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Law and Economics (Corporate Law; Antitrust and Regulation)

Economic inequalities: the role of corporate governance and public pension funds

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Introduction

Over the last few years, we are facing a shift in our perception of capitalism. While the current growth model has, on one hand, captivated the worlds of business, finance, and institutions, leading to major economic advances. On the other hand, it has also contributed to unsustainable environmental and social consequences.[1] Climate change, loss of biodiversity, social inequalities, and violations of human rights are just some of the negative outcomes of a production and consumption system that is too short-term focused and predicated on the notion of an infinite supply of resources.
These challenges necessitate a new strategy for how businesses operate and compete, which must be supported by a radical transformation of the corporate governance model toward what is now known as stakeholder approach.

In early times, corporations served broader social aims, and the purpose clause was one of the most important provisions in corporate charters.[2] It embodied the link between what we refer to as the private and public spheres.[3] Businesses grew in size as the industrial revolution progressed, and their mission shifted away from social good and toward profit maximisation.[4] As a result, the ultra-vires doctrine was adopted as a means of retaining the state's eroding power over corporations. This implies that "corporate purpose broadly concerns corporations' role in society."[5] The ultra-vires doctrine was eventually abandoned, but modern legislation, which allows corporations to declare their purpose as "any lawful activity," shows that in a way corporations are still controlled by the public sphere.[6]

Nowadays corporations are losing popularity; according to a 2014 survey, only 36% of Americans consider corporations as something constructive for society.[7] Hence, their role in society is being assessed, the idea that firms are run solely for the purpose of maximising shareholder's wealth is no longer sufficient and the paradigm of corporate social responsibility is becoming always more

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[1] Bourree Lam, Quantifying Americans' Distrust of Corporations, THE ATLANTIC (Sept. 25, 2014), https://www.theatlantic.com/business/archive/2014/09/quantifying-americans-distrust-of-corporations/380713/ [https://perma.cc/J3ZL-MDML].
[2] Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). Texas Law Review, Vol. 99, P. 1423, 2021, U of Penn, Inst for Law & Econ Research Paper No. 21-15, Available at SSRN: https://ssrn.com/abstract=3803604
[3] *Id*
[4] Bessen, James E., The Skills of the Unskilled in the American Industrial Revolution (September 2000). Research on Innovation Working Paper, Available at SSRN: https://ssrn.com/abstract=244569
[5] Serafeim, George, The Role of the Corporation in Society: An Alternative View and Opportunities for Future Research (May 27, 2013). Available at SSRN: https://ssrn.com/abstract=2270579
[6] Ramanna, Karthik, Friedman at 50: Is It Still the Social Responsibility of Business to Increase Profits? (January 18, 2020). California Management Review, (May 2020) Volume: 62 issue: 3: 28-41. https://doi.org/10.1177/0008125620914994., Available at SSRN: https://ssrn.com/abstract=3668873
[7] See note 1

influential.[8] Corporations are increasingly considering non-financial factors to determine growth opportunities.[9] Therefore, controlling the Environmental, social and governance (ESG) issues is becoming a priority when conducting business. This draws our attention back to "the more fundamental question of corporate governance: what is the purpose of the corporation?"[10] This issue has sparked numerous debates, and this dissertation will investigate whether corporations should be run solely to maximise shareholder value or to achieve broader social goals.

The primary goal of a corporation, according to Colin Mayer, ahead of the British Academy's Future of the Corporation Project, is to conduct business in an ethical manner, providing sustainable solutions to problems involving people and the environment without causing harm to others.[11] Most index funds based in the United States have spoken out on the topic, stating that a company must provide "sustainable business strategies that take into account ESG factors to drive long-term value creation."[12] In contrast, some of the most prominent law professors and economists have a narrower view of what a corporation's purpose should be, placing shareholder value maximisation above all else.

The debate about the role of modern corporations in society is not new, the latest trigger came from a declaration, about the corporate purpose, by the Business Roundtable (BRT), a group of American CEOs. The declaration reversed the long-held position that the firm's primary aim is to serve shareholders, arguing that corporations should undertake a commitment to deliver value to all their stakeholders. This statement has reversed a longstanding viewpoint by shifting from shareholder primacy ideology to a stakeholder approach. In exploring the stakeholder paradigm in the second chapter I will compare and contrast the arguments in favour, supported by the BERA study, with the arguments against. Dodd and other proponents of corporate social responsibility endorse the BRT statement and believe that the purpose of a corporation is to deliver value to a larger range of stakeholders, such as its employees, suppliers, consumers, and the environment. On the

[8] See note 5
[9] Cheng, Beiting and Ioannou, Ioannis and Serafeim, George, Corporate Social Responsibility and Access to Finance (May 19, 2011). Strategic Management Journal, 35 (1): 1-23., Available at SSRN: https://ssrn.com/abstract=1847085 or http://dx.doi.org/10.2139/ssrn.1847085
[10] Mitts, J., John C. Coffee, J., Leo E. Strine, J., Mitts, J., John C. Coffee, J., John C. Coffee, J., Baker, T., Judge, K., Lipton, M., Rosenblum, S., Savitt, W. and Cain, K., 2021. Wachtell Lipton on the Purpose of the Corporation | CLS Blue Sky Blog. [online] Clsbluesky.law.columbia.edu. Available at: <https://clsbluesky.law.columbia.edu/2020/05/27/wachtell-lipton-on-the-purpose-of-the-corporation/> [Accessed 6 April 2021].Definition
[11] Mayer, Colin, The Governance of Corporate Purpose (May 12, 2021). European Corporate Governance Institute - Law Working Paper No. 609/2021, Available at SSRN: https://ssrn.com/abstract=3928613
[12] The Harvard Law School Forum on Corporate Governance. 2021. On the Purpose of the Corporation. [online] Available at: <https://corpgov.law.harvard.edu/2020/05/27/on-the-purpose-of-the-corporation/> [Accessed 6 April 2021].

contrary, Shareholder primacy views, including those of Berle, Friedman, professor Bainbridge, and professor Lipshaw, disagree with the assertion and hold that firms must be governed slowly to maximise shareholder value.

Scrutinizing the outcomes of the BRT declaration reveals that directors' incentives to embrace a shareholder primacy approach are high, and they are bound by law to prioritise the interests of shareholders over those of other stakeholders. The BRT has no power to alter this. For instance, as the paper explains, most BRT members seem to remain committed to maximising shareholder value.

Part III investigate whether a stakeholder approach would be advantageous in addressing inequality. In recent years, concentration of wealth and economic disparity have grown dramatically, becoming a key topic of discussion.[13] As measured by the Gini index economic disparity is the highest it has been since 1992.[14] Many blames capitalism, which has led corporations to focus solely on profit. At first glance the stakeholder approach may appear to be a reasonable solution. In fact, significant progress in the fight against inequality would be expected if corporations' goal was to provide value to all of their stakeholders (workers, customers, suppliers, and communities). Hence, the third chapter begins with an examination of the primary causes of economic inequality, namely globalisation, international trade, technological advancement, education, the concentration of market power, rights and protection to workers and discrimination.

Based on the analysis carried out in chapter III, we deduce that a stakeholder approach would result in little to no change in addressing inequality. Hence, Part IV will go back to assess the debate that has swung back and forth throughout the course of the past century: corporate governance should be managed solely to meet the interests of shareholders or a wider set of stakeholder interests? This chapter attempts to address the interrogation by examining an alternative solution to economic disparities, this time through Professor David Webber's lens. In his book, *The Rise of the Working-Class Shareholder*, he shifts the focus from the fiduciary duties of managers (analysed in the previous chapter through the BRT) to the vast, yet largely unexploited, power of the trillions of dollars deposited in employee pension funds. With these resources, employees can enforce their interests against corporate governance in a context of shareholder supremacy. This suggests that the debate on corporate purpose is not what we must consider. Politicians do not need to be persuaded to expand the board of directors or extend the concept of fiduciary duty to include consideration of employees'

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[13] Taylor Telford, Income Inequality in America Is the Highest It's Been Since Census Bureau Started Tracking It, Data Shows, WASH. POST. (Sept. 26, 2019, 2:57 PM),

[14] Statista. 2022. U.S. household income distribution, by Gini-coefficient 2020 | Statista. [online] Available at: <https://www.statista.com/statistics/219643/gini-coefficient-for-us-individuals-families-and-households/>

interests. It is sufficient for workers (labour) to establish their collective power as the owners of capital.

I. THE STAKEHOLDER APPROACH

A. Background: The corporate purpose

1. History

The topic of a company's mission statement has been a source of debate for centuries. Prior to the middle of the 19th century, forming a corporation required convincing the state legislature to pass a special act authorizing the issuance of a customized corporate charter. With the establishment of corporate charters, new distinct legal entities emerged, allowing corporations to own assets, enter contracts, sue and be sued, and bring and defend legal actions.[15]

All Charters were required to include a purpose provision that conveyed vital information about how the corporation should be run, but also limited its powers. All corporations chartered prior to 1800 were engaged in public activities, constituting government infrastructure. The objective was the coordination of private and public actors.[16] Receiving a corporate charter began with a private actor or group requesting one. It was the sovereign actor’s responsibility to assess whether to grant the requested charter concession and, if so, to decide "under what conditions and for what purposes." Evidence of this contribution was frequently emphasised in the charter by describing the community benefits the corporation would provide.[17] After the American Revolution chartering continued through special acts, granting privileges and powers that varied from one charter to another. “The charter provisions setting out these privileges and powers functioned as an articulation of the corporation’s purpose, upon which investors relied”.[18]

However, because powerful legislators were frequently paid under the table for their approval, this process based on special corporate charters resulted in unfairness, which contributed to the emergence of American capitalism. In addition, corporate critics have argued for many years that politicians are

[15]Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). U of Penn, Inst for Law & Econ Research Paper No. 21-15, Texas Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3803604
[16] see note 12
[17]see note 12
[18] see note 12

shareholders in major corporations and use their connections and power to obtain favours.[19] States were compelled to intervene as the notion that special chartering contributed to capitalist corruption grew in popularity. The only way to eliminate the ability of politicians to decide who to favour was to provide everyone with the same opportunity to obtain a corporate charter.[20]

States began adopting statutes that provided a simpler and modern process to form a corporation. These statutes were known as “enabling laws” and permitted incorporators to form their business simply by conforming to specific obligations and following straightforward steps, the most important of which was presenting articles of incorporation to the secretary of state’s office. The articles had to meet requirements imposed by the state legislature. This shift from special chartering to general incorporation reduced the burden on states to “monitor and enforce the regulations written into charters”[21]

Historians Jessica Hennessey and John Wallis observed that “A single set of corporate rules could not possibly provide the best rules for each organisation.”[22] For this reason, in the later nineteenth century states began to provide more generic incorporation requirements and “the language of pursuing “any lawful business” started to seep into charters and regulatory discourse.”[23]
Scholars believe that when the general incorporation was implemented, corporations abandoned the notion that their implicit purpose was public utility. The incorporation system no longer required a sovereign actor to decide whether to grant the charter. If the private actor followed the procedure and met all the requirements, the state was required to approve the charter grant.[24]

Furthermore, because the ultra-vires doctrine was a "commonly litigated issue," when it came to clarifying the purpose of the corporation, owners of large corporations tried to be as vague as possible so that if the opportunity to expand into a different business line arose, the corporation would not be limited by its purpose.[25]

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[19] Bebchuk, L. A. (2005). The Case for Increasing Shareholder Power. Harvard Law Review, 118(3), 833–914. http://www.jstor.org/stable/4093350
[20] *Id*
[21]Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). U of Penn, Inst for Law & Econ Research Paper No. 21-15, Texas Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3803604
[22]Jessica L. Hennessey & John Joseph Wallis, Corporations and Organizations in the United States after 1840, at 90, in CORPORATIONS AND AMERICAN DEMOCRACY (Naomi R. Lamoreaux & William J. Novak eds., 2017)
[23] see note 12
[24] Hathaway, O. A. (2008). International Delegation and State Sovereignty. *Law and Contemporary Problems*, *71*(1), 115–149. http://www.jstor.org/stable/27592224
[25] see note 12

2. *Ultra-vires doctrine*

Historically, when forming a corporation, the ultra-vires doctrine emphasized the importance of defining the organization's purpose. As previously stated, the charter provision served as an expression of the corporation's objective, which could be enforced by the latter doctrine.[26] Under the ultra-vires doctrine the companies' operations were limited to the exact purpose reported on the charter, "and actions outside the scope could be voided by shareholders or deemed void ab initio."[27] Therefore, if a corporation entered into a transaction or a contract for an unapproved purpose, the transaction or contract would be deemed ultra vires and declared null and void.[28]

The ultra-vires doctrine was a regulatory mechanism intended to prevent corporations from engaging in transactions that exceeded their contractual capacities; contractual capacities determined by the content of the corporate purpose clause.[29]
The purpose frequently covered "both an aspect of granting special privileges and expecting special action, which the state and corporate participants organised their activity around." Frequently, states granted charter monopoly privileges "to encourage private investment in public utility-like project.[30] Limiting the corporation's authority to its mission would have prevented ambiguity. Therefore, contracts that exceeded the scope of its corporate authority were deemed ultra-vires and void. Directors and officers were also held personally accountable. In many instances, actions that would be considered socially responsible today were deemed to be beyond the scope of the law.[31]

In addition, technological advancements brought about by the industrial revolution resulted in the formation of enormous industrial corporations that required a substantial amount of capital. The growing acceptance of the corporate form for general commercial operations is attributable to the request for the corporate form to facilitate the "aggregation of the substantial amounts of capital required by the expanding scale of business activity."[32] As a result, states shifted from special charters

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[26]see note 12
[27] see note 12
[28]Bainbridge, Stephen Mark, Making Sense of The Business Roundtable's Reversal on Corporate Purpose. 46 Journal of Corporation Law 285 (2021), UCLA School of Law, Law-Econ Research Paper No. 20-03, Available at SSRN: https://ssrn.com/abstract=3664078
[29]Griffin, S., 2021. *The Rise and Fall ofthe Ultra Vires Rule in Corporate Law*. [online] Ssudl.solent.ac.uk. Available at: <https://ssudl.solent.ac.uk/id/eprint/954/1/1998_2_1.pdf> [Accessed 8 April 2021].
[30] see note 12
[31] See note 12
[32]E. Fisch, J. and Davidoff Solomon, S., 2021. [online] Scholarship.law.upenn.edu. Available at: <https://scholarship.law.upenn.edu/cgi/viewcontent.cgi?article=3165&context=faculty_scholarship#:~:text=Because%20a%20corporation%20consists%20of,terms%20of%20that%20association%20through> [Accessed 10 April 2021].

to general charters, resulting in a legislative shift that permitted corporations to define their corporate purpose as engaging in "any lawful activity."[33] The need to specify the purpose of the business in the articles of incorporation became a mere formality as the fear of evil corporations diminished over time. Nowadays, the ultra-vires doctrine has been abandoned but not entirely eradicated, and the corporate purpose has evolved into a meaningless decorum. Directors are no longer monitored and held liable for the ultra-vires doctrine; instead, they are held accountable for breaches of fiduciary duties.

3. Incorporating a Business Today

Examining the development of American corporate law throughout history reveals the distinction between the Early common law and the current corporate law; this distinction highlights the liberal approach that America adopted in this field and the "enduring relevance of purpose clause" that we observe today through the duty of good faith.[34]

Today, forming a corporation has become astonishingly straightforward. Articles of incorporation are drafted and mailed to the office of the secretary of state, along with any applicable fees. If the article satisfies all requirements, the secretary of state's office will accept it for filing, and the corporation will become officially established.[35]

As mentioned previously, early enabling corporation codes required the article of incorporation to specify the corporation's purpose and the powers it would use to pursue that purpose. Several states, including Delaware, still require corporations to address their corporate purpose in their articles, despite the almost inborn American urge toward liberty[36], hence, is enough to state that:

> "The purpose of the corporation is to engage in any lawful act or activity for which corporations may be organised under the General Corporation Law of Delaware, and by such statement all lawful acts and activities shall be within the purposes of the corporation, except for express limitations, if any."[37]

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[33] R. Franklin Balotti & Jesse A. Finkelstein, A Brief History Of The General Corporation Law Of The State Of Delaware And The Amendatory Process in BALOTTI AND FINKELSTEIN'S DELAWARE LAW OF CORPORATIONS AND BUSINESS ORGANIZATIONS (3rd Edition, 2020-1 Supplement).

[34]Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). U of Penn, Inst for Law & Econ Research Paper No. 21-15, Texas Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3803604

[35] Keller, M. (1997). The Making of the Modern Corporation. The Wilson Quarterly (1976-), 21(4), 58–69. http://www.jstor.org/stable/40260534)

[36]"[I]ndividual freedom understood as freedom from interference on the part of everybody, including the authorities." BRUNO LEONI, FREEDOM AND THE LAW 75 (3d ed. 1991)

[3737] DGCL § 102(a)(3)

The fiduciary duty doctrine evolved as states became more lenient and extremely general regarding the requirement to state specific corporate powers and purpose. Courts no longer evaluate whether directors acted in accordance with the powers and purposes of the corporation; instead, they evaluate whether directors pursued the interests of their shareholders.[38] “According to the current law a director obligation includes a duty to attempt in good faith to assure that a corporate information and reporting system, which the board concludes is adequate, exists, and a failure to do so under some circumstances may, in theory at least render a director liable for losses caused by non-compliance with applicable legal standards.”[39] The obligation of good faith clause prevents the company from breaking the law. Thus, fiduciary duties can be viewed as a means of ensuring that the corporation adheres to its stated purpose, which is to "engage in any lawful act". Following that, the twentieth-century discussion concerning "corporate purpose" concentrated on the rising themes of directors' fiduciary duty to shareholders and burgeoning problems of corporate philanthropy and social responsibility.[40]

II. CORPORATE PURPOSE DEBATE

A. *Social role of corporation today*

As the clarity of the purpose clause diminished, corporations began to communicate their values and purposes in other ways. Businesses began investing in social projects, philanthropy, and other forms of corporate social responsibility. Through corporate social responsibilities and mission statements, businesses have aligned their interests with those of the public. This indicates that, despite the fact that the general incorporation statutes diminished the awareness of the public role of corporations, the commitment to pursue public benefit did not disappear.[41]

[38] See note 33
[39]Bainbridge, S., n.d. *Corporate law*. Foundation press.
[40]Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). U of Penn, Inst for Law & Econ Research Paper No. 21-15, Texas Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3803604
[41]Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). U of Penn, Inst for Law & Econ Research Paper No. 21-15, Texas Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=3803604

Who, then, determines the social function of corporations if the state no longer decides whether a corporation's purpose is appropriate? What goals should directors pursue? The proponents of the shareholder primacy theory argue that corporations should only be managed to maximise shareholder wealth. In contrast, proponents of corporate social responsibility believe that when making business decisions, all corporate constituencies should be considered. Nonetheless, what does the law permit? "Put another way, to what extent do the fiduciary duties of corporate directors permit them to consider non shareholder interests when making corporate decisions?"[42]

Despite the topic's obvious significance, there are few authoritative examples of it. Dodge v. Ford Motor Co. laid out the legal perspective on corporate social responsibility.[43] Ford Motor Company has consistently distributed annual dividends. The company also frequently paid large extra-dividends until Henry Ford, who owned 58 percent of the stock, decided to retain a portion of the corporation's capital earnings to expand the business, denying shareholders their extra-dividends. In addition, Henry Ford implemented a policy that reduced prices while simultaneously improving the quality of the products sold.[44] Dodge brothers, who owned ten percent of the company's stock, filed a lawsuit against Ford, alleging that the company had resumed paying extra dividends and halted plans for business expansion.[45] In public defense of its strategy, Ford declared that his "ambition is to employ still more men, to spread the benefits of this industrial system to the greater possible number, to help them build up their lives and their homes. To do this we are putting greatest share of profits back in the business."[46]

The Dodge brothers argued that Ford's excessive altruism toward his stockholders was the source of his actions. Maximizing shareholder wealth has traditionally been the guiding principle for business decisions in the United States; indeed, one seldom encounters harsher judicial language than that utilised by the court in the now-classic case of Dodge v. Ford Motor Co.[47]:

> A business corporation is organised and carried on primarily for the profit of the stockholders. Therefore, directors' authorities should be employed for that end. "The discretion of directors is to be exercised in the choice of means to attain that end and does not extend to a change in

[42]Bainbridge, S., n.d. *Corporate law*. Foundation press.
[43] Dodge v. Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (Mich. 1919)
[44] *Id*
[45] *Id*
[46]B. Dorff, M., 2016. Can a Corporation Have a Soul? Henry Ford, who passed up profits to provide society with good jobs and cheap cars, thought so. *the Atlantic*, [online] Available at: <https://www.theatlantic.com/business/archive/2016/10/can-a-corporation-have-a-soul-dorff/504173/> [Accessed 24 April 2021].
[47] 50 Wash. & Lee L. Rev. 1423 (1993)

> the end itself, to the reduction of profits, or to the non-distribution of profits among stockholders in order to devote them to other purposes."[48]

The court also added that "it is not within the lawful powers of a board of directors to shape and conduct the affairs of a corporation for the merely incidental benefit of shareholders and for the primary purpose of benefiting others."

Ford had violated the shareholder wealth maximisation norm, which is a code of conduct, so the court ordered the company to resume the payment of additional dividends. Regarding the business expansion plan, however, the court invoked the Business judgement rule and refused to intervene. The reasoning behind the court's decision is that a corporate decision that could benefit shareholders in the long run, such as Ford's expansion plan, does not require court intervention. On the other hand, it is unlikely that shareholders will benefit from the decision to discontinue extra-dividend payments while reducing prices. Therefore, the court stepped in and ordered Ford to begin paying the requested dividends.[49]

1. *evolving conceptions of corporate purpose*

As previously stated, when corporations first emerged in the United States, their primary function was public. The second industrial revolution, and particularly the period following the American Civil War, saw the emergence of more modernised corporations; ones that were larger, frequently publicly held, and engaged in purely profit-driven activities with no explicit public interest.[50] Those corporations were typically founded on the premise of maximising profits for their shareholders. This concept was widely accepted prior to the 1929 stock market crash and subsequent Great Depression. The debate on corporate purpose grew as a result of these tragic events, which cast doubt on how businesses should be operated.[51]

The Nobel economist Milton Friedman, in 1970, stated that "There is one and only one social responsibility of business–to use it resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception or fraud."[52] Friedman's argument on the corporate purpose seems straightforward, however the dispute about the scope of the corporation is a longstanding debate still persisting today.

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[48] See note 40
[49] *Id*
[50] See note 12
[51] *Id*
[52] Milton Friedman, 1970

“A“ great debate” about whether public companies exist to deliver returns for shareholders or in service of a broader constituency has been underway for decades. The question in whose interests should the corporation be run? and its close corollary what should a corporation’s managers strive to achieve?”[53]

Professor E. Merrik Dodd and Adolph A. Berle are the two leading figures in the corporate purpose discussion. Professor E. Merrik Dodd believed that corporate directors should balance the interests of shareholders with their responsibilities to the community, their employees, and most importantly, their consumers. Mr. Dodd provided several justifications for his belief that this was the case.[54] He argued that a person cannot form a corporation without state permission, which implies that the state must permit the formation of corporations, and thus corporations have a "social obligation" to serve a purpose for the community.[55]
Second, Dodd contended that a socially responsible company will be more profitable in the long run. Essentially because this strategy will increase employee satisfaction, which correlates with increased productivity and, consequently, increased profit.[56]
Measuring a corporation’s performance using metrics that go beyond mere profit, for example considering the environmental, social and corporate governance issues, in the long run might lead to better returns to shareholders. Dodd believed “that public opinion, which ultimately makes law, has made and is today making substantial strides in the direction of a view of the business corporation as an economic institution which has a social service as well as a the function of making profit, that this view has already has some effect upon legal theory, and that it is likely to have a greatly increased effect upon the latter in the near future.”[57] Dodd's argument emphasised how, during the 1930s, public opinion pressured corporations to adopt a social function in addition to a profit-making one.

Henry Manne, an American law and economics scholar, argued that a business expenditure must be "purely voluntary" to qualify as a socially responsible action. This implies that expenditures must be

[53]Cheffins, Brian R., Stop Blaming Milton Friedman! (March 11, 2020). University of Cambridge Faculty of Law Research Paper No. 9/2020, European Corporate Governance Institute - Law Working Paper No. 523/2020, Available at SSRN: https://ssrn.com/abstract=3552950 or http://dx.doi.org/10.2139/ssrn.3552950
[54] Elson, Charles M. and Goossen, Nicholas J., E. Merrick Dodd & the Rise and Fall of Corporate Stakeholder Theory (May 1, 2017). Business Lawyer, Forthcoming, Available at SSRN: https://ssrn.com/abstract=2966331
[55] *Id*
[56] see note 40
[57]Dodd, E. Merrick. “For Whom Are Corporate Managers Trustees?” *Harvard Law Review*, vol. 45, no. 7, 1932, pp. 1145–1163. *JSTOR*, www.jstor.org/stable/1331697. Accessed 27 Apr. 2021.

motivated by the perception of doing the right thing for society, and not by public opinion or legislation.[58]

Adolf A. Berle was a diplomat, author, and member of the 'Brain Trust' of President Franklin D. Roosevelt. Professor Bainbridge describes modern corporation and private property as "the most significant book ever written on American corporate governance" and its publication as "a turning point in the evolution of American legal scholarship." Berle responded to Dodd's argument by stating that managers of a company should view themselves as trustees of the shareholders' investments; therefore, all the authority that the law grants to directors and officers should be used for the shareholders' benefit.[59]
Berle's argument was made shortly after the Russian revolution, during a time when socialist movements were extremely common. Specifically, he equated Dodd's viewpoint with socialism, arguing that either we are committed to a system of private property or we move in a socialist direction (referring to Dodd's viewpoint).[60]

The debate over corporate purpose raged on for years, until the New Jersey Supreme Court issued a landmark decision in the A.P. Smith Mfg. Co. v. Barlow case in 1953.[61] The Smith company made a donation to Princeton University, and a shareholder filed a lawsuit alleging that this was an improper use of corporate assets. The issue was whether the corporation could make donations without the consent of the stockholders.[62] The president of the company testified that he viewed the donation as an investment because it will ultimately benefit the community and advance the public welfare. The court ruled that the corporation had permission to make the contribution.[63]

It is fascinating how the court's decision echoes Dodd's argument that public opinion compels corporations to move in a more socially responsible direction. It recalls Dodd's viewpoint to the extent that Berle acknowledged in his book "The 20th Century Capitalist Revolution" that Dodd was correct,

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[58]Gatti, Matteo and Ondersma, Chrystin D., Can a Broader Corporate Purpose Redress Inequality? The Stakeholder Approach Chimera (March 4, 2020). 46 J. Corp. L. 1 (2020), Available at SSRN: https://ssrn.com/abstract=3547791 or http://dx.doi.org/10.2139/ssrn.3547791
[59]Stewart, Fenner L., Berle's Conception of Shareholder Primacy: A Forgotten Perspective for Reconsideration During the Rise of Finance. Seattle University Law Review, Vol. 34, 2011, Available at SSRN: https://ssrn.com/abstract=1651286
[60] *Id*
[61] A.P. Smith Mfg. Co. v. Barlow. Annotate this Case. 13 N.J. 145 (1953). 98 A.2d 581.
[62] *Id*
[63]"Community". *Community*, 2021, https://www.lexisnexis.com/community/casebrief/p/casebrief-a-p-smith-mfg-co-v-barlowIs).

citing the aforementioned case as evidence.[64] Nonetheless, he also stated that Dodd's viewpoint was prevalent during that particular time period, implying that there may be a time in the future when his viewpoint will again prevail.[65]

The influential economist Milton Friedman published an article on New York Times in 1970 rejecting Dodd’s view, stating that “the manager is the agent of the individuals who own the corporation or establish the eleemosynary institution, and his primary responsibility is to them”[66] and in a free society “there is one and only one social responsibility of business—to use its resources and engage in activities designed to increase its profits so long as it stays within the rules of the game, which is to say, engages in open and free competition without deception fraud.”[67] Through his claim he strongly emphasised the strong advocacy to shareholder primacy that reconnects to Berle’s point. His claim is often “said to have launched a shareholder-focused reorientation of managerial priorities in America’s public companies.”[68]

In addition, many advocates of corporate social responsibility hold Friedman accountable for defending capitalism. In rebuttal to Dodd's socialist viewpoint, he argued that managers who invest in socially responsible activities are not spending their own money, but rather dividends from stakeholders. This suggests that managers become "public employees or civil servants" in some capacity.[69] “If they are to be civil servants, then they must be elected through a political process… this is the basic reason why the doctrine of "social responsibility" involves the acceptance of the socialist view that political mechanisms, not market mechanisms, are the appropriate way to determine the allocation of scarce resources to alternative uses”.[70]

Friedman has been heavily criticised for his shareholder-centric approach, but he never intended to diminish the significance of the legal and social obligations that all corporations must conform to. In

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[64] Elson, C. M., & Goossen, N. J. (2017). E. Merrick Dodd and the Rise and Fall of Corporate Stakeholder Theory. *The Business Lawyer*, *72*(3), 735–754. https://www.jstor.org/stable/26419161

[65] *Id*

[66]Friedman, Milton. "A Friedman Doctrine-- The Social Responsibility Of Business Is To Increase Its Profits". *New York Times*, 1970, https://www.nytimes.com/1970/09/13/archives/a-friedman-doctrine-the-social-responsibility-of-business-is-to.html. Accessed 27 Apr 2021.

[67] see note 25

[68]Cheffins, Brian R., Stop Blaming Milton Friedman! (March 11, 2020). University of Cambridge Faculty of Law Research Paper No. 9/2020, European Corporate Governance Institute - Law Working Paper No. 523/2020, Available at SSRN: https://ssrn.com/abstract=3552950 or http://dx.doi.org/10.2139/ssrn.3552950

[69]Friedman, M., 1970. The Social Responsibility of Business is to Increase its Profits. *The New York Times Magazine*, [online] Available at: <http://umich.edu/~thecore/doc/Friedman.pdf> [Accessed 19 April 2021].

[70] see note 50

addition, he understood that managers must focus on long-term benefits to ensure that short-term expenditures result in long-term profit.[71]

B. BRT statement

From 1970 up to the financial crisis of 2008 most American business schools defined Friedman's view as the dominant standard assumption of how businesses should be managed.[72] The concept of socially responsible investors began to take shape during the financial crisis. Yet, the dramatic change has occurred in August 2019 as The Business Roundtable (BRT) "issued a statement on the purpose of the corporation in which it reversed a longstanding position." [73] The Business Roundtable is a highly successful organisation made up of the CEOs of 200 of America's largest corporations. Its goal is to safeguard the interests of American companies. The organisation has published a guide to good corporate governance every few years since 1978, based on how CEOs believe corporations should be managed collectively. Friedman's belief that the board of directors' responsibility is to maximise shareholder wealth has always been reflected in the guide.[74]
The BRT made an unexpected shift in its long-standing corporate purpose policy four years ago, emphasising a commitment to all stakeholders, not just shareholders.[75] The statement revised by the CEOs of BRT discloses that "companies should serve not only their shareholders but also deliver value to their customers, invest in employees, deal fairly with suppliers and support the communities in which they operate."[76]

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[71]Is interesting to notice that Friedman's argument is inherent with American business because of its corporate governance structure. In the United States the power is concentrated in "one-tier board", this mean that all the legal power to manage and supervise the corporation is exercised by a single board of directors elected by shareholders, whose job is to do what is best for their employers. In contrast, "two-tire jurisdiction" such as Germany prescribe a separation between the two main functions monitoring and management. "Monitoring powers are allocated to elected *supervisory* boards of non-management directors, which then appoint and supervise *management* boards that include the principal executive officers in charge of designing and implementing business strategy." This implies that Berle's and Friedman's view that directors are employees of shareholders comes from the "one-tier board" system.
[72] Sneirson, J. F. (2015). SHAREHOLDER PRIMACY AND CORPORATE COMPLIANCE. Fordham Environmental Law Review, 26(3), 450–473. http://www.jstor.org/stable/26195883
[73] See note 12
[74]*Id*
[75] Business Roundtable - Purpose of a Corporation. 2021. One Year Later: Purpose of a Corporation - Business Roundtable - Purpose of a Corporation. [online] Available at: <https://purpose.businessroundtable.org/> [Accessed 6 May 2021].
[76]*Id*

This framework places shareholders last, emphasising the responsibility of directors as business leaders to ensure that their companies deliver value to all stakeholders, not just shareholders. The following is the statement on a corporation's purpose from August 2019:

While each of our individual companies serves its own corporate purpose, we share a fundamental commitment to all of our stakeholders. We commit to:

- *Delivering value to our customers. We will further the tradition of American companies leading the way in meeting or exceeding customer expectations.*
- *Investing in our employees. This starts with compensating them fairly and providing important benefits. It also includes supporting them through training and education that help develop new skills for a rapidly changing world. We foster diversity and inclusion, dignity and respect.*
- *Dealing fairly and ethically with our suppliers. We are dedicated to serving as good partners to the other companies, large and small, that help us meet our missions.*
- *Supporting the communities in which we work. We respect the people in our communities and protect the environment by embracing sustainable practices across our businesses.*
- *Generating long-term value for shareholders, who provide the capital that allows companies to invest, grow and innovate. We are committed to transparency and effective engagement with shareholders. Each of our stakeholders is essential. We commit to deliver value to all of them, for the future success of our companies, our communities and our country.*[77]

This statement appears to encourage the country's most powerful corporations to abandon shareholder primacy in favour of modern corporate governance principles. However, some commenters have questioned the statement's sincerity and true intentions.[78] There were two major criticisms. First, consider the true motivations for this statement. More discretionary powers should be granted to directors in order to restructure corporate governance in the direction of sustainability and shareholder interest.[79] To combat the rise of hedge fund activism, some commentators argue that CEOs are attempting to find a solution while professing to benefit all of their stakeholders. As a

[77] Business Roundtable, Statement on the Purpose of a Corporation (Aug. 19, 2019)

[78] Bebchuk, Lucian A. and Tallarita, Roberto, Will Corporations Deliver Value to All Stakeholders? (August 4, 2021). Forthcoming, Vanderbilt Law Review, Volume 75 (2022)
European Corporate Governance Institute - Law Working Paper No. 645/2022
Harvard Law School John M. Olin Center Discussion Paper No. 1078
Harvard Law School Program on Corporate Governance Working Paper 2021-11, Available at SSRN: https://ssrn.com/abstract=3899421 or http://dx.doi.org/10.2139/ssrn.3899421

[79] *Id*

result, CEOs have formed a coalition to protect their interests and seek broad stakeholder authority. This remark also raised the possibility of greenwashing. [80]
They may try to prevent future legislation that would be detrimental to corporate directors by advocating for stakeholder-friendly corporate governance. Furthermore, this statement sparked a heated debate among law scholars and commentators about its enforceability in American corporate law, particularly in Delaware law, where directors are legally required to act in the best interests of the shareholders.[81]

The BRT statement has been "interpreted as a schism between business and the Friedman Doctrine"[82] and in someway confirms that "America's top business and financial leaders now officially support the rapidly evolving environmental, social and corporate governance ("ESG")/sustainability movement …." [83]

1. Standard of conduct

The BRT statement was perceived as a rather dramatic shift, raising the question of whether this initiative was in accordance with American corporate law. Exploring the law in this area leads us to consider one of the most distinctive features of Anglo-American law: corporate purpose is derived from judicial opinion rather than statute. This calls into question the distinction between a standard of conduct and a standard of review. Delaware corporate law differentiates the aforementioned standards when determining whether directors have breached their fiduciary duties.[84] The standard of conduct is mostly aspirational, requiring directors to act in good faith and asserting that infringements do not result in legal liability. When determining whether directors have met the conduct standard, a court applies the standard of review, which outlines what a plaintiff must first claim and then demonstrate to prevail.[85]

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[80] *Id*
[81] Pierce, Morton, Analysis of the Business Roundtable statement Harvard Law School Forum on Corporate Governance, 26 Sept 2019.
[82]Colin Mayer, Ownership, Agency, and Trusteeship, ECGI Working Paper No. 488/2020, 2 (2020)
[83]JohnC.Wilcox,ACommon-SenseApproachtoCorporatePurpose,ESG&Sustainability,23 No. 11 Wallstreetlawyer.com: Sec. Elec. Age NL 2 (Nov. 2019)
[84] Allen, W. T., Jacobs, J. B., & Strine, L. E. (2001). Function Over Form: A Reassessment of Standards of Review in Delaware Corporation Law. The Business Lawyer, 56(4), 1287–1321. http://www.jstor.org/stable/40688020
[85] *Id*

The concept of a standard of conduct is highlighted in the Dodge v. Ford motor company case, the facts of which are detailed in section II (A). The court determined that because judges are not business experts, they cannot intervene in business strategy decisions. However, they observed that "A business corporation is organized and carried on primarily for the profit of the stockholders."[86] As a result, the corporation's decisions should be tailored to that specific goal. It could be argued that using earnings for a different purpose should be prohibited.[87]

Dodge decision is described by Professor Bainbridge as a "logical extension of legal trends of the time" and was almost immediately acknowledged as "the correct statement of the law of corporate purpose" by both scholars and judges.[88]

Several cases that were considered ultra-vires before Dodge's will almost certainly be considered socially responsible today. The McCrovy v. Chambers case, in which an Illinois court ruled that a corporate charitable contribution was ultra-vires, is one example.[89] The First National Bank of Charleston made a financial contribution to a local manufacturer, and the court determined that donations "given by a bank are injurious to it, and unwarrantable"[90] and the contributions were not within the bank's power. Furthermore, the court ruled that corporate funds could only be used for "strict furtherance of the business objects and financial prosperity."[91] If such a situation arose today, the court would most likely view the decision as socially responsible and dismiss the claim.

Delaware law is the dominant source of corporate law in the United States, and it is consistent with the law established in Dodge v. Ford Motor Company. The primary objective of the board of directors of a Delaware corporation is to maximise shareholder value.[92] Directors "owe fiduciary duties to the corporation and its stockholders which require that they strive prudently and in good faith to maximise the value of the corporation for the benefit of its residual claimants." [93] The law expects directors to use their authority to maximise shareholder profit.[94] Now that we acknowledged

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[86]170 N.W. 668, 684 (Mich.1919) .

[87] *Id*

[88] See note 12

[89] McCrory v . Chambers , 48 Ill . App . 455

[90]"Donations by a Business Corporation as 'Intra Vires.'" *Columbia Law Review*, vol. 31, no. 1, 1931, pp. 136–144. *JSTOR*, www.jstor.org/stable/1115269. Accessed 27 Apr. 2021.

[91] *Id*

[92] CHAPTER 1. General Corporation Law. Subchapter VII. Meetings, Elections, Voting and Notice. § 211. Meetings of stockholders.

[93] LoPucki, L. and Verstein, A., 2020. *Business associations*. Wolters Kluwer Law & Business, 2020.

[94] See note 90

what the law requires directors to do, the question that arises is what are they permitted to do? In other terms, what is the standard of conduct?

As previously stated, socially responsible action should be entirely voluntary, and Heny Manne defined it as "one for which the marginal returns to the corporation are less than the returns available from some alternative expenditure." As a result, only a small number of organisational activities can adhere to the aforementioned guidelines. Corporate social responsibility decisions, for example, are uncommon.[95] Professor Bainbridge and Professor Lipshaw acknowledge that the Business judgmental rule is one additional reason for this scarcity. They believe that the majority of cases involving corporate purpose “will come out; namely, the court will invoke the business judgment rule and toss the case at the motion to dismiss stage.”[96] The business judgment rule is the central doctrine of American corporate law and provides that courts will not to review the merits of the business decisions if the decision was made in good faith, without any conflict of interest or self-dealing and as long as the process through which the decision has been made was not grossly negligent.[97]

According to Professor Bainbridge, the abstention doctrine allows the court to defer making a decision on the merits of the case.[98] The fact that the rule allows the court to abstain from determining whether directors violated their fiduciary duties to shareholders "does not imply that the norm is not the underlying doctrine.”[99] In cases that involve the business judgment rule, the underlying doctrine is the duty of care. The underlying doctrine in cases involving the business judgement rule is the duty of care. No one can deny the existence of a substantive doctrine as long as the business judgement rule shields The Dodge rule from judicial review. In other words, the application of the business judgement rule does not imply a lack of care.[100]

The Business Judgment rule does not protect director discretion in two situations; the first is uncommon and is referred to as "confessional cases."[101] In these cases, corporate directors clearly state that their priority is not to maximise shareholder wealth, as in the Dodge v. Ford Motor Company

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[95]See note 12
[96] See note 63
[97] Balotti, R. F., & Hanks, J. J. (1993). Rejudging the Business Judgment Rule. The Business Lawyer, 48(4), 1337–1353. http://www.jstor.org/stable/40687428
[98] See note 48
[99] *Id*
[100] *Id*
[101] Steinberg, Marc I., Application of the Business Judgment Rule and Related Judicial Principles-Reflections from a Corporate Accountability Perspective (1981). 56 Notre Dame Lawyer 903 (1981), Available at SSRN: https://ssrn.com/abstract=3769457

case. It is one thing for directors to defend themselves by claiming that they are investing in their employees because they believe that this investment will increase the company's profitability in the long run. It's quite another to say they don't care about how profitable their company is because their goal is to benefit humanity.[102] Henry Ford "thinks Ford Motor Company has made too large profits, and that … a sharing of them with the public, by reducing the price output of the company, ought to be undertaken." [103] Because the law requires directors to act in accordance with shareholder maximisation, whether now or in the future, the Business judgement rule does not protect directors in confessional cases. The rule will also no longer apply in corporate acquisitions, where the board's legal obligation is to get the best possible deal for shareholders when the directors decide to sell the company or in other corporate takeovers.[104]

In disentangling the Business judgement rule and the shareholder wealth maximisation norm, Professor Bainbridge recognised that many business decisions do not directly conflict with shareholder interests. [105] Most business decisions, on the other hand, are potentially win-win situations. Decisions that appear to benefit stakeholders at the expense of shareholders, such as providing health benefits for employees, which initially reduce profit and increase expenses, frequently lead to higher productivity in the long run.[106]

C. Should we endorse the stakeholder paradigm?

At this point in history, the topic of corporate purpose is extremely relevant. Because of the current pandemic, the role of corporations in society is being reconsidered, and market participants are taking the lead. Members of the BRT, as previously stated, have shifted away from the traditional paradigm of shareholder primacy and toward the emerging stakeholder approach, and they are not alone. Institutional investors appear to support the stakeholder method as well; they expect corporations to deliver long-term value and to have a clearly stated purpose. We will investigate a specific dimension of corporate purpose, known as the stakeholder paradigm, and examine its relationship to various financial value outcomes.

[102] *Id*
[103] 2012books.lardbucket.org. 2021. *Cases*. [online] Available at: <https://2012books.lardbucket.org/books/the-legal-environment-and-business-law-executive-mba-edition/s20-07-cases.html> [Accessed 24 April 2021].
[104] See note 99
[105] See note 48
[106] *Id*

1. arguments in favour

We made numerous references to the stakeholder paradigm throughout the paper, but what are the implications? Prioritization is the goal of the stakeholder approach. Being specific about your purpose, relating it to your business, being authentic, and being pro-social are all important factors. The problem arises when a business must find a way to align these elements. In other words, when it comes to announcing who you are as a company and how you conduct yourself. This particular alignment is sought after by institutional investors because it ensures long-term sustainability and returns.

Many people are skeptical of the stakeholders' paradigm; for example, shareholder primacy theorists argue that it is a method of limiting shareholders' rights. Similarly to the reasoning presented in the "Bainbridge hypothetical," which we will discuss later in the paper, Gregory V. Milano contends that the stakeholder model may be misleading: If one strategy is the best for customers but not for employees, how should executives decide which is the best strategy?[107]

Scepticism about the stakeholder approach is understandable, but in the following section, we will look at how Gregory V. Milano, Chief Executive Officer of Fortuna Advisor, demonstrated in his paper "*The Return on Purpose: Before and During Crisis,"* that this approach benefits both shareholders and stakeholders.

Long-term is an important concept to consider when evaluating the stakeholder paradigm; some trade-offs cannot be evaluated over a short period of time.[108] This is demonstrated by the fact that certain corporate expenses, such as human resources management[109], may not yield immediate benefits, but on a long-term horizon will result necessary for the corporation to thrive over its competitors.[110]
Gregory V. Milano observes that corporations presenting a high purpose and clear objectives across all management teams are linked with "higher financial performance and shareholder value over the long term."

[107]Milano, Gregory Vincent and Tomlinson, Brian and Whately, Riley and Yiğit, Alexa, The Return on Purpose: Before and during a Crisis (October 21, 2020). Available at
SSRN: https://ssrn.com/abstract=3715573 or http://dx.doi.org/10.2139/ssrn.3715573

[108] Ratajczak, Piotr and Mikołajewicz, Grzegorz, The Impact of Environmental, Social and Corporate Governance Responsibility on the Cost of Short- and Long-Term Debt (June 22, 2021). Economics and Business Review EBR 21(2), 74-96 DOI: 10.18559/ebr.2021.2.6, Available at SSRN: https://ssrn.com/abstract=3891402

[109]By human resources management (HRM) we refer to a strategic approach to the management of employees with the purpose of achieving the company's target. In simple sense, we can divide HRM in five sub-categories of management: employing people, developing their resources, utilising, maintaining and compensating their services. This process includes long-term activities, with open-ended and ongoing goals

[110] See note 106

When we refer to high purpose we do not imply a financial aspect but "something more aspirational" a high purpose "explains how all the people involved with an organization are making a difference, gives them a sense of meaning, and draws their support"[111]
Mapping and other operational processes are critical for demonstrating a clear and high-level corporate mission. We define mapping as answering the following questions: who are your stakeholders? What is your connection to them? What are the critical issues underlying your company? What are the governance arrangements for your purpose?[112] These questions must be addressed in order to create a clear and strategic vision that will assist your company in determining which investments are most beneficial and why.

"…[We] responsibly provide financial services that enable growth and economic progress…" The Citigroup purpose statement provides a simple, authentic, and high-level purpose.[113] A clear corporation statement conveys to the investors a sense of trust because "Investor expectations reflect an assessment that purpose-driven companies are likely to be more coherently managed, more resilient, better incentivised and prove themselves more able to innovate and respond to disruption."[114]

BERA is a predictive brand technology company based in New York that provides the world's largest ongoing predictions on brands in the marketplace. BERA aims to improve brand positioning by analysing how brands grow, why they fail, and how they recover.[115] The latter developed a corporate purpose measurement framework to better understand the relationship between high purpose and

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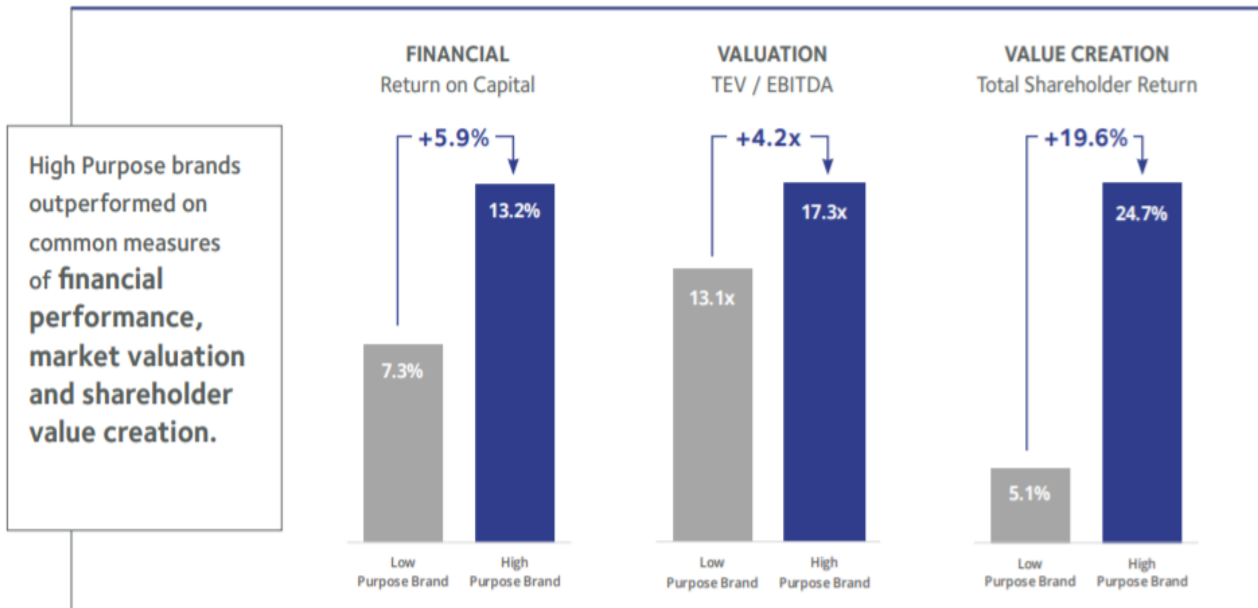
[111]Harvard Business Review. 2021. *How to Help Your Team Find Their Higher Purpose*. [online] Available at: <https://hbr.org/2018/07/creating-a-purpose-driven-organization> [Accessed 6 May 2021].
[112]*The race for returns: How high-purpose brands are taking the lead*. 2021. [video] Directed by G. V. Milano, R. Barker, B. Tomlison and A. Yigit. BERA.)
[113] Citigroup.com. 2022. Mission & Value Proposition - About Us | Citi. [online] Available at: <https://www.citigroup.com/citi/about/mission-and-value-proposition.html> [Accessed 8 June 2022].
[114] Milano, Gregory Vincent and Tomlinson, Brian and Whately, Riley and Yiğit, Alexa, The Return on Purpose: Before and during a Crisis (October 21, 2020). Available at SSRN: https://ssrn.com/abstract=3715573 or http://dx.doi.org/10.2139/ssrn.3715573
[115] WIRE, B., 2022. CECP's CEO Investor Forum and Fortuna Advisors' Report Finds High-Purpose Brands Deliver Better Financial Results than Low-Purpose Brands; CEOs Call Purpose a Key Competitive Differentiator. [online] Businesswire.com. Available at: <https://www.businesswire.com/news/home/20201021005091/en/CECP%E2%80%99s-CEO-Investor-Forum-and-Fortuna-Advisors%E2%80%99-Report-Finds-High-Purpose-Brands-Deliver-Better-Financial-Results-than-Low-Purpose-Brands-CEOs-Call-Purpose-a-Key-Competitive-Differentiator> [Accessed 8 June 2022].

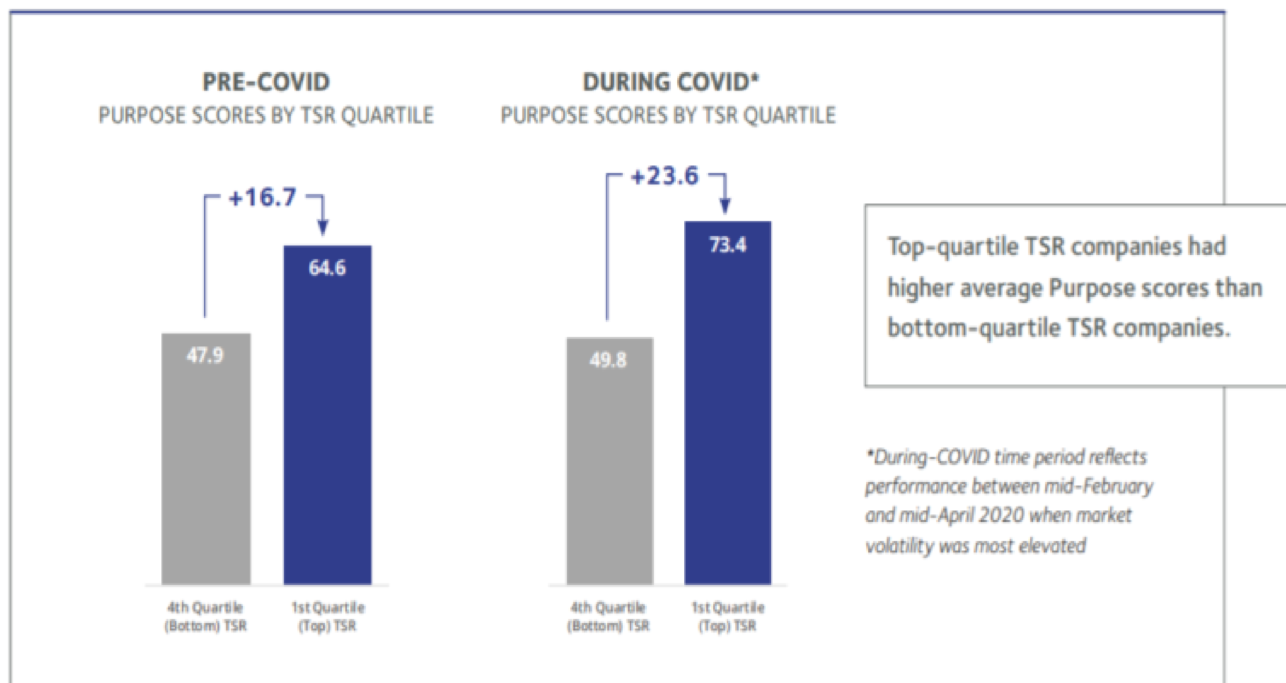
financial results. The metrics of the framework look at not only the financial aspect of efficiency, but also the sustainability and longevity of that performance.[116]



According to the findings, corporations with high purpose earn a 5.9 percent higher return on capital than corporations with low purpose. This implies that incorporating an authentic purpose into corporate strategy not only benefits financial performance, but also makes the firm more appealing to customers, increasing profit and market valuation. In terms of value creation, it also benefits shareholders. [117] As a result, investing in stakeholders is a necessary expense because it assists the company in obtaining higher returns on capital.[118]

[116] See note 112
[117]Corpgov.law.harvard.edu. 2022. [online] Available at: <https://corpgov.law.harvard.edu/wp-content/uploads/2020/11/chrome_0uuH5JgDPc.png> [Accessed 8 June 2022].
[118]See note 112

More importantly, Bera's research demonstrates how firms that intentionally rate high trade at higher valuation multiples.[119] This also implies that supporting a more sustainable business model is critical for the corporation's growth, benefiting both stakeholders and shareholders.[120]



Stakeholder paradigm during COVID

During the last year, every corporation had to deal with the heinous consequences of COVID-19. BERA tracked high-purpose and low-purpose companies and their "share price performance" over the last year to assess the impact of the pandemic and found that "the gap widens." In other words, as we approached the pandemic, corporate purpose seemed to become even more important. This could be due to the rise of conscious consumerism. Because people are spending more carefully during this

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[119]valuation multiple: "Trading Multiples are a type of financial metrics used in the valuation of a company. When valuing a company, everyone relies on the most popular method of valuation, i.e. Discounted Cash Flow (DCF), but it becomes imperative for buyers and bankers to look how the market perceives a particular stock in the same industry with a similar type of assets and the markets. For this reason, "Trading Multiples" are considered and the relative valuation is calculated.
Trading multiples are used to understand how similar companies are valued by the stock market as a multiple of Revenue, EBITDA, Earnings Per Share, EBIT, etc. The basic premise of making a comparison is that they assume that the stock markets are efficient." (Corporate Finance Institute. 2021. *Trading Multiples - Definition, Analysis, Examples of Trading Multiples*. [online] Available at: <https://corporatefinanceinstitute.com/resources/knowledge/valuation/trading-multiples/> [Accessed 16 April 2021]

[120]*The race for returns: How high-purpose brands are taking the lead*. 2021. [video] Directed by G. V. Milano, R. Barker, B. Tomlison and A. Yigit. BERA.

difficult time, they choose products that reflect their values.[121] Furthermore, over the last decade, consumer preferences have shifted toward a more environmentally friendly approach, and COVID-19 has increased this awareness and commitment to purchasing sustainably.[122] even more. For instance, “While the severity, length and character of crises will change, these results highlight that companies that invest well in purpose improve their odds of outperforming during such periods—outperformance that ultimately benefits each of their stakeholder groups.”[123]

2. Arguments against

Professor Bainbridge provided us with a thought experiment, known as the "Bainbridge hypothetical," to help us better understand the concept of corporate law:[124]

> Assume the board of directors wants to close a "obsolete plant" and shift the work that was previously done there to a more modern plant. This change will be detrimental to the workers and community of the decommissioned plant, but it will also benefit shareholders, creditors, and employees. The question now is, "How should the board make the decision?"
> The best option, according to the shareholder wealth maximisation norm, would be to close the plant. “The alternative to following the shareholder wealth maximisation norm would, on the other hand, force directors to struggle with indeterminate balancing standards. In turn, such standards would deprive directors of the critical ability to determine ex ante whether their behavior comports with the law's demands, thereby raising the transaction costs of corporate governance.”[125]

When evaluating the Bainbridge hypothetical and, by extension, the stakeholder paradigm, the issue that emerges is that directors "who are responsible to everyone are responsible to no one."[126] Professor Bhagat and Hubbard argue in their recently published article Should Modern Corporations Maximise Shareholder Value? that when focusing on more than one objective, two major challenges may arise.

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[121] See note 112
[122]Executive, S., 2021. *Sustainability Is Good For Business, New Survey Finds | SGB Media Online*. [online] SGB Media Online | Active Lifestyle Market B2B Information. Available at: <https://sgbonline.com/sustainability-is-good-for-business-new-survey-finds/> [Accessed 16 April 2021].
[123]See note 112
[124] See note 12
[125] *Id*
[126] *Id*

First, consider the stakeholder paradigm's inconsistency.[127] If a company's goal is to "deliver value to our customers," selling high-quality products at a lower cost will help them achieve that goal. In the short term, it is obvious that this would be advantageous because it would result in a larger market share and many more satisfied customers.[128] In the long run, if the company maintains high product quality, it may face financial difficulties. This implies that focusing solely on providing short-term value to customers is detrimental to long-term sustainable practises.[129]

Second, the stakeholder paradigm can be viewed as a tool for better understanding a corporation's commitment to its employees, suppliers, customers, communities, and long-term shareholder value. Except for fraud, all corporate expenditures can be justified if they benefit some stakeholder group, according to this perspective. This implies that the lack of managerial accountability is a complicating factor. In the stakeholder governance paradigm, "this measurement causes confusion in the public policy debate among investors, policymakers, and scholars regarding the performance of a corporation."[130]

3. *What is going on?*

We have seen in previous chapters that economic inequality is increasing and that corporations appear to prioritise money over people and shareholder demands over stakeholder interests. The updated BRT principle, which seeks to change "the purpose of a corporation to promote an economy that serves all Americans," has been signed by 181 publicly traded corporations.[131] This chapter will assess whether corporations are truly attempting to provide value to all stakeholders.

In practise, the stakeholder paradigm and the BRT statement represented little change in the way businesses operate. In his article The False Dichotomy of Corporate Governance Platitudes, Professor Lipshaw emphasises that "in the real world, management regularly commits itself to multiple competing constituencies, including shareholders."[132] Professor Lipshaw's claim is supported by specific research. He examined several pre-amendment CEO annual report letters to shareholders and

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[127] Bhagat, Sanjai and Hubbard, Robert Glenn, Should the Modern Corporation Maximize Shareholder Value? (September 10, 2020). Sanjai Bhagat and R. Glenn Hubbard, "Should the modern corporation maximize shareholder value?" AEI Economic Perspectives, September 2020, https://www.aei.org/research-products/report/should-the-modern-corporation-maximize-shareholder-value/ , Available at SSRN: https://ssrn.com/abstract=3548293 or http://dx.doi.org/10.2139/ssrn.3548293

[128] *Id*

[129] *Id*

[130] *Id*

[131] See note 73

[132]Lipshaw, Jeffrey M., The False Dichotomy of Corporate Governance Platitudes (July 29, 2020). Journal of Corporation Law, 2020, Available at SSRN: https://ssrn.com/abstract=3660450

discovered that corporations intended to maximise shareholder value long before the BRT 2019 announcement by demonstrating high respect for stakeholders constituencies. He also looked at a post-amendment response to the COVID-19 pandemic published in 2020, which confirmed that "the consistent message was that employees and customers were either explicitly or implicitly the company's highest priority, companies were diverting resources to employees, customers, and communities through enhanced benefits, relaxation of contractual limitations, and significant charitable contributions of cash and resources."[133]

Despite the fact that Republicans appear to be the majority of CEOs, social justice warriors do exist in the business world. Salesforce.com CEO Marc Benioff, for example, supports "social activism among American executives."[134]
Nonetheless, the stock market's reaction to the BRT statement was found to be insignificant. The statement was not interpreted as a genuine commitment to the development of Environmental, Social, and Governance (ESG) practises.[135] In their paper The Illusory Promise of Stakeholder Governance, Luciana Bebuchuk and Roberto Tallarita discovered that none of the 20 corporations whose CEO signed the BRT statement had modified their corporate governance statement to align it with the BRT statement.[136] Professor Lipshaw also points out that the lack of change is due to the fact that the statement represents only a minor change in what corporations have been doing all along.[137]

Bainbridge draws our attention to the significant disparity between what CEOs actually do and what they suggested in the BRT statement. “It is one thing to say a few positive words about one’s ESG commitments in a shareholder letter. It is quite another to embed such commitments in the corporation’s corporate governance guidelines.”[138]
Share ownership shifted from individuals to institutions that have made "corporate governance activism a central part of their business model."[139] Boards that try to do what is best for their stakeholders but fail to maximise shareholder value are more likely to face and lose "proxy contests and other forms of activism from activist hedge funds and their allies." Ordinarily, CEOs have

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[133] *Id*
[134]MonicaLangley,Salesforce’sMarcBenioffHasKickedOffNewEraofCorporateSocial Activism, Wall St.J., May 2, 2016, https://www.wsj.com/articles/salesforces-marc-benioff-has-kicked- off-new-era-of-corporate-social-activism-1462201172.
[135]Id. Raghunandan, Aneesh and Rajgopal, Shivaram, Do Socially Responsible Firms Walk the Talk? (April 1, 2021). Available at SSRN: https://ssrn.com/abstract=3609056 or http://dx.doi.org/10.2139/ssrn.3609056
[136]Lucian A. Bebchuk & Roberto Tallarita, The Illusory Promise of Stakeholder Governance 4 (Dec.2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3544978
[137] See note 130
[138]See note 12
[139] Brav, A., Jiang, W., Partnoy, F., & Thomas, R. (2008). Hedge Fund Activism, Corporate Governance, and Firm Performance. The Journal of Finance, 63(4), 1729–1775. http://www.jstor.org/stable/25094488

incentives to exaggerate their ESG commitments and maximise shareholder wealth rather than prioritise stakeholders' interests. CEOs are chosen by the board, which is chosen by the same shareholders. For the reasons stated above, as long as this is the case, the incentives to remain in favour of shareholders are too strong for businesses to adopt the BRT proposal.[140] As the New York Times stated in 2019 "because a public corporation's most direct incentives—including the CEO's pay — remain tied to stock performance, there's no reason to believe that corporations will voluntarily move away from pleasing shareholders alone, despite the new, high-minded ideals."[141]

So far in the paper, we have seen that the amendment to the BRT statement has reignited the corporate purpose debate, but in practise, CEOs have done little to nothing to align their businesses with a broader social goal. As a result, the question that arises is why have BRT representatives decided to address the corporate purpose from a stakeholder perspective, abandoning Friedman's notion that corporations should be run solely to maximise share price and shifting the emphasis to the importance of acknowledging the interests of corporate stakeholders? Professor Bainbridge offers two possible solutions to the latter problem. To begin, BRT members may believe that this shift will benefit shareholders in the long run. Second, they could be acting in their own self-interest.[142]

Bainbridge's first response to the issue is similar to Gregory Milano's point in his article The Race For Returns: How purpose-driven brands are taking the lead. They both agree that investing for a greater good will benefit stakeholders (who will receive more attention), shareholders, and directors. Gregory Milano recognises that, regardless of the market or service your company provides, the voice of the consumer is critical, and customer awareness and commitment to purchasing sustainably is growing. Consumers are becoming more conscious and selective in their purchases, and COVID-19 has increased this even further. Customers look for companies whose purpose aligns with their personal values when it comes to spending money.[143] As a result, businesses are adapting to better serve their customers by aligning corporate purpose with environmental or social impact. This synergy between the corporate purpose and the morals of its customers is critical to the company's success.[144]

[140] *Id*
[141] Farhad Manjoo, CEOs Should Fear a Recession, N.Y. TIMES, Aug. 22, 2019, 27.
[142] See note 12
[143] Manohar, Dr. E., Essential Alignment: Corporate Social Responsibility and Social Impact Assessment for Sustainable Development - An Empirical Study (2019). Journal of Management, 6 (3), 2019, pp. 186–191, Available at SSRN: https://ssrn.com/abstract=3525388
[144] *Id*

Similarly to Gregory Milano, Professor Bainbridge observes that millennials prefer to work for and buy from companies that "project an image of social activists" and are thus perceived as "socially and environmentally responsible."[145] Furthermore, Wall Street Journal columnist David Benoi argued that Democratic presidential candidate Elizabeth Warren stated that "the primacy of shareholder returns has worsened economic inequality, enriching wealthy investors at the expense of workers."[146]. This could imply that BRT members were concerned about a democratic election in 2020 and thus voluntarily adopted a more social approach to better prepare for any unexpected intrusive regulation. This could imply that BRT members were concerned about a democratic election in 2020 and thus voluntarily adopted a more social approach to better prepare for any unexpected intrusive regulation.

Second, in recent decades, an increasing number of directors have become shareholders in the same corporation, becoming more involved in the business and wielding greater power.[147] The number of shareholder activists has steadily increased, significantly reducing CEO power. Just like shareholders, directors and CEOs are incentivized to run the business in their own self-interest, as demonstrated by Professor Bainbridge's use of the Bainbridge hypothetical.

> “Consider how the Bainbridge Hypothetical is likely to play out in a world in which shareholder wealth maximization is not the norm. We can expect the decision to come out whichever way the board and management’s self-interest cuts. If the board’s and managers’ self-interest is consistent with keeping the plant open, they will decide to keep it open and justify their decision by pointing to the impact of closing on stakeholders such as the plant's workers and the local community. In contrast, if directors' and managers’ interests would be best served by closing the plant, they likely will decide to close it and point to concern for the firm's shareholders, creditors, and other benefited constituencies”[148]

The latter example justifies that by adopting a stakeholder approach “the BRT members hope to restore a measure of freedom”.

Progressive Corporation President and CEO Tricia Griffith stated, "CEOs work to generate profits and return value to shareholders, but the best-run companies do more. They prioritise the customer

[145] DavidBenoit,MoveOver,Shareholders:TopCEOsSayCompaniesHaveObligationsto Society, Wall St. J. (Aug. 19, 2019), https://www.wsj.com/articles/business-roundtable-steps-back-from- milton-friedman-theory-11566205200.)
[146]*Id*
[147] McConvill, James A., Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation. Ohio Northern University Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=943907
[148] See note 12

and make investments in their employees and communities. Finally, it's the most promising way to create long-term value."[149]

III. WEALTH AND INEQUALITIES IN CORPORATE AMERICA

To determine the extent to which changes in corporate law may alleviate inequality and economic stagnation, it is first necessary to comprehend their root causes. After examining the potential causes of today's economic inequality, the role that corporate purpose can play in resolving these issues will become clear.

A. Economic disparity

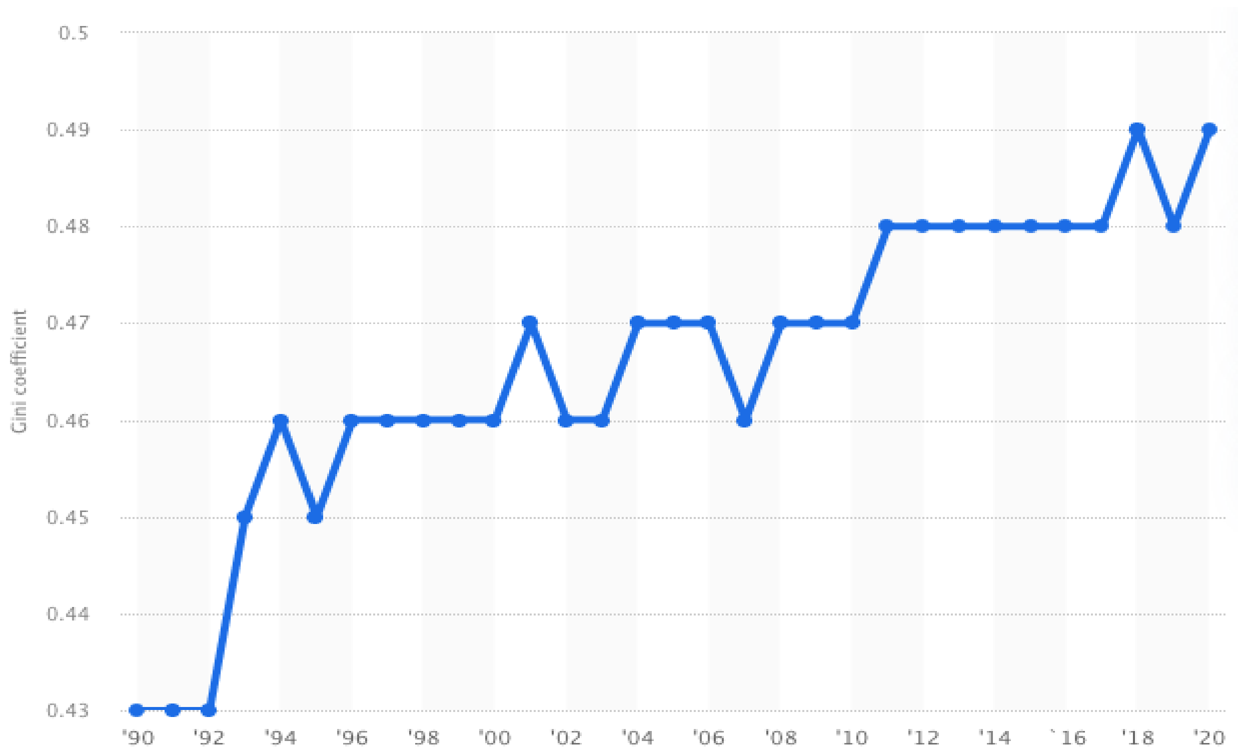
The problem of wealth disparity is gaining prominence in politics in the United States, which is not new, however, the attention it is receiving today is. Household incomes continue to stagnate, and the negative impacts of disparity intensify..

In economics, inequality is the degree to which the allocation of resources deviates from fairness, in other words, preferring to concentrate many resources in the hands of a few. Income inequality is more interesting to quantify than wealth inequality (capital goods, property, and other assets), which is the product of long-term processes.

There are several metrics for measuring income disparity, such as comparing the average income of distinct demographic groups, the Atkinson index, or statistical indicators of concentration.[150] The most popular of these is the Gini coefficient, which quantifies income inequality by assigning a number between 0 (complete equality) and 100 (extreme disparity in which one individual possesses everything). The coefficient does not express any measure of poverty and is significantly impacted

[149] (Businessroundtable.org. 2021. *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'*. [online] Available at: <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans> [Accessed 30 April 2021].)
[150] Frank (2009) notes that negative income values from IRS data are truncated at zero.

by the urban/rural or inter-regional development gap, yet it is still regarded as a useful indication of income inequality.[151]



Statista. 2022. *U.S. household income distribution, by Gini-coefficient 2020 | Statista*. [online] Available at: <https://www.statista.com/statistics/219643/gini-coefficient-for-us-individuals-families-and-households/>

The graph shows the economic disparity in America through the Gini coefficient and is clear that in the last years (from 2018) welfare inequalities in the country are increasing.[152]

Following the economic crises initiated by the pandemic, a shift away from shareholder primacy is gaining traction and America is at a crossroads and must determine how to reconstruct.[153] Whether choosing an economic recovery that embraces a new path that benefits all. Or going back to the usual business, prioritizing the minority at the expense of the majority. Hence, preserving the economic inequality that over the last fifty years has been worsening.[154]

[151] *Id*

[152] Statista. 2022. U.S. household income distribution, by Gini-coefficient 2020 | Statista. [online] Available at: <https://www.statista.com/statistics/219643/gini-coefficient-for-us-individuals-families-and-households/>

[153] Yosifon, David G., Opting Out of Shareholder Primacy: Is the Public Benefit Corporation Trivial? (June 24, 2016). Santa Clara Univ. Legal Studies Research Paper No. 1-16, Available at SSRN: https://ssrn.com/abstract=2733880 or http://dx.doi.org/10.2139/ssrn.2733880

[154] *Id*

1. Division of Capital and Labour

People's earnings were moving closer together up to the late 1960s and many observers believed that the trend would continue indefinitely.[155] It was believed that a stronger economy and a more democratic society would lead to greater equality. However, 1968 represented a shift. What initially appeared as a statistical mistake spiked the interest of economists and the concern of many individuals.[156] Millions of Americans who have no interest in discussing economics or even examining economic data complained that inequality was becoming increasingly apparent in the real world.[157]

However, as time passed the arrangement of economic inequality transformed. From 1968 until some point in the 1990s, the difference between earnings was significant because people with higher education earned more than those in the middle, which in turn earned more than less skilled workers with the least education. The issue was in determining the optimal distribution of wealth between labour and capital, that is, between those who perform the labour and those who own the capital that the workers use. During the middle of the 1950s, 63 % of the money earned by American enterprises went to employees and 37% went to investors. However, this situation does not appear to have changed significantly over time. For instance, by 1990s, 62% went to employees and the remaining 38% to investors.[158]

Things have begun to change only during the past few decades, where salaries, benefits, and other gains on labour have accounted for an average of only 57% of American enterprises' overall earnings. The remaining 43% has been distributed to the owners of corporations and their shareholders. The change from 20 years ago may not appear significant, however 5% of the nation's total corporate profits is well over $500 billion.[159] If this amount was given to the employees instead of owners, then disparity would have been reduced meaningfully.[160] Additionally, this shift away from labour and toward capital is not exclusive to the United States. Increasing salary disparities that favour education are another example. The ratio of labour to capital has shifted from 67/33 to 60/40 in Germany and

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[155] *Id*
[156] Perelman, M. (2008). The Corrosive Qualities of Inequality: The Roots of the Current Meltdown. Challenge, 51(5), 40–64. http://www.jstor.org/stable/40722533
[157] *Id*
[158] (Economic policy institute, 2019)
[159] Economic Policy Institute. 2022. *CEO compensation kept surging in 2018: The ratio of CEO-to-worker compensation was 278-to-1*. [online] Available at: <https://www.epi.org/press/ceo-compensation-kept-surging-in-2018-the-ratio-of-ceo-to-worker-compensation-was-278-to-1/>
[160] (Derenoncourt and Montialoux, 2020)

from 55/45 to 52/48 in Japan during the past few decades. Even in China, which is still seen to be a communist nation, the proportion has decreased from 43/57 to 38/62.[161]

Nowadays getting an education and acquiring skills is still the best way for employees to obtain a middle-class salary.[162] Individuals that possess only a high school diploma earn 30% less than those with a college degree. Similar, but weaker, economic incentives make it advantageous for older people to acquire a wide variety of skills, such as computer programming and operating complex machinery.[163]

Yet, if today's growing inequality is also attributable to the fact that more of the money in circulation is going to the owners of factories, offices, computers, and other devices required for labour, then hiring fewer employees with lower qualifications will not reverse the trend. The distribution of wealth is far more unequal than the one of income. If a greater the proportion of the economy's total output goes to capital owners, the income distribution will never balance.[164]

"The introduction of hundreds of millions of new workers from China, India, and other countries" to the global labour force is a plausible reason.[165] Yet perhaps this explanation would require a fundamental shift in how economists have traditionally viewed the production process. In the most common model, if there were more workers, the proportion of total income allocated to labour and capital would not change. More workers would be compensated, but each would receive less than before; as a result, their wages as a proportion of total output would remain unchanged. Instead, income disparity may be the result of a shift in industrial technology, perhaps linked with an increasing dependency on robotics and artificial intelligence.[166]

2. What is behind economic disparity?

This section discusses some of the most widely known causes of America's current state of inequality and poor progress. In the following sections, we will examine whether current corporate governance has played a role in any of the problems we've observed. In addition, it examines whether increasing

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[161] *Id*

[162] Ozturk, Ilhan, The Role of Education in Economic Development: A Theoretical Perspective. Available at SSRN: https://ssrn.com/abstract=1137541 or http://dx.doi.org/10.2139/ssrn.1137541

[163] *Id*

[164] (Derenoncourt and Montialoux, 2020)

[165] Ernst, Ekkehard and Dávalos, Jorge, How has labour market power evolved? Comparing labour market monopsony in Peru and the United States (March 27, 2021). Available at SSRN: https://ssrn.com/abstract=3813903 or http://dx.doi.org/10.2139/ssrn.3813903

[166] *Id*

directors' and officers' fiduciary duties is a viable strategy for reversing direction and restoring the corporate sector and society to a more sustainable path.

2.1Globalisation and International trade

In recent decades, the development and influence of international trade have been among the themes that have characterised the modern economic era. Global commerce has enabled substantial progress on many fronts, from the strengthening of many developing nations' economies to the decrease of commodity costs for households, on the one hand, due to reduced tariffs and, on the other, due to better ease of transport and communication. Nevertheless, globalisation has also caused several losses. When individuals and companies in the United States were able to import cheaper items from abroad, domestic firms struggled, and many exited the market. [167] Moreover, when corporations discovered ways to produce goods in nations with lower worker salaries, employment was both relocated and lost. [168]Globalization has contributed greatly to the loss of businesses and employment in the United States, therefore it is not surprising that it has become a key problem in national policy. China's increasing import trade has contributed about 10 percent to the decline in manufacturing employment from 17.2 million employees in 1999 to 11.4 million workers in 2011. [169] If one estimates input-output consequences for suppliers and buyers as well as for their respective suppliers and buyers, the overall impact on US employment is even greater: in this broader perspective, job losses rise to nearly 2 million for the entire economy and 985 000 for the manufacturing sector alone. Not only is it difficult to counteract the consequences of trade overall, but it also spreads beyond manufacturing jobs, given that the majority of lost jobs are in regions with fewer job opportunities due to low labour mobility across regions. [170] Trade exposure Trade risk affects the local enterprises that were once engaged in the lost manufacturing company and its workforce, as well as all major professional sectors, including management, professional, and technical positions.

It is concerning that the number of jobs lost because of trade competition is rising. Trade competition's effects more than just unemployment and worker non-participation rates; they also extend to wages: A study that examined the effect of exposure to international trade on workers' earnings from 1992 to 2007 found that the "difference between a manufacturing worker at the 75th percentile of industry trade exposure and one at the 25th percentile of exposure amounts to cumulative

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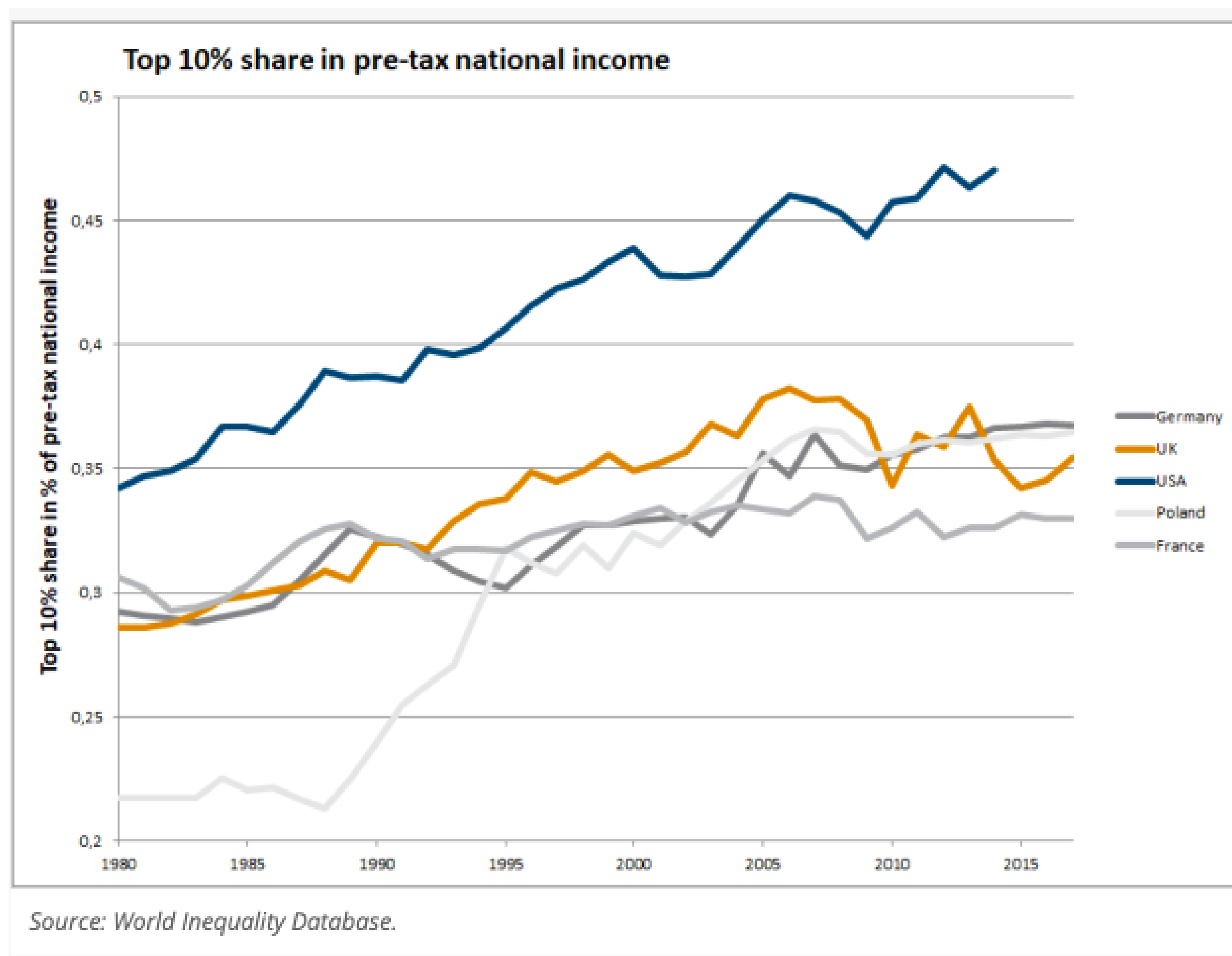
[167] Andrew B. Bernard, J. Bradford Jensen & Peter K. Schott, Survival of the Best Fit: Exposure to LowWage Countries and the (Uneven) Growth of U.S. Manufacturing Plants, 68 J. INT'L. ECON. 219, 219–20 (2006)

[168] Andrew B. Bernard, J. Bradford Jensen & Peter K. Schott, Survival of the Best Fit: Exposure to LowWage Countries and the (Uneven) Growth of U.S. Manufacturing Plants, 68 J. INT'L. ECON. 219, 219–20 (2006))

[169] (Daron Acemoglu, David H. Autor, David Dorn, Gordon H. Hanson & Brendan Price, Import Competition and the Great US Employment Sag of the 2000s, 34 J. LAB. ECON. S141, S144 (2016).

[170] David H. Autor, David Dorn & Gordon H. Hanson, The China Syndrome: Local Labor Market Effects of Import Competition in the United States, 103 AM. ECON. REV. 2121 (2013)

earnings reductions of 46% of initial yearly income and to one half of an additional month where payments from [Social Security Disability Insurance] are the main source of income." [171] It is crucial to note that the same research indicated that employees with a lower initial wage face larger earnings losses than those with a higher initial salary, whose losses are minor.



Source: World Inequality Database.

The graph demonstrates rising economic disparities within specific nations since the 1980s. The top 10%'s share of pre-tax national income is a strong indication that inequality is worsening inside each country. This is true in both Europe and the United States.[172]

There is no evidence linking corporate governance issues, such as shareholder primacy, to the rise of trade and globalisation as a source of inequality. Due to this disturbing trend, initiatives aimed at broadening directors' and management's fiduciary duties will have little effect.

[171] (David Autor, David Dorn, Gordon H. Hanson & Jae Song, Trade Adjustment Worker-Level Evidence, 129 Q.J. ECON. 1799, 1800 (2014))
[172] (Home - WID - World Inequality Database, n.d.)

2.2Technology advancements

Among the various economic concerns of our era, technological progress plays a crucial role as it reduces jobs requiring routine processes or tasks. This phenomenon can be seen in the assembly of automobiles that with computerisation has become a job in which people just supervise construction machines. Computers have rendered obsolete occupations such as typists and telephone operators. The Internet has destroyed the record industry, printing presses, bookstores, video stores, travel companies, and many more industries. These are only a few examples of what has occurred in the previous fifty years or more, and only time will tell how artificial intelligence will impact employment. This is not a new phenomenon: throughout history, particularly following the industrial revolution, innovation has radically altered business practises, resulting in the loss of many jobs. Contrary to what was discussed previously when exploring international trade, technology does not affect total employment rates, but it does reduce wages. Research studies examining the use of technology in the workplace and the resulting reduction in demand for routine-intensive occupations have concluded that specialisation in routine activities has a neutral impact on employment overall.[173] In particular, these studies demonstrate that local labour markets that are specialised in routine activities face losses in these professions, but these losses are largely offset by the rise of other occupations, particularly those demanding significant manual and abstract work. Consequently, this shift in professions leads to the so-called "occupational polarisation" in both manufacturing and non-manufacturing occupations.[174] Occupational polarisation is a significant contributor to income disparity and the problem is attributable to the inability of manufacturing workers to manage their activities.

The way technology have transformed certain industries and severely impacted employee interests has nothing to do with shareholder primacy or corporate law and governance. Therefore, also in this case extending fiduciary responsibility would do little to solve the societal issues generated by new technologies.

[173] David H. Autor, Frank Levy & Richard J. Murnane, The Skill Content of Recent Technological Change: An Empirical Exploration, 118 Q.J. ECON. 1279 (2003) (discussing how technology excels at efficiently performing repetitive, programmable tasks).
[174] *Id*

2.3Education

Historically, education and technology have been viewed as interdependent variables in influencing employment levels and salaries, and consequently the level of inequality. According to an influential mid-1970s paper by Jan Tinbergen, technology and education are in a "race."[175]As technological development increases the demand for workers with higher skills, individuals invest in their instruction to provide jobs that match the demand; if the skills learned do not keep up with the demands generated by the supply of new technologies, the group of workers with inadequate training will fall behind.[176] This means that the education system must quickly increase the number of employees with new abilities. This race highlights the reasons behind the well-known advantage of higher education. Society can benefit from this advantage because it is believed that it can provide a valid solution to the inequality it generates. In other words, it provides a solid incentive for future workers to invest in further education, thereby increasing the number of educated workers and preventing wage increases at the expense of less-educated workers. Renowned economists have discovered that mass education served as a key equaliser in the United States over the majority of the 20th century.[177] Professors Goldin and Katz write that, starting throughout the mid to late 1970s, the United States' dominance in the education system began to fade, and that inequality has worsened since then.[178] In addition, since 2000, hourly earnings for college graduates have hardly improved.[179] Lastly, although 34 percent of those over the age of 25 possess a bachelor's degree, just 26 percent of employment need one. In reality, most profits are made by those with postgraduate degrees.[180]

In general, the US education system fails to sufficiently prepare and develop human capital for the difficulties of the contemporary economy; in particular, it does not consider the less privileged sectors of society, such as minority communities, immigrants, and low-income households. As a result, fixing the existing educational system will certainly result in less disparity.

[175] Jan Tinbergen, Substitution of Graduate by Other Labour, 27 KYKLOS 217 (1974)
[176] GOLDIN, C., & KATZ, L. F. (2008). *The Race between Education and Technology*. Harvard University Press. https://doi.org/10.2307/j.ctvjf9x5x
[177] *Id*
[178] Raj Chetty, John N. Friedman, Emmanuel Saez, Nicholas Turner & Danny Yagan, Mobility Report Cards: The Role of Colleges in Intergenerational Mobility, (Nat'l Bureau of Econ. Rsch., Working Paper No. 23618, 2017), https://www.nber.org/papers/w23618 [https://perma.cc/5S2Y-784C]
[179] Nick Hanauer, Better Schools Won't Fix America, THE ATLANTIC (July 2019), https://www.theatlantic.com/magazine/archive/2019/07/education-isnt-enough/590611/ [https://perma.cc/4PFL9PNC].

[180] Daron Acemoglu & David H. Autor, What Does Human Capital Do? A Review of Goldin and Katz's The Race Between Education and Technology, 50 J. ECON. LITERATURE 426, 440– 42 (2012)

Again, corporation law and governance have no influence. Therefore, shareholder primacy cannot provide real solutions to the fundamental challenges plaguing the American education system.

2.4The Concentration of Market power

Since the early 1980s, consumer welfare has been the only focus of official antitrust policy in America[181]. In addition to consumer welfare, other characteristics connected with market dominance and concentration contributed to the level of inequality. Concentration, for instance, makes it far more difficult for other enterprises, especially smaller ones, to continue operating in the market, causing problems for other business owners[182]; similarly, small suppliers of a large corporation would face more stringent pricing constraints.

In addition, one of the most detrimental effects of corporate concentration is the difficulty with which weaker market participants, such as workers, compete in the market. Two common patterns exist. One is that concentration encourages anti-market conduct, such as the imposition of non-compete clauses on employees.[183] Secondly, mergers are motivated by redistribution of wealth, transferring funds from current employees to prospective shareholders.[184]

We have acknowledged that concentration results in a rise in market dominance and, consequently, a decline in competition. This could lead to wage suppression for employees because “A labor monopsony exists when lack of competition in the labor market enables employers to suppress the wages of their workers.”[185]

As a result of mergers, corporations have seen an increase in profits and markups that have never been seen before, while the share of labour has decreased.[186]

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[181] Herbert Hovenkamp, Post-Chicago Antitrust: A Review and Critique, 2001 COLUM. BUS. L. REV. 257, 266–68 (2001)

[182] Titan Alon, David Berger, Robert Dent & Benjamin Pugsley, Older and Slower: The Startup Deficit’s Lasting Effects on Aggregate Productivity Growth, 93 J. MONETARY ECON. 68 (2018).

[183] Evan Starr, J.J. Prescott & Norman Bishara, Noncompete Agreements in the U.S. Labor Force, J.L & ECON. 6 (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714 [https://perma.cc/3KLW-8FJ2]

[184] Andrei Shleifer & Lawrence H. Summers, Breach of Trust in Hostile Takeovers, in CORPORATE TAKEOVERS: CAUSES AND CONSEQUENCES (Alan J. Auerbach ed., 1988), https://www.nber.org/chapters/c2052.pdf [https://perma.cc/SB3C-LMBF].

[185] Ioana Marinescu & Eric A. Posner, Why Has Antitrust Failed Workers? 2 (Mar. 10, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335174 [https://perma.cc/4J66-Q4LU].)

[186] , Declining Labor and Capital Shares 1 (2017), http://facultyresearch.london.edu/docs/BarkaiDecliningLaborCapital.pdf [https://perma.cc/2CM4-3J8F]

In addition, concentration has led to the formation of so-called "superstar firms" in technology, finance, and retail whose employees earn more than their colleagues in other organisations. Numerous observers have remarked that wage discrepancy is presently more prevalent between organisations than inside them.[187]

Market concentration also gives companies more political power, making it more difficult to adopt reforms that benefit society.[188] Therefore, several studies have been conducted to determine whether concentration has increased in recent years and whether this is causing greater inequality.

In 2016, President Barack Obama's Council of Economic Advisers performed research that found that the revenue share of the 50 biggest firms in most industries rose between 1997 and 2012.[189] Concentration has grown over the last 20 years, resulting in larger profit margins and more successful mergers and acquisitions (M&A) transactions, yet there is little evidence of enhanced operational efficiency.[190] This implies that this value is derived from market power. According to other studies, company markup has increased from 21% in 1980 to approximately 61% in 2016.[191] Such a rise is virtually entirely attributable to the corporations with the largest markups already. In research, Azar, Marinescu, and Steinbaum studied the level of concentration in the labour market. These studies prove that a more concentrated labour market in the United States leads to lower wages for those who are working. Therefore, we can say that the wealth of American firms has expanded at the expense of consumers and employees, negatively affecting investment, dynamism, and entrepreneurship.[192]

To answer the second point, individuals who do not believe that concentration has increased significantly are likely to be even more skeptical of the claim that this has led to regressivity. Some

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[187] Jae Song, David J. Price, Faith Guvenen, Nicholas Bloom & Till von Watcher, Firming Up Inequality 4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 21199, 2015), http://www.nber.org/papers/w21199 [https://perma.cc/7YGL-F4X3]

[188] Mara Faccio & Luigi Zingales, Political
Determinants of Competition in the Mobile Telecommunication Industry (Nat'l Bureau of Econ. Rsch., Working Paper No. 23041, 2017), http://www.nber.org/papers/w23041 [https://perma.cc/N9KR-A8F6]

[189] COUNCIL OF ECON. ADVISERS ISSUE BRIEF, BENEFITS OF COMPETITION AND INDICATORS OF MARKET
POWER (Apr. 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414_cea_ competition_issue_brief.pdf [https://perma.cc/DF4Y-N3YR]

[190] Gustavo Grullon, Yelena Larkin & Roni Michaely, Are U.S. Industries Becoming More Concentrated? 2 (Swiss Fin. Inst. Res. Paper Series, Working Paper No. 19-41, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047 [https://perma.cc/W4YE-J9C5]

[191] Jan De Loecker, Jan Eeckhout & Gabriel Unger, The Rise of Market Power and the Macroeconomic Implications, Q.J. ECON.

[192] Germán Gutiérrez & Thomas Philippon, Declining Competition and Investment in the U.S. 1–3 (2017), (Nat'l Bureau of Econ. Rsch., Working Paper No. 23583, 2017), https://www.nber.org/papers/w23583.pdf [https://perma.cc/LK6R-EEFS]

evidence indicates that a lack of competition exacerbates inequality, while others claim the opposite is true.

Jason Furman, an American economist, and professor, and Peter Orszag, the CEO of Financial Advisory at Lazard Freres Freres & Co LLC, observed that evidence suggests that most of the increase in pay disparity among employees occurs across enterprises rather than within them.[193] According to their study

> "This is consistent with the combination of a rising dispersion of returns at the firm level and the inter-industry pay differential model, as well as with the notion that firms are wage setters rather than wage takers in a less-than-perfectly-competitive marketplace. These various factors raise the question of whether another perspective on inequality trends— which is consistent with the data we present, but is not the only consistent explanation—is that (a) a rising share of firms are earning super-normal returns on capital; (b) workers at those firms are both producing and sharing in those super-normal returns, driving up wage inequality; and (c) the high returns to labor and capital at those firms reduces labor mobility by discouraging workers from leaving firms that earn higher rents."[194]

Recent research, such as that conducted by Autor, Dorn, Katz, Patterson, and Van Reenen, shows a negative link between labour share and concentration. Companies with high productivity and low labour share are increasingly dominating the economy due to technological and competitive forces. The report illustrates how monopolistic firms may keep wages low and hire fewer employees. Among the significant effects of wage suppression are: (a) lower income for employees in the labour market; (b) a reduction in income for individuals who depend on labour in favor of those who rely on capital and profit from a company's market control; (c) unemployment of labour because when wages are low employees do not enter the labour force, and a decline in investments for education; and (d) a government beset by declining revenues and rising expenditures on societal problems.[195]

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[193] Barth, Erling et al. 2014. "It's Where You Work: Increases in Earnings Dispersion across Establishments and Individuals in the U.S." NBER Working Paper No. 20447.

[194] Jason Furman & Peter Orszag, A Firm-Level Perspective on the Role of Rents in the Rise in Inequality (Oct. 16, 2015), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151016_firm_level_perspective_on_role_of_rents_in_inequality.pdf [https://perma.cc/YS9U-BFZS]

[195] Ioana Marinescu & Eric A. Posner, Why Has Antitrust Failed Workers? 2 (Mar. 10, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335174 [https://perma.cc/4J66-Q4LU].

Returning to our original question, has the common perception of a company's goals led to the present degree of concentration? Does the notion of putting shareholders first have any weight? In this case, contrary to what we have seen so far, the answers to both questions are definitely "yes." Under a system in which shareholders elect the board of directors and directors are rewarded based on the performance of the stock, it makes sense for enterprises to attempt to maximise profits. Increasing your market share is one of the most effective methods for achieving this target. Expanding fiduciary rules to include a stakeholderist approach sensitive to competition issues could theoretically be a policy tool to limit market consolidation and boost competition in product and labour markets. As a result, directors and officers cannot attempt to increase a company's market share; we must now determine if this is the most effective policy approach to take on this challenge.

2.5 Rights and Protection to workers

Labour market institutions and the legal system deliver scarce protection to employees, and this inevitably leads to unfairness, in particular to income inequality.[196]

To promote the flexibility and efficiency of labour markets, conservative governments, led by President Reagan, instituted neoliberal revolutions that diminished union privileges and safeguards such as working hours, working conditions, and pensions. This marked the beginning of a global collapse in worker protections and rights.

In comparison with other advanced nations, America has afforded minimal protection and rights to employees. This can be seen in the National Labor Relations Act (NLRA)[197], which offers a scarce enforcement system and insignificant punishments. Moreover, it does not embrace weaker categories, such as agricultural and domestic employees

Employment law has been implemented to control the relationships between individual employees and their employers, whereas labour law has the role to oversee the relationships between groups of workers such as labour unions and their employers. If employment law is inadequate, workers will not find much protection in it. Employment law is a comprehensive body of federal statutes and concepts that grant workers a variety of individual rights and protections. These assure minimum requirements and fairness established by law, such as the minimum wage, and prohibitions against

[196] JAUMOTTE & CAROLINA OSORIO
BUITRON, INEQUALITY AND LABOR MARKET INSTITUTIONS 4 (2015), https://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf [https://perma.cc/2AF3-ALZK]
[197] National Labor Relations Act of 1935 (“Wagner Act”), 29 U.S.C. §§ 151–169 (2012).

sexual harassment and retaliation. In addition, it includes protections against discrimination based on gender, sexual orientation and race … [198]
Although employment laws should, in theory, serve as a starting point for employees and/or unions to negotiate better conditions, this is not always the case. In practise, its individualistic and anti-solidarity structure conflicts with the fundamental principle of labour law.[199]

Furthermore, taking legal action against an employer has become far more difficult because of the Supreme Court's Epic Systems Corp v Lewis decision.[200] This is because most contracts now have mandatory arbitration clauses. Moreover, the safeguards provided by employment legislation are inferior to those often achieved by collective bargaining, and they do not prevent workers from falling into poverty. Overall, it seems that employment law rights are more of a burden to comply with than a sensible approach for employee protection. irritation as opposed to efficient worker protection

the entire system of labour standards enforcement is designed to fail; a lack of worker protection regulations, a minimum wage below sustainability levels, and frequent layoffs have resulted from the U.S. inadequate protection system. Hence, collective bargaining has an insignificant effect on the economy.[201]

The link between inequality and a weak protection system is highlighted in the study carried out by Farber, Herbst, Kuziemko, and Naidu. According to this, there is a negative relationship between union density and inequality.[202] This means that inequality increases because of a decrease in union density. Moreover, individuals who are affected the most are members of LGBTQ and racial minorities.[203]

To return to our initial point, does shareholder primacy affect employee welfare? According to our current findings, companies are interfering with employee rights because they perceive no barriers in

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[198] Alan Hyde, The Idea of the Idea of Labour Law: A Parable, in THE IDEA OF LABOUR LAW 88
(Guy Davidov & Brian Langille eds., 2011)
[199] *Id*
[200] Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018).
[201] Alan Hyde, The Crisis in the US Litigation Model of Labour Rights
Enforcement, in “ONE LAW FOR ALL?”: WEBER V. ONTARIO HYDRO AND CANADIAN LABOUR LAW 301 (Elizabeth
Shilton & Karen Schucher eds., 2017)
[202] David Card, Thomas Lamieux & W. Craig Riddell, Unions and Wage Inequality, 25 J. LAB. RES. 519, 555 (2004)
[203] Marianne Bertrand & Sendhil Mullainathan, Are Emily and Greg More Employable than
Lakisha and Jamal? A Field Experiment on Labor Market Discrimination, 94 AM. ECON. REV. 991 (2014)

the legal system designed to protect employees. As a result, implementing a stakeholder-based approach while retaining labour market institutions would have a negligible effect overall.

2.6 Discrimination

Racial disparities are not random injustices; they are the result of history, stemming from slavery. The United States government played a significant role in fostering a racist mindset; rather than ensuring that everyone had equal access to affordable loans and government assistance, the government purposefully prevented Black individuals and communities from accumulating wealth. For example, the federal government prohibited black people from obtaining FHA loans and conditioned its decision to fund new neighborhoods on the fact that no homes would be sold to black individuals.[204]

Women have been marginalised historically in a variety of ways. For instance, even though the U.S. acted and enacted the Equal Credit Opportunity Act in 1974[205], women continue to face obstacles in creating wealth and achieving financial security due to higher costs for borrowing and predatory lending rates.[206]

In this situation, implementing a stakeholder approach would not result in significant change because it would not be adequate to address discrimination and bias on its own. In other words, the situation would not change significantly.

This thesis has thus far analysed the relationship between the division of capital and labour and the distribution of wealth in society was analysed. We have examined the root causes of economic disparity in the United States to determine whether the stakeholder approach could help and concluded that it would not be effective in protecting weaker constituencies. It is difficult to comprehend why the labour share of income is declining, but some individuals are already pondering what they can do to reverse the trend and are trying to figure out alternatives to the stakeholder approach. For instance, Thomas Piketty, in his 2014 best-selling book Capital in the Twenty-First Century, first brought attention to the role that shifting income distributions might play in the general widening of inequality. In addition, he proposed a wealth tax. Several authors have advocated for large-scale plans to redistribute income, such as a universal basic income. The

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[204] RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 64–68 (2017);

[205] Equal Credit Opportunity Act, Pub. L. 93-495, 88 Stat. 1521 (1974).

[206] Amy Baker Castro, Eroding the Wealth of Women: Gender and the Subprime Foreclosure Crisis, 88 SOC. SERV. REV. 59, 62 (2014)

subsequent chapter illustrates shareholder activism as a solution to economic inequality, thus determining whether a broader corporate purpose can rectify inequality.

IV. ALTERNATIVE SOLUTION: SHAREHOLDER ACTIVISM THROUGH PENSION FUNDS

A. *The rise of the working-class shareholder*

American public pension funds are investing in companies that privatise public employee positions.[207] As a result of these investments, workers' hours are reduced, and they frequently end up losing their positions.[208] Members and beneficiaries of pension funds may occasionally benefit from these investments, but their genuine economic interests may be jeopardised when the adverse consequences on employment are considered. However, this effect is rarely considered because of the interpretation of the fiduciary duty of loyalty, pension representatives consider the fund and not to its members and beneficiaries.[209] Even though ERISA and state pension codes instruct the pension representatives to invest "solely in the interests of participants and beneficiaries and for the exclusive purpose of providing benefits,"[210] the US Department of Labor stated in 2008 that the plan's interests take precedence.[211] Therefore, plan trustees should disregard the possibility that privatising investments could harm employment, as this would be detrimental to plan participants rather than the organisation. Consequently, the members of the plan interests in the plan investments are subverted, in the name of loyalty, to the plan's interests (or, at the very least, to an unduly narrow interpretation of the plan's interests that excludes. As a result, public pension systems invest in ways that are detrimental to the members' finances. This is the exact opposite of loyalty. [212]

When we think of workers, we usually think of strikes, political campaigns, elections, or legislation. All these tools are still necessary for the interest of employees. However, market dominance is vital

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[207] Choudhary, Amod and Papanikolaou, Nikolaos, U.S. Public Pension Funds and Risk Seeking Behavior of Money Managers: The Path to Alternative Investments (2017). The International Journal of Business and Finance Research, v. 11 (1) p. 37-47, Available at SSRN: https://ssrn.com/abstract=3025777

[208] *Id*

[209] *Id*

[210] (Fiduciary Responsibilities, 2022)

[211] CHRIS TOBE, KENTUCKY FRIED PENSIONS: A CULTURE OF COVER-UPS AND CORRUPTION 110 (2013).

[212] Webber, D., 2014. The Use and Abuse of Labor's Capital. [Blog] https://corpgov.law.harvard.edu/2014/04/07/the-use-and-abuse-of-labors-capital/#1, Boston.

in the twenty-first century. Hence, the decisions that have the greatest impact on our lives are made in corporate boardrooms, hedge or private funds, and equity funds.[213] Having a voice in these decisions is growing in importance. In the United States, trillions of dollars are invested in employee pension funds, demonstrating that labour and employees wield significant shareholder power. David Webber emphasises the invisible activist who figures out how to use this power in extremely advantageous ways for workers, thereby granting them a voice.

The Boston University law professor David Webber proposes an alternative way to contain economic disparity. In The Rise of the Working-Class Shareholder, he argues that a significant portion of the investments of wealth made on corporate capital in the U. S. arrives from "low- and middle-income workers' deferred wages — not in the form of individual savings and 401(k) plans, but in institutional pension funds"[214] supported by employers such as school systems or unions in which many workers still take part. These accounts are established to assist employees in saving for retirement. Webber questions whether this must be their sole responsibility and his answer is no.

Investing in pension funds is critical to reducing the tendency to hold short-term models, which Webber calls 'short-terminism'.[215] The pension funds are the prototype of long-term investors, who seek to increase capital over time. Moreover, it is in the interest of investors to oppose any move by a company that prioritises short-term gains over long-term performance. Thus, operating pension funds can provide an important counterbalance to pressures exerted by other capital holders, which often encourage management to prioritise the short term.[216]

According to Webber, pension, and union funds (as large institutional investors) should engage in shareholder activism. The lack of adequate external governance has long been a matter of criticism in corporate America.[217] In the 1930s, Adolf Berle and Gardiner Means first brought attention to the separation of ownership and control in US businesses, when an increasing number of people acquired modest stakes in a wide range of businesses.[218] This pattern persisted over time and institutional investors have acquired even more importance. in the United States investment

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[213] Bebchuk, Lucian A. and Roe, Mark J., A Theory of Path Dependence in Corporate Ownership and Governance (October 1, 1999). Stanford Law Review, Vol. 52, pp. 127-170, 1999, Columbia Law School, Center for Studies in Law & Economics Paper No. 131, November 1999, Available at SSRN: https://ssrn.com/abstract=202748 or http://dx.doi.org/10.2139/ssrn.202748
[214] Retrieved from https://www.nybooks.com/articles/2019/06/27/shareholder-labor-last-hope
[215] See note 205
[216] *Id*
[217] Corporate Finance Institute. 2022. Corporate Governance. [online] Available at: <https://corporatefinanceinstitute.com/resources/knowledge/other/corporate-governance/>
[218] See note 196

organisations, such as pension and mutual funds, today control 44% of all outstanding shares in the country.[219]

The main issue is that the funds in which public employees invest are used to subsidise companies that privatise the jobs of their own employees.[220] his problem is mostly hidden from public view, as these investments are usually made by private equity companies.[221] Let us take the example of the Chelmsford public school, where the pension plan was invested in a company that profited from reducing the earnings of future pensioners:

> "The schools employed custodians who were once paid $25 an hour and were promised a modest pension. For decades, the jobs had been reasonably stable. But as Bloomberg News reported, these custodians learned in 2012 that their jobs had been privatized and they were being fired. They were then offered the same job, at a 50 percent pay cut, by Aramark, a private firm that had been funded by their own pension funds."[222]

According to Webber, there is a reason why these organisations remain silent regarding the management of the companies in which they hold stock, and it has nothing to do with union pension funds or state and local government-sponsored pension funds.[223] Instead, he contends that because these pension funds are among the largest shareholders, they should use their power to influence the behaviour of these corporations. They are "an enormous source of leverage for labour," Webber says, adding, "pensions should evaluate the effects of their investments on their employees, including their jobs." It is common knowledge that pension funds assist employees fund their retirement.[224] However, the point that Webber is trying to make is that they should consider other factors that would benefit workers. Webber is clear about the political and economic implications of his proposals. Given what has occurred to several American occupations, incomes, and working conditions, he asserts that balancing the distribution of power between labour and capital is what America requires. He pushes for a "worker-centric legal and policy vision".[225]

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[219] Lin, Lauren Yu-Hsin, Controlling Controlling-Minority Shareholders: Corporate Governance and Leveraged Corporate Control (June 20, 2017). 2017 (2) Columbia Business Law Review 453-510 (2017), Available at SSRN: https://ssrn.com/abstract=2954854

[220] Webber, David H., David H. Webber: Protecting public pension investments (November 20, 2014). Appearing on The Washington Post website: https://www.washingtonpost.com/opinions/david-h-webber-protecting-public-pension-investments/2014/11/20/85748ee6-66cb-11e4-836c-83bc4f26eb67_story.html, Boston Univ. School of Law Research Paper Forthcoming, Available at SSRN: https://ssrn.com/abstract=3925223

[221] *Id*

[222] *Id*

[223] Webber, D., 2018. The rise of the working-class shareholder. Cambridge, Massachusetts: Harvard University Press.

[224] See note 205

[225] *Id*

> "Labour would have massive leverage using its pensions to its advantage in hiring and future pension contributions. That leverage would administer an adrenaline shot to the working class that could keep it off life support and send it back into the political arena in the twenty-first century." [226]

> "These pension funds, with the assets and power they have accumulated…operate inside the private sector, inside the market, as shareholders. They benefit from rules designed to keep power and resources marshaled there. Shareholder empowerment empowers them."[227]

Webber highlights the influence that pension funds have on corporations. He also takes into consideration that others institutional investors such as hedge funds may theoretically do the same thing but that is typically absent.[228]

> "Perversely, these particular shareholders [pension funds, that is] are more powerful than most because they operate in the private sector unencumbered by business conflicts of interest that keep other shareholders quiet when their rights are violated or their interests subverted."[229]

Webber bolsters his argument regarding the role pension funds could play in empowering workers with evidence of substantial progress. Pension funds, for example, made it possible for shareholders to vote on annual proxy statements.[230] In 2013, when the American Federation of Teachers released a list of hedge funds whose directors participated in the initiative to stop funding public schools in favour of charter schools, which included a reduction of teacher pensions. This lead some union and public worker pension funds to reconsider their investments.[231]

On the other hand, Webber also writes about the failure that pension funds have experienced. For example, the unsuccessful revolt against a corporation's initiatives to minimize wages, working conditions, and employment. In 2003, when the Safeway chain of supermarkets decided to cut salaries and wealth benefits. Therefore, after a failed strike, some pension funds, among which the California

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[226] *Id*
[227] See note 100
[228] See note 205
[229] See note 100
[230] See note 205
[231] Greppmair, Stefan, Systemic Risk Channels of Asset Managers: Evidence from Hedge Funds and Mutual Funds (June 19, 2020). Available at SSRN: https://ssrn.com/abstract=3631115 or http://dx.doi.org/10.2139/ssrn.3631115

Public Employees' Retirement System (CalPERS) and the New York City Employees' Retirement System (NYCERS), initiated a shareholder revolt against the CEO and board of Safeway. The CEO ended up remaining, but two members were removed from the important committee and three left the board.[232]

When writing about the aforementioned events, Webber is trying to encourage pension funds to make these efforts more frequently to support the interests of employees. However, is it legal? Can they? The main goal of these pension funds is to benefit the employees whose wages serve as the funds' investment capital. If reducing salaries or firing employees increases the corporation's overall profitability, then the owners will receive a higher yield. If a pension fund is one of the owners, the increased profit will allow each member to receive a higher pension. However, an employee whose income is reduced or who is fired may be worse off even if their retirement benefits increase. When deciding what to do with the pension fund's corporate shares, why not consider the broader context? Why should the investment's return be the only concern?

B. Challenges to Webber's argument

This argument can result problematic because most pension-covered employees are those who work for corporations that prefer to reduce wages and lay off large numbers of workers to increase profits.[233] Therefore, Webber's argument is only possible if those workers sacrifice their future rate of return in support of those other workers who have experienced wage cuts or job loss. This commitment should be based on a spirit of solidarity in which the needs of all employees are grouped. Following this perspective implies that some will lose while others will gain. This solidarity would help the younger employee, but older people approaching or already in retirement would not benefit from pension benefits due to the fund's lower rate of return.[234]

In addition, in pensions for the private sector in the United States, each individual contributes to his or her account, and their benefit in retirement is determined by the amount inside their account and

[232] See note 100
[233] Gordon, J. N. (1997). Employees, Pensions, and the New Economic Order. Columbia Law Review, 97(5), 1519–1566. https://doi.org/10.2307/1123442
[234] Thornton, P. N., & Wilson, A. F. (1992). A REALISTIC APPROACH TO PENSION FUNDING. Journal of the Institute of Actuaries (1886-1994), 119(2), 229–312. http://www.jstor.org/stable/41141064

the rate of return it generates over time.[235] On the other hand, employees of the public sector, such as schools, have defined contribution pensions. Each worker is granted a set of monthly payments, generally depending on the duration of the employment and the final income. It is important to point out that retirees will not receive more money if the rate of return on assets invested in such a plan increase. Rather, less money gets raised from taxpayers. This suggests that "Any loss of return on the company's stock held by the pension fund would be a loss to the taxpayers, not to current or future retirees … The activism that Webber advocates would advance the interests of some groups of workers at the expense of the taxpayers, not other groups of workers." [236]

Webber's argument for shareholder activism as a potential remedy for inequality has several flaws, which he refers to as "profound threats to labor's capital."[237] In his book, he describes two possible eventualities that concern him. The first occurred in June 2019, when the Supreme Court prohibited public-sector unions from charging fees to non-members who negotiate with local government employees. This is a strategy for weakening unions, which will result in less money flowing into pension funds, and as a result, pension funds will gradually lose the majority of their shareholder power.[238]

The second possible concern involves 401(k) plans. Similar to governmental pension plans, the majority of U.S. companies used to offer defined benefit pensions to their employees. However, this is no longer the case now.[239] These days, contribution schemes such as 401(k)s are incredibly popular. Webber emphasises that these plans leave all of the risks on the workers, including the possibility that invested assets might fail and hence provide low returns. This means that even if all of its pensioners end up with insufficient funds to survive, the company is not liable. Webber fears that many Americans who rely on these plans for retirement income will realize that they are insufficient.[240]

The shift to 401(k) plans has another effect that has a direct impact on Webber's suggestion. Only multibillion-dollar funds that control millions of employees' retirement savings have sufficient power for shareholder activism. For instance, pension funds such as CalPERS or NYCERS must be efficiently managed by personnel able to negotiate with other shareholders and communicate

[235] *Id*
[236] M. Friedman, B., 2019. Labor's Last Hope?. New York Review,.
[237] See note 205
[238] *Id*
[239] *Id*
[240] See note 205

effectively with the managers of corporations.[241] The following inquiry arises: A person responsible for investing a pension fund's monies could perhaps decide to follow Webber's suggestions. Can he/she legally consider how shareholder activism would benefit employees, taking all workers (not just those covered by the fund) into account? Or should he/she only concentrate on factors that influence the rate of return on the pension fund's assets?

Webber mentioned, “I do not think that federal or state law requires, or should require, funds to ignore the overall impact of a fund’s investments on workers in the name of maximising returns.” Furthermore, he adds, “In the American context, it is often taken as a given that a business case and only a business case for investment action is appropriate…. I argue that the law suggests otherwise.”[242] He mentions two court rulings, one from the 11th Circuit Federal Court of Appeals in 1986 and one from the California Court of Appeals in 2006, that "implicitly endorsed" the premise underlying his stance. This suggests that Webber’s perspective is not completely his own.

The situation is unclear. Several courts, especially the Federal Court of Appeals for the District of Columbia Circuit, have been openly hostile to this type of shareholder activism.[243]
Webber's book takes a political and economic stance rather than a legal one, and remarkable evidence demonstrates that economic and especially political variables play a considerable influence in determining the court's decision. It remains to be seen if Webber's case will withstand the scrutiny of today's Court.

Conclusion

According to some influential politicians, academics, and members of the general public sphere, shareholder primacy is a major driver of economic disparity.[244] They believe that instead of focusing solely on profit, corporations should embrace a broader social responsibility.[245] The stakeholder approach appeals to a wider range of interests, including customers, employees, and the environment.

[241] Lipton, Martin, Corporate Governance: Does It Make a Difference? (1997). Fordham Finance, Securities and Tax Law Forum, Vol. 2, pp. 41-58, 1997, Available at SSRN: https://ssrn.com/abstract=2017082
[242] See note 205
[243] Gilson, Ronald J. and Gordon, Jeffrey N., Agency Capitalism: Further Implications of Equity Intermediation (February 1, 2014). European Corporate Governance Institute (ECGI) - Law Working Paper No. 239/2014, Stanford Law and Economics Olin Working Paper No. 456, Columbia Law and Economics Working Paper No. 461, Available at SSRN: https://ssrn.com/abstract=2359690
[244] Thomas Clarke, Why Shareholder Value Drives Income Inequality, THE CONVERSATION (Jul. 25, 2018), https://theconversation.com/why-shareholder-value-drives-income-inequality-100324 [https://perma.cc/67BL-5UB2]
[245] Matthew Bodie, Income Inequality and Corporate Structure, 45 STETSON L. REV. 69, 70 (2016)

As observed in the second chapter, the BRT statement has been signed to "reconcile the statement of principles to what they felt they do – that is, balance the interests of several corporate stakeholders, including customers, employees, suppliers, and communities." [246] As a result, the notion that the corporation's primary goal is to maximise shareholder wealth is dispelled. [247] Throughout the years, many have questioned how companies should strive to improve society, rather than just make a profit. In this way, the 'shareholders versus stakeholders' argument, also known as the 'corporate purpose' debate, has been resurrected.

While many contend that the stakeholder approach is the most effective way to achieve long-term profitability and improve economic inequality in America. On the other hand, shareholder wealth maximisation absolutists, like Professor Bainbridge, believe that the stakeholder paradigm is deceptive and that business decisions should be made with the best interests of shareholders in mind.

In real life, corporate management must constantly balance the needs of various stakeholder constituencies to ensure the corporation's long-term success, regardless of whether this benefits only shareholders or all business constituencies. In terms of legal doctrine, the concept of maximising shareholder wealth is neither correct nor incorrect. Rather, the business judgement rule, which justifies most corporate expenses that have a reasonable connection to the best interests of the corporation, "subsumes all such platitudes masquerading as legal laws." [248] As a result, the BRT restatement "is likely to cause much ado about nothing...neither the law nor the incentive structure for CEOs has changed."[249]

So, what is the cause of the BRT shift towards a stakeholder approach? The paper examines the arguments for and against the stakeholder paradigm. The embracement of an Environmental, social, and corporate governance approach (ESG) may be attributable to CEOs using it as a tool to attract stakeholders for the long-term benefit of shareholders. Alternatively, they may believe that focusing on stakeholders rather than shareholders is a way to return to the days of colonial CEOs. The bottom line is that the corporate purpose will remain unchanged until legislation or the motivation for CEOs to engage in ESG practices changes. And this is reflected in the BRT announcement's almost imperceptible consequences.

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[246] Lipshaw, Jeffrey M., The False Dichotomy of Corporate Governance Platitudes (July 29, 2020). Journal of Corporation Law, 2020, Available at SSRN: https://ssrn.com/abstract=3660450

[247] *Id*

[248] *Id*

[249] see note 77

It may appear reasonable to blame shareholder primacy for the economic disparity that the United States is experiencing, and thus appealing to a stakeholder approach may be an appropriate solution. However, as explored in the dissertation, the reasons behind wealth disparities are various, and only a few are directly related to the corporate purpose and fiduciary responsibilities. The desire for firms to act in the interests of their employees, customers, and communities is natural and even admirable. However, relying on managers and directors to tackle a problem such as inequality is a risky bet. Therefore, A stakeholder strategy is unlikely to result in a significant relocation of power to weaker groups.

An alternative solution to economic inequality, that does not involve the expansion of fiduciary duties, is what Professor Webber calls shareholder activism. He emphasises the power that workers can exercise as owners of capital in employee pension funds, which gives them a powerful strategy against their exploiters in labour's capital.

"For far too long, labor and its progressive sympathizers have sought to transform the market from outside the market: from courts, from legislatures, from regulators, from street protests, from strikes. These tools are important. But ultimately, it is not possible to transform the market from the outside. It must be transformed from within."[250]

These sentences that Webber writes at the beginning of his book captured my attention. Corporations are, without a doubt, the most powerful and influential force in American society. While writing this thesis, I realised that workers have attempted to change corporations through boycotts, legislative action, and protests. However, as Webber puts it, the most successful results are achieved "from within," by supporting the shareholders.[251]
To address wealth inequality, climate change, diversity, and other issues, investment should be motivated by a social purpose. To build a sustainable economy, investors must consider environmental, social, and governance (ESG) issues because investments have an impact on society and the environment.[252]
What America requires is a more radical departure from the conventional definition of fiduciary responsibility. Most fiduciaries are investing in what is highly profitable but will soon render the world uninhabitable, and the Employee Retirement Income Security Act of 1974 (ERISA) in

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[250] Webber, D., 2018. The rise of the working-class shareholder. Cambridge, Massachusetts: Harvard University Press.
[251] *Id*
[252] Rose, P. (2021). CATALYZING SUSTAINABLE INVESTMENT. Environmental Law, 51(4), 1221–1276. https://www.jstor.org/stable/48647572

practise requires fiduciaries to act in the same manner as other fiduciaries. Instead, they should prioritise long-term, sustainable development.

Webber points out that trustees "ignore the overall economic impact of a fund's investments on workers in the name of maximising returns … Trustees should broaden their economic perspective beyond blind maximisation of returns, which can undermine workers' economic interests in their investments."[253] Shareholders are not machines and corporate directors and fund managers should represent their interests as human beings in their entirety rather than as robots in constant pursuit of yield.

In conclusion, when this day comes America will finally progress from this constant pathological corporate pursuit for profit and power to a fully implemented mediating system that assists people in making our world more productive. The rise of working-class shareholders is critical to the success of these initiatives.

[253] *Id*

Works Cited

- A.P. Smith Mfg. Co. v. Barlow. Annotate this Case. 13 N.J. 145 (1953). 98 A.2d 581.
- Aghion P., E. Caroli and C. Garcia-Penalosa, (1999), "Inequality and Economic Growth: The Perspective of the New Growth Theories," Journal of Economic Literature
- Alan Hyde, The Crisis in the US Litigation Model of Labour Rights Enforcement, in "ONE LAW FOR ALL?": WEBER V. ONTARIO HYDRO AND CANADIAN LABOUR LAW 301 (Elizabeth Shilton & Karen Schucher eds., 2017)
- Alan Hyde, The Idea of the Idea of Labour Law: A Parable, in THE IDEA OF LABOUR LAW 88 (Guy Davidov & Brian Langille eds., 2011)
- Allen, W. T., Jacobs, J. B., & Strine, L. E. (2001). Function Over Form: A Reassessment of Standards of Review in Delaware Corporation Law. *The Business Lawyer*, *56*(4), 1287–1321. http://www.jstor.org/stable/40688020
- Amy Baker Castro, Eroding the Wealth of Women: Gender and the Subprime Foreclosure
- Andrei Shleifer & Lawrence H. Summers, Breach of Trust in Hostile Takeovers, in CORPORATE TAKEOVERS: CAUSES AND CONSEQUENCES (Alan J. Auerbach ed., 1988), https://www.nber.org/chapters/c2052.pdf [https://perma.cc/SB3C-LMBF].
- Andrew B. Bernard, J. Bradford Jensen & Peter K. Schott, Survival of the Best Fit: Exposure to LowWage Countries and the (Uneven) Growth of U.S. Manufacturing Plants, 68 J. INT'L. ECON. 219, 219–20 (2006)
- Atkeson A. and M. Ogaki, (1996), "Wealth-Varying Intertemporal Elasticities of Substitution: Evidence from Panel and Aggregate Data," Journal of Monetary Economics
- Bainbridge, Stephen Mark, Making Sense of The Business Roundtable's Reversal on Corporate Purpose. 46 Journal of Corporation Law 285 (2021), UCLA School of Law, Law-Econ Research Paper No. 20-03, Available at SSRN: https://ssrn.com/abstract=3664078
- Baldwin R. E., P. Martin, and G. I. P. Ottaviano, (2001), "Global Income Divergence, Trade and Industrialization: The Geography of Growth Take-Offs," Journal of Economic Growth,
- Balotti, R. F., & Hanks, J. J. (1993). Rejudging the Business Judgment Rule. *The Business Lawyer*, *48*(4), 1337–1353. http://www.jstor.org/stable/40687428
- Barth, Erling et al. 2014. "It's Where You Work: Increases in Earnings Dispersion across Establishments and Individuals in the U.S." NBER Working Paper No. 20447.
- Bebchuk, L. A. (2005). The Case for Increasing Shareholder Power. *Harvard Law Review*, *118*(3), 833–914. http://www.jstor.org/stable/4093350

- Bebchuk, Lucian A. and Roe, Mark J., A Theory of Path Dependence in Corporate Ownership and Governance (October 1, 1999). Stanford Law Review, Vol. 52, pp. 127-170, 1999, Columbia Law School, Center for Studies in Law & Economics Paper No. 131, November 1999, Available at SSRN: https://ssrn.com/abstract=202748 or http://dx.doi.org/10.2139/ssrn.202748
- Bebchuk, Lucian A. and Tallarita, Roberto, Will Corporations Deliver Value to All Stakeholders? (August 4, 2021). Forthcoming, Vanderbilt Law Review, Volume 75 (2022)
- Bessen, James E., The Skills of the Unskilled in the American Industrial Revolution (September 2000). Research on Innovation Working Paper, Available at SSRN: https://ssrn.com/abstract=244569
- Bibliograpgy
- Blanchard, Olivier and Justin Wolfers. 2000. "The Role of Shocks and Institutions in the Rise of European Unemployment: The Aggregate Evidence." The Economic Journal 110, (462):
- Bourree Lam, Quantifying Americans' Distrust of Corporations, THE ATLANTIC (Sept. 25, 2014),
- Brav, A., Jiang, W., Partnoy, F., & Thomas, R. (2008). Hedge Fund Activism, Corporate Governance, and Firm Performance. *The Journal of Finance*, *63*(4), 1729–1775. http://www.jstor.org/stable/25094488
- Business Roundtable, Statement on the Purpose of a Corporation (Aug. 19, 2019)
- Businessroundtable.org. 2022. *Business Roundtable Redefines the Purpose of a Corporation to Promote 'An Economy That Serves All Americans'*. [online] Available at: <https://www.businessroundtable.org/business-roundtable-redefines-the-purpose-of-a-corporation-to-promote-an-economy-that-serves-all-americans>
- CHAPTER 1. General Corporation Law. Subchapter VII. Meetings, Elections, Voting and Notice. § 211. Meetings of stockholders.
- Cheng, Beiting and Ioannou, Ioannis and Serafeim, George, Corporate Social Responsibility and Access to Finance (May 19, 2011). Strategic Management Journal, 35 (1): 1-23., Available at SSRN: https://ssrn.com/abstract=1847085 or http://dx.doi.org/10.2139/ssrn.1847085
- Choudhary, Amod and Papanikolaou, Nikolaos, U.S. Public Pension Funds and Risk Seeking Behavior of Money Managers: The Path to Alternative Investments (2017). The International Journal of Business and Finance Research, v. 11 (1) p. 37-47, Available at SSRN: https://ssrn.com/abstract=3025777

- Citigroup.com. 2022. *Mission & Value Proposition - About Us | Citi*. [online] Available at: <https://www.citigroup.com/citi/about/mission-and-value-proposition.html> [Accessed 8 June 2022].
- Corporate Finance Institute. 2022. *Corporate Governance*. [online] Available at: <https://corporatefinanceinstitute.com/resources/knowledge/other/corporate-governance/>
- COUNCIL OF ECON. ADVISERS ISSUE BRIEF, BENEFITS OF COMPETITION AND INDICATORS OF MARKET POWER (Apr. 2016), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20160414_cea_ competition_issue_brief.pdf [https://perma.cc/DF4Y-N3YR]
- Crisis, 88 SOC. SERV. REV. 59, 62 (2014)
- Daron Acemoglu, David H. Autor, David Dorn, Gordon H. Hanson & Brendan Price, Import Competition and the Great US Employment Sag of the 2000s, 34 J. LAB. ECON. S141, S144 (2016).
- David Card, Thomas Lamieux & W. Craig Riddell, Unions and Wage Inequality, 25 J. LAB. RES. 519,555 (2004)
- David H. Autor, David Dorn & Gordon H. Hanson, The China Syndrome: Local Labor Market Effects of Import Competition in the United States, 103 AM. ECON. REV. 2121 (2013)
- Declining Labor and Capital Shares 1 (2017), http://facultyresearch.london.edu/
- Derenoncourt, E. and Montialoux, C., 2020. Minimum Wages and Racial Inequality*. *The Quarterly Journal of Economics*, 136(1), pp.169-228.
- docs/BarkaiDecliningLaborCapital.pdf [https://perma.cc/2CM4-3J8F]
- Dodge v. Ford Motor Company, 204 Mich. 459, 170 N.W. 668 (Mich. 1919)
- Economic policy institute, 2019. *CEO compensation has grown 940% since 1978*. Typical worker compensation has risen only 12% during that time. Economic Policy institute.
- Economic Policy Institute. 2022. *CEO compensation kept surging in 2018: The ratio of CEO-to-worker compensation was 278-to-1*. [online] Available at: <https://www.epi.org/press/ceo-compensation-kept-surging-in-2018-the-ratio-of-ceo-to-worker-compensation-was-278-to-1/>
- Ellora Derenoncourt, Claire Montialoux, Minimum Wages and Racial Inequality, *The Quarterly Journal of Economics*, Volume 136, Issue 1, February 2021, Pages 169–228, https://doi.org/10.1093/qje/qjaa031
- Elson, C. M., & Goossen, N. J. (2017). E. Merrick Dodd and the Rise and Fall of Corporate Stakeholder Theory. *The Business Lawyer*, *72*(3), 735–754. https://www.jstor.org/stable/26419161

- Epic Sys. Corp. v. Lewis, 138 S. Ct. 1612 (2018).
- Equal Credit Opportunity Act, Pub. L. 93-495, 88 Stat. 1521 (1974).
- Ernst, Ekkehard and Dávalos, Jorge, How has labour market power evolved? Comparing labour market monopsony in Peru and the United States (March 27, 2021). Available at SSRN: https://ssrn.com/abstract=3813903 or http://dx.doi.org/10.2139/ssrn.3813903
- European Corporate Governance Institute - Law Working Paper No. 645/2022 Harvard Law School John M. Olin Center Discussion Paper No. 1078
- Evan Starr, J.J. Prescott & Norman Bishara, Noncompete Agreements in the U.S. Labor Force, J.L & ECON. 6 (forthcoming 2020), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2625714 [https://perma.cc/3KLW-8FJ2] (finding that 13.3% of non-college educated workers earning less than $40,000 per year were bound by noncompetes).
- Frank, M. W. 2009. "Inequality and Growth in the United States: Evidence from a New StateLevel Panel of Income Inequality Measures." Economic Inquiry 47(1): 55–68.)
- Germán Gutiérrez & Thomas Philippon, Declining Competition and Investment in the U.S. 1–3 (2017), (Nat'l Bureau of Econ. Rsch., Working Paper No. 23583, 2017), https://www.nber.org/papers/w23583.pdf
- Gilson, Ronald J. and Gordon, Jeffrey N., Agency Capitalism: Further Implications of Equity Intermediation (February 1, 2014). European Corporate Governance Institute (ECGI) - Law Working Paper No. 239/2014, Stanford Law and Economics Olin Working Paper No. 456, Columbia Law and Economics Working Paper No. 461, Available at SSRN: https://ssrn.com/abstract=2359690
- GOLDIN, C., & KATZ, L. F. (2008). *The Race between Education and Technology*. Harvard University Press. https://doi.org/10.2307/j.ctvjf9x5x
- Gordon, J. N. (1997). Employees, Pensions, and the New Economic Order. *Columbia Law Review*, *97*(5), 1519–1566. https://doi.org/10.2307/1123442
- Greenfield, Kent, The Rise of the Working Class Shareholder: An Application, an Extension, and a Challenge (December 4, 2019). Boston University Law Review, Vol. 99, No. 1, 2019, Boston College Law School Legal Studies Research Paper No. 516, Available at SSRN: https://ssrn.com/abstract=3498385
- Greppmair, Stefan, Systemic Risk Channels of Asset Managers: Evidence from Hedge Funds and Mutual Funds (June 19, 2020). Available at SSRN: https://ssrn.com/abstract=3631115 or http://dx.doi.org/10.2139/ssrn.3631115

- Gustavo Grullon, Yelena Larkin & Roni Michaely, Are U.S. Industries Becoming More Concentrated? 2 (Swiss Fin. Inst. Res. Paper Series, Working Paper No. 19-41, 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2612047 [https://perma.cc/W4YE-J9C5]
- Harvard Law School Program on Corporate Governance Working Paper 2021-11, Available at SSRN: https://ssrn.com/abstract=3899421 or http://dx.doi.org/10.2139/ssrn.3899421
- Hathaway, O. A. (2008). International Delegation and State Sovereignty. *Law and Contemporary Problems*, *71*(1), 115–149. http://www.jstor.org/stable/27592224
- Herbert Hovenkamp, Post-Chicago Antitrust: A Review and Critique, 2001 COLUM. BUS. L. REV. 257, 266–68 (2001)
- https://www.theatlantic.com/business/archive/2014/09/quantifying-americans-distrust-of-corporations/380713/ [https://perma.cc/J3ZL-MDML].
- Ioana Marinescu & Eric A. Posner, Why Has Antitrust Failed Workers? 2 (Mar. 10, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335174 [https://perma.cc/4J66-Q4LU].
- Ioana Marinescu & Eric A. Posner, Why Has Antitrust Failed Workers? 2 (Mar. 10, 2019), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3335174 [https://perma.cc/4J66-Q4LU].)
- Jae Song, David J. Price, Faith Guvenen, Nicholas Bloom & Till von Watcher, Firming Up Inequality 4 (Nat'l Bureau of Econ. Rsch., Working Paper No. 21199, 2015), http://www.nber.org/papers/w21199 [https://perma.cc/7YGL-F4X3]
- Jan De Loecker, Jan Eeckhout & Gabriel Unger, The Rise of Market Power and the Macroeconomic Implications, Q.J. ECON.
- Jan Tinbergen, Substitution of Graduate by Other Labour, 27 KYKLOS 217 (1974)
- Jason Furman & Peter Orszag, A Firm-Level Perspective on the Role of Rents in the Rise in Inequality (Oct. 16, 2015), https://obamawhitehouse.archives.gov/sites/default/files/page/files/20151016_firm_level_perspective_on_role_of_rents_in_inequality.pdf [https://perma.cc/YS9U-BFZS]
- JAUMOTTE & CAROLINA OSORIO BUITRON, INEQUALITY AND LABOR MARKET INSTITUTIONS 4 (2015), https://www.imf.org/external/pubs/ft/sdn/2015/sdn1514.pdf [https://perma.cc/2AF3-ALZK]
- Keller, M. (1997). The Making of the Modern Corporation. *The Wilson Quarterly (1976-)*, *21*(4), 58–69. http://www.jstor.org/stable/40260534

- Krueger, Alan B. and Lawrence H. Summers. 1988. "Efficiency Wages and the Inter-Industry Wage Structure."
- Lin, Lauren Yu-Hsin, Controlling Controlling-Minority Shareholders: Corporate Governance and Leveraged Corporate Control (June 20, 2017). 2017 (2) Columbia Business Law Review 453-510 (2017), Available at SSRN: https://ssrn.com/abstract=2954854
- Lipton, Martin, Corporate Governance: Does It Make a Difference? (1997). Fordham Finance, Securities and Tax Law Forum, Vol. 2, pp. 41-58, 1997, Available at SSRN: https://ssrn.com/abstract=2017082
- M. Friedman, B., 2019. Labor's Last Hope?. *New York Review*,.
- Manohar, Dr. E., Essential Alignment: Corporate Social Responsibility and Social Impact Assessment for Sustainable Development - An Empirical Study (2019). Journal of Management, 6 (3), 2019, pp. 186–191, Available at SSRN: https://ssrn.com/abstract=3525388
- Mara Faccio & Luigi Zingales, Political Determinants of Competition in the Mobile Telecommunication Industry (Nat'l Bureau of Econ. Rsch., Working Paper No. 23041, 2017), http://www.nber.org/papers/w23041 [https://perma.cc/N9KR-A8F6]
- Marianne Bertrand & Sendhil Mullainathan, Are Emily and Greg More Employable than Lakisha and Jamal? A Field Experiment on Labor Market Discrimination, 94 AM. ECON. REV. 991 (2014
- Matthew Bodie, Income Inequality and Corporate Structure, 45 STETSON L. REV. 69, 70 (2016)
- Mayer, Colin, The Governance of Corporate Purpose (May 12, 2021). European Corporate Governance Institute - Law Working Paper No. 609/2021, Available at SSRN: https://ssrn.com/abstract=3928613
- McConvill, James A., Shareholder Empowerment as an End in Itself: A New Perspective on Allocation of Power in the Modern Corporation. Ohio Northern University Law Review, Forthcoming, Available at SSRN: https://ssrn.com/abstract=943907
- McCrory v . Chambers , 48 Ill . App . 455
- Milano, Gregory Vincent and Tomlinson, Brian and Whately, Riley and Yiğit, Alexa, The Return on Purpose: Before and during a Crisis (October 21, 2020). Available at SSRN: https://ssrn.com/abstract=3715573 or http://dx.doi.org/10.2139/ssrn.3715573
- National Labor Relations Act of 1935 ("Wagner Act"), 29 U.S.C. §§ 151–169 (2012).

- Nick Hanauer, Better Schools Won't Fix America, THE ATLANTIC (July 2019), https://www.theatlantic.com/magazine/archive/2019/07/education-isnt-enough/590611/ [https://perma.cc/4PFL9PNC].
- Nordhaus, William (2015). "Are We Approaching an Economic Singularity? Information Technology and the Future of Economic Growth," NBER Working Paper 21547, National Bureau of Economic Research, Cambridge, MA.
- Organization for Economic Cooperation and Development (2018).
- Ozturk, Ilhan, The Role of Education in Economic Development: A Theoretical Perspective. Available at SSRN: https://ssrn.com/abstract=1137541 or http://dx.doi.org/10.2139/ssrn.1137541
- Philippon, Thomas (2019). The Great Reversal: How America Gave Up on Free Markets, Harvard University Press.
- Pierce, Morton, Analysis of the Business Roundtable statement Harvard Law School Forum on Corporate Governance, 26 Sept 2019.
- Pollman, Elizabeth, The History and Revival of the Corporate Purpose Clause (March 12, 2021). Texas Law Review, Vol. 99, P. 1423, 2021, U of Penn, Inst for Law & Econ Research Paper No. 21-15, Available at SSRN: https://ssrn.com/abstract=3803604
- Raj Chetty, John N. Friedman, Emmanuel Saez, Nicholas Turner & Danny Yagan, Mobility Report Cards: The Role of Colleges in Intergenerational Mobility, (Nat'l Bureau of Econ. Rsch., Working Paper No. 23618, 2017), https://www.nber.org/papers/w23618 [https://perma.cc/5S2Y-784C]
- Ramanna, Karthik, Friedman at 50: Is It Still the Social Responsibility of Business to Increase Profits? (January 18, 2020). California Management Review, (May 2020) Volume: 62 issue: 3: 28-41. https://doi.org/10.1177/0008125620914994., Available at SSRN: https://ssrn.com/abstract=3668873
- Ratajczak, Piotr and Mikołajewicz, Grzegorz, The Impact of Environmental, Social and Corporate Governance Responsibility on the Cost of Short- and Long-Term Debt (June 22, 2021). Economics and Business Review EBR 21(2), 74-96 DOI: 10.18559/ebr.2021.2.6, Available at SSRN: https://ssrn.com/abstract=3891402
- Retrieved RICHARD ROTHSTEIN, THE COLOR OF LAW: A FORGOTTEN HISTORY OF HOW OUR GOVERNMENT SEGREGATED AMERICA 64–68 (2017);
- Roe, Mark, Why are America's CEOs talking about stakeholder capitalism now? Project Syndicate, 4 Nov 2019.

- Rose, P. (2021). CATALYZING SUSTAINABLE INVESTMENT. *Environmental Law*, *51*(4), 1221–1276. https://www.jstor.org/stable/48647572
- Serafeim, George, The Role of the Corporation in Society: An Alternative View and Opportunities for Future Research (May 27, 2013). Available at SSRN: https://ssrn.com/abstract=2270579 or http://dx.doi.org/10.2139/ssrn.2270579
- Sneirson, J. F. (2015). SHAREHOLDER PRIMACY AND CORPORATE COMPLIANCE. *Fordham Environmental Law Review*, *26*(3), 450–473. http://www.jstor.org/stable/26195883
- Song, Trade Adjustment Worker-Level Evidence, 129 Q.J. ECON. 1799, 1800 (2014)
- Steinberg, Marc I., Application of the Business Judgment Rule and Related Judicial Principles-Reflections from a Corporate Accountability Perspective (1981). 56 Notre Dame Lawyer 903 (1981), Available at SSRN: https://ssrn.com/abstract=3769457
- Stigler G., (1951), " The Division of Labor is Limited by the Extent of the Market," Journal of Political Economy
- Taylor Telford, Income Inequality in America Is the Highest It's Been Since Census Bureau Started Tracking It, Data Shows, WASH. POST. (Sept. 26, 2019, 2:57 PM),
- Thomas Clarke, Why Shareholder Value Drives Income Inequality, THE CONVERSATION (Jul. 25, 2018), https://theconversation.com/why-shareholder-value-drives-income-inequality-100324 [https://perma.cc/67BL-5UB2]
- Thornton, P. N., & Wilson, A. F. (1992). A REALISTIC APPROACH TO PENSION FUNDING. *Journal of the Institute of Actuaries (1886-1994)*, *119*(2), 229–312. http://www.jstor.org/stable/41141064
- Titan Alon, David Berger, Robert Dent & Benjamin Pugsley, Older and Slower: The Startup Deficit's Lasting Effects on Aggregate Productivity Growth, 93 J. MONETARY ECON. 68 (2018).
- U.S. DEPARTMENT OF LABOR. 2022. *Fiduciary Responsibilities*. [online] Available at: <https://www.dol.gov/general/topic/retirement/fiduciaryresp>
- Wash. & Lee L. Rev. 1423, In Defense of the Shareholder Wealth Maximization Norm: A Reply to Professor Green (1993)
- Webber, D., 2014. *The Use and Abuse of Labor's Capital*. [Blog] https://corpgov.law.harvard.edu/2014/04/07/the-use-and-abuse-of-labors-capital/#1, Boston.
- Webber, D., 2018. *The rise of the working-class shareholder*. Cambridge, Massachusetts: Harvard University Press.

- Webber, David H., David H. Webber: Protecting public pension investments (November 20, 2014). Appearing on The Washington Post website: https://www.washingtonpost.com/opinions/david-h-webber-protecting-public-pension-investments/2014/11/20/85748ee6-66cb-11e4-836c-83bc4f26eb67_story.html, Boston Univ. School of Law Research Paper Forthcoming, Available at SSRN: https://ssrn.com/abstract=3925223
- WID - World Inequality Database. n.d. *Home - WID - World Inequality Database*. [online] Available at: <https://wid.world/> [Accessed 19 May 2022].
- Yosifon, David G., Opting Out of Shareholder Primacy: Is the Public Benefit Corporation Trivial? (June 24, 2016). Santa Clara Univ. Legal Studies Research Paper No. 1-16, Available at SSRN: https://ssrn.com/abstract=2733880 or http://dx.doi.org/10.2139/ssrn.2733880
- from https://www.nybooks.com/articles/2019/06/27/shareholder-labor-last-hope