposeful change. This is true of public policy, legislation, investor decisions, financial risk regulations, and consumer behaviour'. The political context is an important factor if these alternative forms are to gain traction, and so is their wider regulatory context (Boeger). As Gregory points out with regard to the social enterprise movement, 'for social enterprise policy to be reinvigorated, a political shove from above is likely required.' Similarly, technology has a double-edged potential, as destructive and disruptive but also potentially as innovative and a source for new solutions.

Veldman notes that the problems are exacerbated by the lack of clarity and the contestation around the purpose of the Separate Legal Entity and the resulting architecture that has placed shareholders and directors centre-stage, giving special privileges to the shareholders at the expense of the other constituent groups. Ireland talks about a financial oligarchy. Talbot observes that under this capitalist system profit is the main obstacle to creating a corporation that is fit for social purpose. The challenge for these other forms of business is how they might work beyond, or in spite of, capitalism. If they can achieve their goals in alternative ways this could have a broader positive influence. Cooper is optimistic about this: 'there is great potential for productive and innovative accountability practices to be 'emerging elsewhere than in listed company contexts'. If they are able to achieve their goals without a narrow profit-driven focus, then other positive changes might follow. As Talbot suggests, 'remove that driver for corporate activity, add

a political commitment to change in the interests of all people, and all things are possible'. It is arguably necessary for us to challenge the existing economic regime. The Separate Legal Entity model is not a sufficient answer to the problems (Veldman). In such challenge lies the potential for new ways of doing things. As Kristensen and Morgan remind us:

> [C]ollective forms of organisation are responses to the challenges that face actors in particular circumstances where there are elements of institutional continuity and path dependence but there are also moments of openness when political struggle can make a difference and new paths can emerge and new experiments in the use of institutions and organisational forms can be undertaken.

Ultimately, our main message in this book is that we cannot continue with a business as usual mentality. If we do that the future of our planet is at stake. Ridley-Duff reminds us that social structures are products of human agency and free will. This lets us know that we *can* change things. We *can* find alternative forms of business and enterprise that focus less on profit and more on benevolence and societal and environmental well-being. Our book presents a starting point for this search. Already, there are many different models that provide inspiration for innovation. Most of these alternatives, having been developed at grass root level, are inherently more democratic in their structures and decision-making practices and recognise and reward the contributions of a broader set of constituents (Villiers). As Gregory remarks: 'Across the UK we are creating and growing more democratic, fairer, more diverse, more innovative and more inclusive businesses, distinct and popular for how they trade.' It is this democratic feature that is perhaps their strongest attribute because it speaks to a fundamental evolutionary social behavioural requirement. In the words of Erdal:

> [A]t the root of our evolved nature is a complex socially-tuned set of responses built around autonomy, recognition, the ability to decide on who gets to lead in any situation and a powerful reaction against arrogance. An egalitarian social environment is natural to us at a deep level.