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Corporate Personhood and Fiduciary Duties as Critical Constructs in Developing Stakeholder Management Theory and Corporate Purpose

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Abstract. This article considers the complex process of economic value creation in joint production in which a corporation is viewed as more than a nexus of contracts for four reasons related to the interdependent functions of the corporate personhood concept of the corporation as a separate legal entity. Corporate personhood facilitates stewardship and stakeholder management, which can encourage firm-specific investments, reduce shirking, and attenuate rent seeking to provide economic value. The corporate personhood approach illuminates multidimensional constructs for the governance of a corporation at the board level to embody fiduciary duties and corporate purpose, which is much richer than the nexus of contract view.

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Keywords: corporate personhood • fiduciary duties • stakeholder management • corporate purpose • joint value creation • governance • institutional logics

When a publicly traded corporation is formed, the law recognizes an independent legal entity that is separate from organizers and investors and can do certain business activities like a "person." The corporation, from the Latin "corpus," meaning body, was traditionally recognized by U.S. law as being formed by a group of people who could act as one "body" or one "legal person" (Canfield 1917, Mark 1987, Blair 2013). However, in the 1970s, this time-honored concept of the corporation became dominated by a reductionist, financial, economics-inspired approach that regards firms[1] as contractual devices with no separate existence apart from its contracting agents. This contractarian (principal-agent) approach became the conventional wisdom of U.S. legal scholarship in the 1980s and 1990s, and many influential law school scholars currently espouse this approach. Specifically, the corporation is regarded as no more than "a nexus of contracts" through which a set of explicit and implicit agreements are voluntarily negotiated among rationally self-interested parties joining the corporation (Alchian and Demsetz 1972, Jensen and Meckling 1976, Easterbrook and Fischel 1991), thus challenging the concept of corporate personhood.[2]

Pragmatically, the corporate personhood concept allows the mediation of legitimate stakeholder interests, which is viewed negatively within contractual agency theory because increasing managerial discretion entails higher agency costs (i.e., the sum of monitoring costs, bonding costs, and residual loss) and thereby reduces the economic value of the corporation (Jensen and Meckling 1976, Fama 1980). However, minimizing agency costs does not necessarily maximize the economic value of the corporation (Zajac and Olsen 1993, Blair and Stout 1999, Zingales 2000). Indeed, the mediating hierarchy solution for effectively resolving ex post conflicts in stakeholder management can encourage firm-specific investments, reduce shirking, and mitigate rent seeking to provide economic value that exceeds additional agency costs incurred by stakeholder management, thereby achieving net gains.[3]

To achieve joint value creation, the realization of effective corporate personhood requires the development of the individual and the expansion of cooperation within the corporation as mutually dependent realities in which strategic and tactical activities both embody purpose and evolve purpose (Follett 1924, pp. 82–83; Barnard 1938; Mayer 2021). Essential to joint value creation is effective corporate governance that induces multistakeholder contributions and reduces economic rent seeking across stakeholder constituencies (Barnard 1938, Simon 1947, Blair and Stout 2006). Here, it is maintained that the traditional corporate personhood concept of the corporation—presently a minority view in economics—is a better foundation for a stakeholder theory of the corporation and economic value creation, and thus a more relevant holistic conceptualization of corporate governance for the fields of organization theory and strategic management compared with a nexus of contracts view. In considering the complex process of economic value creation in joint production, a corporation is *more* than a nexus of contracts for four reasons related to the interdependent functions of the corporate personhood concept of the corporation as a separate legal entity (Blair 2013, Pollman 2021).

Four Interdependent Functions of Corporate Personhood

First, corporate personhood is an innovation that provides continuity and clear-cut succession in holding property and implementation of contracts as the separate corporate personhood continues to hold property to be liable for performance under its contracts, even if the individual humans involved die or withdraw from the corporation (Clark 1986, Ayotte and Hansmann 2013, Blair 2013).

Second, corporate personhood provides an "identifiable persona" and thus is the bearer of reputational and organizational capital to serve as a central actor in carrying out certain business activities (Hovenkamp 1988, Pollman 2011).[4] Stakeholders in the corporation acknowledge, and perhaps identify with this persona, which serves as the holder of critical intangible assets such as goodwill, relational networks, corporate reputation, and brand. In a world of mass production, marketing, and distribution, these intangible assets can be sources of substantial economic value to the corporation's stakeholders and would be difficult to develop and sustain if the only thing holding the coalition of stakeholders together were transactional contracts or market exchanges (Chandler 1990, Kogut and Zander 1996, Boivie et al. 2011).

Third, corporate personhood provides an "economic bonding" governance mechanism that partitions and shields the corporate entity's assets dedicated to the business from the personal assets of individuals participating in the business, which enables the commitment of specialized assets, and locks in those assets to the corporation to realize economic value more fully. It provides mutual credible commitments toward cooperative efforts as it locks each of the stakeholders into a Rousseauean social contract in the form of the corporation (Coleman 1982, Blair and Stout 1999).[5] Indeed, the ability to commit (co)specialized assets and organizational capabilities, both physical and intangible, to a common purpose over time is a critical function of the corporation (Nelson and Winter 1982, Teece 1986, Henderson and Van den Steen 2015). The current article maintains that law, economics, and organization theory are needed to understand institution building and corporate purpose. In particular, *corporate personhood enables lock-in and mutual commitments that support a corporation to become not only a unique social actor but also a long-lasting institution that is infused with value and creates an economic surplus for stakeholders* (Selznick 1957, Blair 2003, King et al. 2010, Kraatz and Flores 2015). Further, a particular type of (defensive) asset partitioning in the form of limited liability means that only the corporate personhood itself is responsible for debts of the corporation, and equity holders and creditors cannot be held personally liable for the debts of the corporation, which makes it easier for it to raise equity capital from widely dispersed shareholders (Berle 1947, Hansmann and Kraakman 2000, Blair 2003).[6]

Fourth, corporate personhood status requires a governance structure in the form of a managerial hierarchy topped by a board of directors. The functions of the board of directors have been a subject of controversy at least since the debate between Adolph A. Berle (1931) and E. Merrick Dodd (1932). The current article aligns with Dodd (1932) as well as Blair and Stout (1999) by considering the board of directors as "mediating hierarchs" overseeing team production. In this view, the board of directors have well-defined fiduciary duties of due care, good faith, and loyalty for the purpose of increasing the welfare of the *whole corporation* as well as the shareholders by mediating disputes among team members about the allocation of duties and rewards and thereby mitigating shirking and rent seeking among team members (Blair and Stout 1999, Lan and Heracleous 2010). As former Commissioner of the Securities and Exchange Commission (SEC), Steven Wallman (1999, p. 813) notes, in the United States, state law governs the fiduciary duty of directors and the majority of states describe the fiduciary duties of the board of directors to the *corporation itself*: "Shareholder primacy is not now—and never has been—the law of the land."[7] The corporation both descriptively and normatively is an institution of responsible capitalism mitigating conflict, realizing mutual gains, and infusing order, in which the board of directors serves as a corporate conscience, especially in times of crisis (Commons 1932, Mace 1971, Williamson 1996).

Fiduciary and Team Approaches to the Board of Directors

Bestowing authority to the board of directors streamlines decision making, identifies accountable human persons to act for the corporate personhood, and restricts control that various individual participants, such as the chief executive officer (CEO), or a major financial investor might otherwise possess (Bainbridge 2002, Blair 2003). Because the board members do not have high-powered incentives, such self-governance via the board of directors is viewed as a second-best private-ordering solution to facilitate firm-specific investments and efforts in team production by serving as an internal "court of appeals" or final arbiter to follow rules of probity and appropriateness to provide a dispute resolution function for various stakeholders with legitimate claims (Masten 1988, Blair and Stout 1999, Ocasio 1999, Williamson 1999, Gevurtz 2004).[8]

Fiduciary duties are at the heart of corporate case law, which deals with alleged breaches of such duties (Dodd 1932, Clark 1986, Blair and Stout 2001). Those claiming that the corporation can be fully described and understood as a nexus of contracts challenge the very idea of fiduciary duties by asserting that they are merely default rules and thus negotiable provisions in which corporate officers and directors can opt out of their fiduciary duties through bylaws, charter provisions, or employment agreements (Butler and Ribstein 1990, Hart 1993). The current article, in contrast, holds that the duty-based purpose of loyalty to the corporation itself as well as its shareholders should not be considered a default rule but rather a mandatory rule (i.e., fiduciary duties are nonnegotiable obligations) enforced by courts and that contracting relationships and fiduciary relationships are *different institutional logics in practice* as well as discrete structural governance alternatives (Clark 1985, Williamson 1991, Eisenberg 1999, Thornton and Ocasio 2008, Hollensbe et al. 2014, George et al. 2023).

The economists' nexus of contracts view of the corporation is a social construction that both assumes and legitimizes self-interest. Such an instrumental theory of the corporation has its place, but such a theory must also be kept in its place because blurring categorical distinctions and claiming that the fiduciary relationship can be reduced to contracting undermines the primary purpose of the fiduciary concept to facilitate trust via legal rules, the *logic of probity and appropriateness* (and court's attempts at shaming for violation of duty), and, even more critically, shared logics of action (in which there is more social framing than shaming to manage joint production motivation and to internalize trustworthiness as an intrinsic value) (Williamson 1999, Blair and Stout 2001, March and Olsen 2009, Lindenberg and Foss 2011, Donaldson 2021).

A fiduciary relationship is a concept based on the premise of the board of directors making a normative commitment to a fiduciary role by adopting an *other-regarding preference function.* Categorical distinctions between contracts and fiduciary relationships serve key functional purposes in the *social framing* of expectations, maintaining institutional stability, facilitating trust, and engaging in productive discourse to the mutual benefit of all members of the corporation (Blair and Stout 2001, Osterloh and Frey 2006, Bruce et al. 2011). Such a logic amplifies the relational impact of purpose and the governance of corporations emphasizing stakeholder value creation based on social capital; meaningful work; normative commitments via professional socialization; distributional, procedural, and interactional justice; as well as relational trust (Coleman 1990, Dyer and Singh 1998, Rousseau et al. 1998, Harrison et al. 2010, Poppo et al. 2016, Gartenberg et al. 2019). Relational small wins, namely, concrete, complete, implemented outcomes of moderate importance, which are derived from a series of exchanges, encourage subsequent larger-scale cooperation in the corporation (Weick 1984, Reay et al. 2006, McCarter et al. 2011).

Corporate personhood safeguards the going-concern value of the corporation to serve the joint interests of all stakeholders and not just shareholders. Under the team production approach, corporate board members are conceived neither as shareholders' agents nor as agents of any other stakeholder, but rather as *disinterested trustees for the entire corporate personhood* (Eells and Walton 1961, p. 151; Clark 1985; Kaufman and Englander 2005).[9] The interests of the corporation itself and its shareholders can be understood as a joint welfare function of all those making firm-specific investments and agreeing to participate and commit to this internal mediation process within the corporation (Aoki 1984, Stout 2001).[10] The corporation offers a governance structure that adaptively allocates decision control rights and income rights among interdependent stakeholders in ways that mitigate collective action problems to increase economic value creation and achieve a broader purpose (Ostrom 1990, Blair and Stout 1999, Gulati 2022, Stoelhorst 2022, Aguilera 2023).

Critically, the claim that shareholders are "principals" and the board of directors are "agents" contradicts the realities of corporate law. Indeed, the act of incorporation means that no one team member, including the shareholder, is a principal possessing a control right over the team (Clark 1985, Blair and Stout 2001). Moreover, the board of directors has decision control rights over the use of corporate assets that are independent from individual team members and are protected by law. Therefore, the directors are not agents in a legal sense (Clark 1986, Blair and Stout 2006). Shareholders can elect the board of directors and, under some circumstances, remove these directors, but shareholders cannot command the board of directors, even by unanimous vote. Indeed, since the early 20th century, both the common law and state codes have required that boards of directors manage publicly-held corporations, and the independence of the board of directors is a defining feature of the publicly-traded corporation. Furthermore, the implicit contract law of internal organization is that of forbearance and the "business judgment rule" insulates directors from most claims of breach of the duty of care even when they deliberately sacrifice shareholders' interests to serve other stakeholders. While the board of directors have incentives to accommodate the interests of various stakeholders, the directors are under the command of none and possess intrinsically discretionary responsibility (Williamson 1991, Rajan and Zingales 1998, Blair and Stout 1999, Robé 2011, Cheffins and Williams 2021).

The institutional logic of practice for the corporation as a nexus of contracts, as noted above, is a theory of explicit and implicit agreements voluntarily negotiated among rationally self-interested parties who join the corporate enterprise. The logic of corporate personhood and autonomous fiduciary duties, however, replaces competitive and self-regarding behavior, which is ruled largely by external sanctions (e.g., legal sanctions, monetary incentives, reputational loss, and social sanctions), with cooperative and other regarding behavior that is highly shaped by habits and norms of internalized trustworthiness and appropriate behavior. Such a logic is *socially contingent*, for example, based on solidarity, group identity, and the social expectations of cooperative behavior of others (Arrow 1974; Axelrod 1984; Mitchell 1999; Blair and Stout 2001; Bridoux and Stoelhorst 2016, 2022).[11] Having established that corporate law on fiduciary duty offers an alternative institutional logic in practice for team member collaboration, let us consider management literature that contributes to this collaborative concept of the corporation.

Corporate Personhood and Management Theory

The publication of Freeman's (1984) landmark *Strategic Management: A Stakeholder Approach* sowed the seeds of an alternative *fiduciary* concept of the corporation to challenge the agency theory claim that the corporation is solely a "nexus of contracts." Donaldson and Preston (1995) moved this conversation forward by noting that stakeholder theory can be directly tied to Dodd's (1932) theory of the corporate personhood and its accompanying fiduciary obligations to the institution of the corporation as a whole, and evaluating stakeholder theory based on *descriptive/empirical accuracy* relative to rival theories (e.g., agency theory), *instrumental* in terms of more effective achievement of conventional performance goals, such as firm-level economic value creation, and *normative* perspectives, in terms of legitimate interests in procedural and/or substantive aspects of corporate activity. All three views are marshalled in providing a coherent defense of corporate personhood and fiduciary duties.

Similar to Dodd's (1932) fiduciary position based on legal foundations, Evan and Freeman (1988) come to a similar conclusion based on more (Rawlsian) philosophical foundations that the board of directors has an obligation to safeguard the welfare of the corporation and of balancing conflicting (distributional) claims of multiple stakeholders to achieve this goal (see also Garcia-Castro and Aguilera 2015, as well as Sachs and Ruhli 2011). Moreover, a stakeholder theory of the firm redefines the purpose of the corporation to *serve as a vehicle for coordinating stakeholder interests*.

Akin to Blair and Stout's (1999) mediating hierarch framework, Evan and Freeman (1988) place greater emphasis on the *process* of multiple-stakeholder coordination than on the specific agreements/bargains.[12] This framework concerning the board of directors offers a viable cooperative alternative to agency theory by shaping possibilities for developing a coherent governance team that focuses on collective decision making and goal alignment, intrinsic motivation, corporate-level identification, collaborative problem solving, and service. Further, such service reflects collectivistic behaviors having higher utility than individualistic, self-serving behaviors (Mahoney et al. 1994, Davis et al. 1997, Sundaramurthy and Lewis 2003).

At the heart of the fiduciary relationship is Barnard's (1938, 1948) concept of *responsibility*, which is considered here in terms of the honor and faithfulness with which the board of directors is expected to carry out its fiduciary duties. The emphasis is on competence, integrity, professionalism, stewardship, and a systems approach to understanding the nature and nurture of the corporation to achieve cooperation among groups and individuals within the social system of a corporation (Mahoney 2002, Gabor and Mahoney 2013).[13] Barnard's (1938) concept of executive responsibility encourages behaviors consistent with a duty of care that keeps in mind the importance of organizational survival.

In terms of corporate purpose, Barnard (1938, p. 282) emphasizes the foundational role of morality in the effective practice of management, and states: "organizations endure … in proportion to the breadth of morality by which they are governed. This is only to say that foresight, long purposes, high ideals are the basis for the persistence of cooperation." The depth, breadth, and length of organizational purpose evoke calls for stakeholder management in which building collective purpose through dependability and determination in human conduct enables participant stakeholders to flourish.[14] Corporate responsibility means loyalty to a moral code that supports the corporate personhood as a going concern. This code produces a systemic outcome, which Barnard (1938, p. 259) labeled the "moral factor" for institution-building that enables executives "to inspire cooperative personal decision by creating faith: faith in common understanding, faith in the probability of success, faith in the ultimate satisfaction of personal motives, faith in the integrity of objective authority, faith in the superiority of common purpose as a personal aim of those who partake in it."

The fiduciary duty of loyalty precludes self-dealing and requires that the board of directors acts in the best interest of the corporation itself.[15] Moreover, beyond fulfilling fiduciary duties because of reputational career concerns and maintaining perceived legitimacy of the board (Hurst 1970, Cowen and Marcel 2011), directors taking seriously their fiduciary responsibility in maintaining the publicly traded corporation will also take seriously the duty of care within the fiduciary doctrine. Relatedly, Barnard's (1938) notion of executive responsibility encourages behaviors consistent with a duty of care that attends to organizational survival (Godfrey and Mahoney 2014). *The purpose of the corporation then is to facilitate cooperative collective action and the development of individual participants to flourish, which are mutually dependent realities.*

The corporate personhood approach illuminates multidimensional constructs for the governance of a corporation at the board level, which is much richer than the nexus of contract view. A comparative institutional assessment of "corporation as contracting" and "corporation as fiduciary relationship" that joins law, economics, and organization theory is needed to provide a different and deeper understanding of the purposes served by the publicly traded corporation in the evolving science of organization.[16]

Endnotes

[1] Clark (1985, p. 5) notes: "Much of the economic literature talks about 'firms' rather than "corporations,' and does not distinguish sharply between closely held business organizations (whatever their legal form) and publicly held corporations. For a number of reasons, failure to make this distinction clearly can be a source of almost fatal confusion." In the current article, "firms" refers to publicly-traded corporations.

[2] As a critique of the contractarian view of the corporation, DeMott (1988, pp. 879–880) states: "Resorting unreflectively to contract rhetoric is insidiously misleading and provides no rationale for further development of the law of fiduciary obligation … . Descriptions drawn exclusively from contract principles are surely mistaken."

[3] Under incomplete contracting, maximizing shareholder wealth does not necessarily address conflicting interests of shareholders, employees, suppliers, and other stakeholders, and thus does not necessarily maximize the corporation's economic value (Klein et al. 2012, Barney 2018, McGahan 2021). Shareholder primacy and minimizing agency costs can be applicable for a particular corporation, but the mediating hierarchy framework counsels against a simple rule that shareholder primacy is best for all corporations (Blair and Stout 1999, Blair 2013). Amis et al. (2020, p. 500) note: "Developing a theory of stakeholder governance that explains how firms can reconcile the conflicting economic and non-economic interests of its multiple stakeholders is a hard problem. However, this is the governance problem that senior managers currently face, a reality reaffirmed by the recent announcement by 181 CEOs associated with the Business Roundtable (2019) that they will now focus on addressing broader stakeholder interests instead of just maximizing the wealth of shareholders." Stakeholder management holds that effective safeguards and trust-building mechanisms are required. For example, Wang et al. (2009) submit that employees with foresight may be reluctant to make firm-specific investments that would make them economically vulnerable, and this empirical study explores economic- and relationship-based governance mechanisms that mitigate this underinvestment problem. Such firm-specific investments are critical for achieving superior economic performance because they are not easily tradable or redeployable and hence provide barriers to imitation (Dierickx and Cool 1989, Chi 1994). Effective use of these governance mechanisms enables a corporation to obtain greater economic performance from its efforts to deploy firm-specific knowledge resources. From an instrumental stakeholder perspective, *governance matters*, and the *bundle* of governance mechanisms considers both complementarity and substitution (Rediker and Seth 1995, Sundaramurthy et al. 1997, Hoskisson et al. 2018).

[4] Pollman (2011, pp. 1631–1632) notes that U.S. law inherited and transformed the corporate personhood concept: "Some trace the origins of the corporate form to ancient Rome, and more definitively, to medieval Europe when churches, guilds, and local governments sought royal authority to incorporate entities for perpetual survival. By the late 16th century, several European countries had begun chartering corporations to develop foreign trade and colonies. Some of these early corporations, such as the East India Company and the Hudson Bay Company, became well-known players in American colonial times. English law used the metaphor of the corporation as a person to describe the self-perpetuating nature of the corporation."

[5] Ketokivi and Mahoney (2016) maintain that the stakeholder logic of Blair and Stout (1999) is also the logic of transaction cost economics in which mutual commitments are reciprocal acts designed to safeguard an exchange relationship. The wise prince should think beyond Machiavelli's myopic approach to contracting and should seek both to give and receive credible commitments that facilitate ongoing relationships and adaptation (Williamson 1996, p. 26). Stout (2003, p. 669) notes: "Just as the legendary Ulysses served his own interests by binding himself to the mast of his ship, investors may be serving their own interests by binding themselves to boards." This logic indicates that restricting one's own choices can make one better off (Schelling 1960). Thus, corporate governance seeks to facilitate the corporation's economic value creation in the team production process through the mediating function of the board of directors at the top of the hierarchy, who is not, itself, a residual claimant in the corporation, and whose charge is to mediate conflicts among enfranchised stakeholders bearing residual risk and having residual claims on the corporation as a "nexus of firm-specific investments"(Blair and Stout 1999, Asher et al. 2005, Heracleous and Lan 2012, Mahoney 2012, Klein et al. 2019, Bacq and Aguilera 2022).

[6] Donaldson (1982) cautions that limited liability is frequently taken as the sine qua non of corporate existence, even though it is often missing in the history of the corporation. Indeed, limited liability was not an essential attribute of the corporation in the early 19th century (Blumberg 1986). California corporations did not obtain limited shareholder liability until 1931 (Weinstein 2005), and, until 1965, the American Express Company was incorporated but had unlimited liability (Grossman 1995). Further, Blair (2004) notes that a highly successful business partnership between Isaac Merritt Singer and Edwin Clark was reorganized in its corporate form as the Singer Manufacturing Company in 1863 neither to raise new capital nor to provide investors with limited liability, but to prevent the partners' heirs from forcing a premature liquidation of assets used in the business and to provide a mechanism for settling future disputes between the former partners or among subsequent investors. The problem, Clark could foresee, was that, if the firm were organized as a partnership when Singer died, then the valuable business that the two had built would be destroyed in legal battles over claims to Singer's estate, because, by 1860, I. M. Singer had fathered and acknowledged 18 children, 16 still then living, by four women. Once incorporated, the business assets would no longer be the joint property of Singer and Clark but would belong to the corporation itself. Thus, substantial organizational capital accumulated by the corporation could not be split apart, and thus its reputation could not be easily destroyed. Corporate personhood enables mutual credible commitments among existing and new participants in which the corporation becomes the receptacle of reputational capital.

[7] Wallman (1999) notes that U.S. corporate law in giving the board of directors flexibility in shaping corporate strategy thereby improves the corporation's economic performance, while providing effective safeguards to investors through federal securities laws. Williamson (1990, p. 126) espouses governance safeguards and submits that "the world should not be organized to the advantage of the opportunistic against those who are more inclined to keep their promises. I would simply say that introspection supports this view. And all of Shakespeare's tragedies and comedies support it."

[8] Corporate law supports the idea that directors possess extensive and sui generis legal powers, control the inclusive, pluralistic, and

open-ended rules of corporate purpose, and are expected to be the final decision makers with respect to numerous issues likely to involve conflicts across stakeholders: "(1) the hiring or firing of a CEO; (2) compensation of the CEO; (3) compensation of the board itself; (4) succession planning; (5) declaring and paying dividends; (6) developing a plan for a merger or acquisition, or for a sale of all or substantially all of the assets of a corporation; (7) dissolution of the corporation; (8) issuing new stock; (9) reviewing and approving any transaction in which the CEO or a board member has a conflict of interest; (10) responding to a derivative action initiated by a shareholder; and (11) selecting an auditor and approving the audit" (Blair 2015, p. 311). Moreover, the board of directors' decision rights to use corporate assets or earnings can benefit nonshareholder constituencies such as creditors, employees, local communities, or even general philanthropic causes (Blair and Stout 2006, p. 726). Similarly, Eells and Walton (1961, pp. 149–150) conclude: "The property of the corporation is owned by the *persona ficta* and not, either in law or in fact, by the 'share owners.' The corporate 'person' acts through its board of directors as a collective body, and it is they alone who may determine how the property [of the corporation] is used, how earnings are calculated, and how net earnings are distributed. Although they must act within the boundaries of legally set norms, their discretionary area for decision making is wide. In exercising its powers as established by charter and corporation law, the business corporation functions like a [Lockean] representative government rather than a direct democracy, for the shareholders elect the board, which in turn has broad powers of business management."

[9] Former Harvard Law Dean Robert Clark (1985, p. 56) summarized corporate law: "(1) corporate officers like the president and treasurer are agents of the corporation itself; (2) the board of directors is the ultimate decision-making body of the corporation (and in a sense is the group most appropriately identified with 'the corporation'); (3) directors are not agents of the corporation but are *sui generis*; (4) neither officers nor directors are agents of the stockholders; but (5) both officers and directors are 'fiduciaries' with respect to the corporation and its stockholders." Clark (1985, pp. 60–62) goes on to ask, "Is it realistic or useful to view the modern public corporation as consisting only, or even principally, of a set of contracts? I think not. This extreme contractualist viewpoint is almost perverse. It is likely to blind us to most of the features of the modern corporation that are distinctive, puzzling, and worth exploring … . Most corporate law deals with alleged breaches of fiduciary duties by managers … [which] are highly unlikely to have been the result of any compact or understanding between manager and investor. … Economic analysis could help a great deal in the study of the law's special concept of the fiduciary, but a militantly contractualist approach may make it difficult to realize this contribution."

[10] As a matter of statutory law, shareholders' rights in a publicly held corporation are very limited. Blair and Stout (1999, p. 289) note: "While in certain limited circumstances shareholders enjoy special rights not granted to other stakeholders, these rights are merely instrumental. Shareholders enjoy special legal rights not because they have some unique claim on directors, but because they often are in the best position to represent the interests of the coalition that comprises the corporation. Thus, when directors breach their fiduciary duties and seek to profit personally at the corporation's expense, shareholders sometimes can take legal action on the corporation's behalf. As a general rule, however, the benefits of such derivative actions inure not just to shareholders, but to *all* stakeholders." Thus, directors' control of a corporation's assets enables stakeholder coalitions to benefit from joint value creation in team production by safeguarding against wasteful economic rent seeking, and property rights are allocated to the board of directors as a governance structure for the mutual advantage of all stakeholders (Clark 1985, Blair and Stout 1999).

[11] Emphasizing social norms in the fiduciary relationship, Rock (1997) maintains that "fiduciary duty law evolves primarily at the level of norms rather than the level of rules" (p. 1097) and that "we should understand Delaware fiduciary duty law as a set of parables or folktales of good and bad managers and directors, tales that collectively describe their normative role" (p. 1106). These narratives serve an aspirational function of the roles that the board of directors are to *(re-)enact*. Thus, legal standards influence the development of the social norms of the board of directors. Relatedly, Blair and Stout (2001, pp. 1796–1798) state that "discussions of fiduciary duty in corporate case law act as judicial 'sermons' on proper motives and conduct that filter down to directors, officers, and shareholders through corporate lawyers and the business press. Courts preach these sermons not to enlist the aid of third-party 'norms enforcers,' but primarily to influence corporate participants' behavior more directly by fleshing out the social context of their relationships, and particularly by framing … fiduciary relationships based on trust, [and] corporate law influences behavior not just by imposing sanctions but also by shaping perceptions of what sort of behavior is expected, appropriate, and common. [Furthermore] law can serve an 'expressive function' and promote desirable behavior by changing preferences as well as by changing payoffs."

[12] Donaldson and Preston (1995, p. 88) presciently conclude: "The theory of property rights, which is commonly supposed to support the conventional [principal-agent] view, in fact-in its modern and pluralistic form-supports the stakeholder theory instead."

[13] Godfrey and Mahoney (2014, p. 367) make the relevant connection: "Barnard made the case that executives have a fiduciary responsibility to the organization as a whole and not to any one stakeholder group—a view consistent with modern property rights theory and contemporary corporate law … . Responsibility means that individual action conforms to the requirements of some relevant code of conduct; executive responsibility entails the adoption of an 'organizational personality' (Barnard 1938, p. 270) where actions will be dictated by 'a sense of the good of the organization as a whole' (Barnard 1938, p. 277). The primary good for the organization is survival and the maintenance of the cooperative effort in the face of environmental change, unexpected human or social events, and the vagaries of chance. Executive responsibility thus points in the direction of exercising due care in decision making and action."

[14] Mahoney and Kor (2015, p. 302) offer systemic challenges to a stakeholder approach that upholds fiduciary duties because "even if a management team embraces the stakeholder approach, firms (and their stakeholders) are subject to time inconsistency problems (Shleifer and Summers 1988)—when managerial philosophy and priorities change over time because of managerial turnover or new financial/competitive challenges. An unfettered pursuit of shareholders' value maximization at those times may lead to inefficient strategic actions, such as the breach of valuable implicit contracts that encourage employees to invest in firm-specific human capital. For example, Shleifer and Summers (1988) maintained that a breach of trust via breaking implicit contracts can occur in hostile takeovers. In such cases, financial transfers from employees to shareholders can result from the termination of established defined benefit pension funds (Pontiff et al. 1990). Economic efficiency losses will occur because employees who anticipate opportunistic behavior will be reluctant to enter into implicit contracts with the corporation (Wang and Barney 2006). After observing or experiencing such opportunistic firm behavior, the dominant strategy of the employees (and managers) is likely to be to minimize firm-specific projects."

[15] Zaman et al. (2021) discuss self-dealing and breach of loyalty to Nissan Motor Company, in which the SEC charged Carlos Ghosn, the company's CEO, and board member Greg Kelly with fraudulently concealing $140 million of compensation and retirement

benefits from Nissan's investors. Similarly, AirAsia's board chairperson and the CEO were jointly accused of accepting a $50 million bribe from Airbus for placing an order for aircraft. It should be noted that dismissing the fiduciary role of the board of directors based on such examples of corruption lacks a comparative institutional assessment. Presumably, all governance forms are flawed (Williamson 1996). Given a business world in which opportunism occurs, the current paper has focused on how the concept of corporate personhood and the board of directors' role in serving a stewardship function and enacting fiduciary duties provide safeguards that are inextricably intertwined with enhancing economic value creation and corporate purpose (Blair and Stout 1999, Boivie et al. 2021).

[16] This article maintains that a comparative institutional analysis within the economics/finance and legal arenas corroborates that the corporate personhood construct has been instrumentally valuable, enabling the corporation as an institutional and legal form to create economic value and to manage risk at the institutional level. Corporate personhood facilitates stewardship and stakeholder management, which can encourage firm-specific investments, reduce shirking, and attenuate rent seeking to provide economic value. As a historical matter, corporate personhood is a separate construct from its constitutional treatment, which involves thorny sociopolitical issues, as the U.S. Constitution provides no reference to corporations, and there are tensions between constitutional law and corporate law. There are dangers in anthropomorphizing the corporation, and corporate personhood should not be confused as synonymous to a natural person (Cornelissen 2002, Ashforth et al. 2020). For example, a corporation cannot claim a Fifth Amendment privilege against self-incrimination because the historic function of this right has been limited to the protection of individuals. However, a fault line of the corporate personhood construct is that there is no limiting principle in how far the construct is extended in sociopolitical and religious arenas as manifested in such cases as *Citizens United v. FEC* (2010), in which the Supreme Court upheld the First Amendment right of corporations to use general treasury funds to support or oppose candidates in political election campaigns and invalidated strict federal campaign finance laws that placed limits on corporate spending in elections, and in *Burwell v. Hobby Lobby Stores* (2014), in which the Supreme Court determined that a business corporation can constitute a "person" who can "exercise religion" under the Religious Freedom Restoration Act of 1993, and thus can deny employees healthcare benefits that include contraceptive products and services (Ellis 2010, Miller 2011, Ripken 2012, Horwitz 2014, Pollman 2021). I thank David Chandler, Tom Donaldson, Matt Kraatz, Jackson Nickerson, Will Ocasio, and Roy Suddaby for their insights on the benefits and limits of the corporate personhood construct.

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