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# Shaping corporate reform: social enterprise, cooperatives, mission-led and employee-owned business

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## Introduction

Many of the most serious challenges we face today, including climate change threats, mass migration and major levels of income and wealth inequality, have been linked to the activities of business corporations. The involvement of large multinationals in resource depletion, social and economic exploitation and other corporate scandals has created suspicion and distrust. And despite attempts by corporate actors to ensure, or at least to give an impression of, better behaviour, there has grown widespread scepticism towards corporate social responsibility (CSR) and towards well-established corporate norms such as shareholder primacy. The resulting legitimacy crisis of corporations arises in part out of the financial nature of shareholdings, where shares are held as part of an investment portfolio, and shareholders are distant from the corporation but focus instead on maximising their return on investment. In addition, central to these financialised structures, executives appear to have abandoned their fiduciary duties to the corporation and focus instead on extracting value for investors and for themselves.

By prioritising short term, profit oriented goals rather than long term objectives that comprise a broader set of aims, company directors manage corporations above all with a view to maximising value for their shareholders; even if doing so means impacting negatively, directly or indirectly, on other stakeholders, both those inside the corporation (employees) and those external to it (consumers, suppliers, communities, taxpayers, the environment). These externalities remain largely unaccounted for (they are not internalised) unless regulatory intervention leads corporations to modify their behaviour. But corporate power and influence extends to the political decision-making that determines these regulations. Corporations lobby extensively and they fund political activism. Their investments in our economies grant them access to, and power over, our governments and political decision-makers. They invest, too, in controlling our societies: shaping our knowledge, understanding and perceptions, such as what we consider a “normal” business, and our workplace, to look like; how we measure wealth, success and social justice; how seriously we take our health and a healthy environment, and so on.

In short, corporations take on few responsibilities except towards their shareholders, but they have vast social, economic and political influence over everyone else too. That is what, currently, makes them so problematic. In this chapter, I will set out briefly why these concerns have led a number of commentators to suggest that radical reform of the corporate form is necessary to address its current failures as well as the extensive power it has accumulated. I will then turn to discussing some existing, and emerging, alternative forms of the business enterprise and ask what these forms, and the great diversity of organisations they represent, may be able to contribute to the critical debate over reforming the governance of our corporations. These alternative business forms operate mostly in the “interstices” of the mainstream capitalist model, servicing distinct and often localised niche

markets, though with notable exceptions.<sup>1</sup> But this chapter argues that they include many examples of socially responsible organising that could translate into possibilities for wider corporate governance reform. In this way, the chapter discusses the development of social enterprises, cooperatives, mission-led, and employee-owned businesses in the United Kingdom, and asks whether we may look to these models to find inspiration for radical corporate reform. The final section briefly considers whether the motivational strength of these forms, namely their reliance on strong entrepreneurial figures prepared to use business as a vehicle for social activism, may at the same time constitute one of their potential pitfalls: perhaps we should beware the glorification of the activist entrepreneur?

### The case for corporate reform

Corporate governance reform has been a widely discussed issue following the global economic crisis of 2008. In response to the crisis, governments and policymakers have at least paid lip service to the idea that corporations should be more strictly held accountable for their actions, and they have introduced additional governance requirements to avoid such crises in the future. However, most of these responses have not been effective. As Paddy Ireland observes, the frequency and sheer scale of the corporate scandals emerging in most recent times suggests instead that ‘corporate irresponsibility does seem to be scaling new heights’.<sup>2</sup> Among other things, this reflects a lack of meaningful corporate governance reforms, despite governments’ concerted efforts to convey a public message that they are taking issue of corporate accountability (more) seriously.

The reason for why these responses have remained, by and large, inadequate and ineffectual, lies in the corporation itself and in its political power. Corporate law and the regulation of corporate governance have been shaped, perhaps more than any other regulatory domain, by the political influence of large corporations over regulatory processes. Instead of introducing systemic changes to corporate governance rules that would be mandated, what we have seen in the aftermath of the crisis are essentially the “same old same old” market-led responses to corporate failure. These feature plenty of discussion around corporate social responsibility, sustainability and stakeholder responsibilities, but the reality is that few, if any, of the additional reforms introduced over the last ten years (including attempts to achieve more independent non-executive directors and auditors, more transparency and disclosure requirements but also a reduction of “red tape”) mandate systemic changes to corporate structure and organisation. Nor have they proven especially impactful or fundamental. On the contrary, by focusing on the role of shareholders to hold company directors to account so as to improve corporate transparency, some of these reforms have further reinforced the primacy of shareholders in the governance of the corporation.

The intellectual climate around corporate governance reform however is, as Ireland reminds us, more and more critical of the *status quo*. A rising number of academics, popular political commentators, but also leaders in the business world, are beginning to seriously question the neoliberal ideology that has underpinned corporate governance from the 1990s onwards, the idea that shareholder value should be so central to what corporations are for and how they are run. But,

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<sup>1</sup> See only the employee-owned John Lewis partnership or Cooperative retailer in the UK, or the Mondragon cooperative consortium based in the Spanish Basque region.

<sup>2</sup> Paddy Ireland, ‘Corporate Schizophrenia: the institutional origins of corporate social irresponsibility’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hard Publishing, 2017, forthcoming.

although many of these critical commentators challenge the idea of shareholder value maximisation and short-termism, few go further and propose a more fundamental revision of the shareholder primacy norm itself. According to Ireland:

‘These critiques do not, however, generally entail a rejection of shareholder primacy. On the contrary, their goal is usually to get managers to purpose shareholder value in a more ‘enlightened’ manner and to focus on long- rather than short-term financial returns. Many of the reform proposals that have emerged thus seek to get shareholders to act more like ‘proper’, active, committed ‘owners’.... and to persuade managers to adopt the role of ‘stewards’.’<sup>3</sup>

Ireland’s argument on the other hand is that in a context where most shares are held by distant shareholders as part of a portfolio of financial investments, getting these financiers to act more like responsible ‘owners’ of the corporation is a struggle against the systemic odds. Portfolio investment encourages shareholder distancing and a focus on short term financial results rather than their active involvement in and stewardship of the corporation. So, trying to give them a more responsible role in corporate governance will, as Lorraine Talbot<sup>4</sup> too points out, exacerbate the problems that flow from financialisation and corporate irresponsibility rather than solving them.

The proposition we find here, then, is that reforms must be directed towards radical change in the structure and purpose of the corporation. Addressing the responsibilities of shareholders and managers without fundamentally questioning their relation to the firm is not enough. Instead, these reforms must start by challenging the fundamental proposition that shareholders have a claim to be the ‘owners’ of, or should have an owner-like status in, the corporation. A key structural problem is, as Ireland maintains, that the corporate legal form currently confers residual property rights on shareholders (especially the rights to receive a dividend and to appoint the board), but with few of the responsibilities that usually attach to such rights:

‘Shareholders have been relieved, like creditors, of responsibility from corporate wrongs and debts, but permitted to retain residual proprietary rights which enable them to ensure that corporations are run in their exclusive interests.’<sup>5</sup>

When these rights coexist alongside financial remuneration incentives for directors to increase profits and raise share prices, they generate a highly profit-oriented corporate culture. At the same time, directors can widely protect themselves against incurring a personal responsibility, not least by invoking specific leniency clauses in the corporate articles and/or extensive indemnity and insurance policies. The case for reform therefore arises directly out of the corporate legal personality which, as currently construed, confers many advantages on the corporation but establishes few personal responsibilities for shareholders or corporate executives.

Related to this is the suggestion that the corporate form is itself a socially constructed organisation and is, as Martin Parker reminds us, ‘only one form of organising amongst many, many others’.<sup>6</sup> Both

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<sup>3</sup> Ireland, above fn. \*.

<sup>4</sup> Lorraine Talbot, ‘Why Shareholders Shouldn’t Vote’ 76 *Modern Law Review* (2013) 791.

<sup>5</sup> Ireland, above fn. \*.

Parker and Ireland challenge the idea that the corporation as we know it, with shareholder primacy operating at its heart, somehow entrenches, as a matter of *necessity*, how we should conduct business and trade. Instead, it is suggested that a more open and experimentalist intellectual attitude towards social and economic organisation is necessary to make business fit for our century, to tackle necessary corporate reforms and meet the global challenges we currently face. We have an intrinsic capability as humans to collectively shape our organisations and, as Colin Mayer points out, to ‘create concepts and institutions to assist rather than subjugate us.’<sup>7</sup> This capability forces us to recognise that our organisational choices, including how we organise and legally construct the firm, remain fundamentally a matter determined by our *politics*. It must not be determined by a sense of ‘false necessity’, as Roberto Mangabeira Unger puts it,<sup>8</sup> where existing organisations, especially the ones that dominate our social and economic lives so deeply as the corporation does, are understood to reflect some teleological imperative or natural law that determines our development or human nature. In short, the conceptual starting point here is that the corporate legal form is a social construct and a political choice rather than determined by any form of economic necessity. Choosing to radically reform corporations, or finding new ways of conducting business and trade, is equally a political matter. It must not be treated as somehow outside what is politically feasible or acceptable.<sup>9</sup>

### **Existing and emerging alternatives: social enterprise, mission-led business, employee-ownership and cooperatives**

The existence, and ongoing emergence, of alternative forms of the business enterprise that differ fundamentally from the corporation in both structure and purpose, has become a more and more central theme in these critical debates on corporate governance reform. As suggested by Boeger and Villiers, by looking beyond the conventional corporate form, and taking inspiration from existing alternatives such as cooperatives and social enterprises, we might find lessons in those examples to identify new ways of organising business enterprises to benefit entrepreneurs *and* global society.<sup>10</sup> By studying these alternative forms, we may then be able to devise better organisational vehicles to enable us to open out both the structure and purpose of business to wider societal concerns, while ensuring their economic sustainability. In this way, we may not only provide an inspiration and impetus to progress toward corporate governance reform, but we may eventually be able to challenge the hegemony of the corporation itself as the (necessarily) most appropriate form of organising collective economic activity.<sup>11</sup> At the same time, by looking at these alternatives, we may

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<sup>6</sup> Martin Parker, Epilogue: necessity organisation and politics’, Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hard Publishing, 2017, forthcoming.

<sup>7</sup> Colin Mayer, *Firm Commitment: why the corporation is failing us and how to restore trust in it*, Oxford: Oxford University Press, 2013, p. 255.

<sup>8</sup> Roberto Unger, *False Necessity: Anti-Necessitarian Social Theory in the Service of Radical Democracy*, London: Verso, 2004.

<sup>9</sup> Parker, above fn. \*.

<sup>10</sup> Nina Boeger and Charlotte Villiers, ‘Introduction’, in *idem*, *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

<sup>11</sup> In fact, practical trends are beginning to challenge that hegemony: see for example the rapid growth of limited liability companies in the US as an alternative to traditional corporations, as documented at <https://www.berkmansolutions.com/blog/item/trends-in-new-business-entities-30-years-of-data> (accessed 18 August 2017).

identify a wider role for them in shaping capitalism today, even if many of them still currently operate in niche markets.

Despite the focus in mainstream corporate scholarship and amongst most business practitioners on the conventional corporate form, there exists today a great diversity of formats globally that enable business enterprises to address concerns beyond maximising profit for shareholders. In fact, such is their diversity that it calls into question any purist claim that 'doing good' is something that will be left to non-profits while the (only) purpose of business is to 'do well' by making money. So many and so varied are their forms, that one of the key challenges today is defining common ground and a common language that will permit us to study their idiosyncratic features, draw comparisons and identify differences, but also to develop cross-cutting ideas and concepts that can define (new) legal and governance structures. Individual businesses' demands and capacities will have to be carefully matched to the available legal and governance formats, and therefore, some diversity is advantageous, but it should not cloud the structural cohesion we need to develop workable organisational forms in this diverse and evolving corporate landscape.

In the UK for example, we may consider at least four separate types to broadly classify existing alternative business forms: social enterprises, mission-led businesses, employee-owned firms and (more broadly) cooperatives. There are many overlapping aspects and blurred boundaries between these, and we cannot expect all alternative business organisations to neatly fit within one or other category, though mapping out these categories or types helps us in identifying certain themes and characteristics. In doing so, we should also adopt a critical lens, scanning these formats not only for their strengths and opportunities but equally for existing weaknesses, potential risks and unintended consequences. Aware of the limitations that the scope of a single chapter imposes on the task, this section presents an attempt at introducing the key features of those four types of alternative business forms, to offer an idea of their central features, key developments as well as challenges, including how they relate to one another.<sup>12</sup> This is followed in the next section by a discussion of how our experience with these various forms might, both empirically and conceptually, help in shaping the debate on corporate reform.

### Social enterprise

The first of these categories is what nominally defines this book: *social enterprise*. Although internationally the concept of social enterprise is contested and usually means, as Teasdale reminds us, 'different things to different people across different contexts and at different points in time',<sup>13</sup> in the UK at least there exists a rough-and-ready consensus on its basic definition. Broadly, we understand social enterprises as firms that earn most of their income through trading, but that also commit themselves to a specific social and/or environmental purpose(s) and principally reinvest

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<sup>12</sup> There are further alternatives we could cover here, for example mutual and state-owned enterprises, but with a view towards the following debate, and given the constraints of this chapter, we focus on these four types.

<sup>13</sup> Simon Teasdale, 'What's in a name? The construction of social enterprise', Third Sector Research Centre, Working Paper 46, 6 September 2010, available at: <http://www.birmingham.ac.uk/generic/tsrc/documents/tsrc/working-papers/working-paper-46.pdf> (accessed 20 July 2017)

their surplus revenue to advance this/these purpose(s).<sup>14</sup> Beyond this basic definition, social enterprises still feature a spectrum of governance options,<sup>15</sup> varying in terms of their size and legal form, the intensity of their community engagement and extent of financial investment, as well as the volume of their commercial trade and proportion of income re-invested to progress their social purpose(s). Some operate locally, others nationally or even internationally.<sup>16</sup> Some are longstanding businesses and other start-ups.

One of the key concerns for many social enterprises is to ensure their social mission will endure and be 'locked into' the business, to prevent a for-profit sale of business assets and a disproportionate extraction of profits at any point in the future. Legal formats such as the community interest company<sup>17</sup> or the community benefit society<sup>18</sup> are available in the UK to impose an asset lock on the business, a constitutional device that prevents the distribution of residual assets to members and ensures that the community benefit of any retained surplus, or residual value, cannot be appropriated for the private benefit of its members.<sup>19</sup> In addition, community interest companies that are set up as companies limited by shares are subject to a regulated dividend cap that is calculated chiefly as an aggregate limit on the total dividend declared. These provisions are primarily there to ensure that profits continue to be principally invested for the community benefit. But some social entrepreneurs are concerned that these commercial restrictions will put off investors,<sup>20</sup> including social impact investors, at a time when almost half of social enterprises in England continue to regard access to finance as a key barrier, or potential barrier, to attaining economic sustainability.<sup>21</sup> These concerns are not new. Following calls within the sector to increase financial flexibility, in 2014 the legislator approved changes to loosen the original regime on dividends caps, and restrictions on performance-related loans, to establish the current, more flexible rules.<sup>22</sup> Following these legislative changes, social finance and investment in community interest companies appears to have grown in recent years.

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<sup>14</sup> Dan Gregory, 'The Politics, Policy, Popular Perception and Practice of Social Enterprise in the 21<sup>st</sup> Century', in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

<sup>15</sup> Rory Ridley-Duff and Mike Bull, *Understanding Social Enterprise: Theory & Practice*, 2<sup>nd</sup> edition, SAGE Publishing, 2015.

<sup>16</sup> Social Enterprise UK, *State of Social Enterprise Survey 2015*, available at: <https://www.socialenterprise.org.uk/Pages/Category/state-of-social-enterprise-reports> (accessed 18 June 2017)

<sup>17</sup> Companies (Audit, Investigations and Community Enterprise) Act 2004 and Community Interest Company Regulations 2005 (SI 2005/1788), as amended by the Community Interest Company (Amendment) Regulations 2009 (SI 2009/1942) and Community Interest Companies (Amendment) Regulations 2014 (SI 2014/2483).

<sup>18</sup> Co-operative and Community Benefit Societies Act 2014.

<sup>19</sup> Office of the Regulator of Community Interest Companies, *Community Interest Companies: Guidance Chapters*, last updated April 2017, available at: <https://www.gov.uk/government/publications/community-interest-companies-how-to-form-a-cic> (accessed 2 May 2017).

<sup>20</sup> Stephen Lloyd, 'Transcript: Creating the CIC', *Vermont Law Review* 2010 (35)1, 31-44.

<sup>21</sup> Social Enterprise UK, *State of Social Enterprise Survey 2015*, available at: <https://www.socialenterprise.org.uk/Pages/Category/state-of-social-enterprise-reports> (accessed 18 June 2017)

<sup>22</sup> Nina Boeger, Sara Burgess and Julie Ellison, 'The Community Interest Company' in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

The community interest company limited by shares, these days with fewer restrictions following the legislative amendments, embodies the more commercial aspect of this legal model. While still not as common as community interest company limited by guarantee, there is a modest upward trend in registrations of community interest companies limited by shares. The current trend suggests that this more commercial model may be gradually supplementing the more traditional hybrid format where the organisation behaves charitably and often focuses on grant income while having the responsibility of a private limited company. Social investment tax relief, introduced in the UK 2014, is also starting to attract interest from smaller investors who can achieve tax relief for their investment in a community interest company (and other asset locked models). It offers social enterprises access to “cheaper” capital, potentially without the risk of having to dilute ownership of their company. Many investors, and community interest companies themselves, are currently still uncertain about the nature of social investment tax relief, but there appears to be an appetite amongst community interest companies, and social enterprises generally, to develop their businesses more strategically, to grow commercially stronger and be more influential.

### **Mission-led business**

Formats with significantly less commercial restrictions are available to firms wishing to set up as *mission-led businesses*. The UK government has defined these as enterprises that distribute their profits to shareholders and owners, but at the same time formulate an intention to have a positive social impact as a central purpose of their business. They make a long-term commitment to deliver on that intention, and regularly report on their social impact to their stakeholders.<sup>23</sup> Rather than an asset lock and dividend cap, the procedural mechanism to protect the social or environmental purpose of these enterprises is more flexibly defined. While there is concern to “lock” the social mission into the business for some time – perhaps the foreseeable future - these models are generally designed to be more adaptable to the financial expectations of investors and therefore take a more relaxed attitude towards the future evolution of their business model. One way of setting up a mission-led business, without going as far as locking-in assets or restricting dividend distribution, is to become a certified B Corporation or ‘B Corp’. The B Corp label, which will be more familiar to corporate lawyers in the US where it originated, arrived in the UK in 2015. It is not a legal format but a voluntary certification available to businesses upon application (and payment of a fee) to B Lab, an independent and internationally operating not-for-profit organisation. B Corp certification offers an independent assurance that a firm is committed, through its constitution and its governance, not just towards its shareholders but also towards its wider stakeholders and the environment. Amongst other things, the certification process involves an independent assessment of the business’ governance and overall impact on internal and external stakeholders (including workers, communities and the environment) at least every two years. It also requires the firm to include in its constitutional documents an objective to benefit shareholders *and* to have a positive

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<sup>23</sup> UK Government, *Mission-led Business Review*, Call for Evidence, May 2016, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/521927/Mission-Led\\_Business\\_Review-Call\\_for\\_Evidence.PDF](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/521927/Mission-Led_Business_Review-Call_for_Evidence.PDF) (accessed 2 May 2017); Advisory Panel’s Independent Report on the Review, *On a Mission in the UK Economy*, published in February 2017, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/574694/Advisory\\_Panel\\_Report\\_-\\_Mission-led\\_Business.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/574694/Advisory_Panel_Report_-_Mission-led_Business.pdf) (accessed 2 May 2017).

impact on society and the environment,<sup>24</sup> and to sign a declaration that sets out its commitment to its stakeholders and the environment.<sup>25</sup>

The government recently commissioned an independent review of mission-led business that has given rise to wider debates, beyond the B Corp, about a more responsible form of business which, however, remains fully profit-distributing and commercially active. In its concluding report, the independent review panel describes it as an ‘ethos’ of mission-led businesses ‘to contribute positively to society through their operations, goods and services.’<sup>26</sup> The report further states that there are currently around 123,000 mission-led businesses in the UK with an annual turnover of £165 billion, employing around 1.4 million people. It further estimates that ‘by 2026 all UK businesses will have a mission that includes serving society and the environment. The most successful businesses will be those that manifestly deliver on that mission.’<sup>27</sup> These, as Hunter and Boeger observe, ‘might be surprising numbers given this is a new concept for many people’, and especially the estimate requires some careful interpretation, not only because of the ‘undeniable ambition of the word “all” but also because “includes” could cover a vast spectrum of intent, not all of it benign to all stakeholders.’<sup>28</sup> It is therefore still too early to predict what impact the report will eventually have; much depends on the government’s response to it, and whether there is any political traction to take its ideas seriously.

However, the report itself has already provoked some critical reflection and debate, not least because it clearly chooses to define the social mission or ethos of a company primarily as a business case, arguing that it would make the company more successful economically and give it a ‘competitive advantage’<sup>29</sup> (for example, because it would impact on workforce morale and productivity, or on consumer satisfaction). This, and the panel’s additional focus on the ‘contribution to UK growth’<sup>30</sup> by mission-led businesses, have raised concern as to whether this is genuinely seeking to reform the business enterprise or simply a re-branding exercise which, at its heart, remains concerned with growth and productivity. More particularly, there is concern that corporations may turn to the mission-led business label as a ‘brand’ rather than instigating fundamental changes to the corporate culture of their business. Could this, in other words, turn out to be merely a new iteration of CSR which, as Hunter and Boeger point out, could be ‘perhaps more dangerous if it is given legislative legitimacy and provides a further shield of apparent benign intent behind which corporates continue ‘business as usual’?’<sup>31</sup> And further, will genuine, fully asset-locked, social enterprises be able to maintain their market positions, and retain and even grow their access to affordable and sustainable finance, when fully-profit distributing businesses might brand

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<sup>24</sup> In the UK, this requires the adoption of a wording in the constituting document that repeats s. 172(1) of the Companies Act 2006 but with some ‘small but significant’ alterations to satisfy this legal test, according to David Hunter, ‘The Arrival of B Corps in Britain: another milestone towards a more nuanced economy?’ in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, forthcoming, 2017.

<sup>25</sup> Available at <https://www.bcorporation.net/what-are-b-corps/the-b-corp-declaration> (accessed 2 May 2017).

<sup>26</sup> *On a Mission in the UK Economy*, above fn. \*, p. 8.

<sup>27</sup> *On a Mission in the UK Economy*, above fn. \*, p. 31

<sup>28</sup> David Hunter and Nina Boeger, *What is the Point of Business?*, University of Bristol Law School Blog, December 2016.

<sup>29</sup> *On a Mission in the UK Economy*, above fn. \*, p. 5

<sup>30</sup> *On a Mission in the UK Economy*, above fn. \*, p. 3.

<sup>31</sup> David Hunter and Nina Boeger, *What is the Point of Business?*, University of Bristol Law School Blog, December 2016.

themselves - to consumers, to investors, to policymakers, to the public – as business with a social mission but without any guarantee that this mission is fully entrenched in the business?

### Employee-owned firms

If the defining characteristic of social enterprises and mission-led businesses is their social purpose or mission, then employee-owned firms and cooperatives are distinct primarily because of their democratic ownership and governance structure. In practice though, these boundaries are of course not clear-cut. Cooperatives for example usually do have a defined purpose (they have been titled the ‘original’ social enterprise), and many modern cooperatives would explicitly identify as a social enterprise. There are many employee-owned firms, on the other hand, that despite their distinct structure would not consider themselves a social enterprise.

*Employee-owned firms* have been a part of the UK economy for decades, although they remain, comparatively speaking, a niche business form. Nonetheless, the UK’s Employee Ownership Association (EOA) considers employee ownership to be ‘significant and growing’, delivering currently 4% of UK GDP annually.<sup>32</sup> The advantages of employee-owned businesses, according to the Association, include ‘higher productivity and greater levels of innovation’ as well as ‘more engaged, more fulfilled and less stressed workforces’ and greater resilience to economic turbulence.<sup>33</sup> Empirical studies beyond the UK support these claims. A 1980s study of US Employee Stock Ownership Plans (ESOPs) conducted by the US General Accounting Office, for example, found that ‘the greater degree of employee participation in corporate decision making, the higher the rate of change in our measure of productivity between pre-ESOP and post-ESOP periods’.<sup>34</sup> But – if there is a correlation between democratic decision-making and productivity, as identified, then why are there not more businesses controlled by their workers?

Neoliberal economic theory suggests it is because employee ownership generates inefficiency, as Jensen and Meckling write:

‘The fact that this system seldom arises out of voluntary arrangements among individuals strongly suggests that codetermination or industrial democracy is less efficient than the alternatives which grow up and survive in a competitive environment.’<sup>35</sup>

David Erdal on the other hand, pointing towards the empirical evidence, argues that the real reason why employee ownership has remained a niche format and not gained a greater market share is not structural inefficiency but vested corporate interests: the conventional corporate form currently grants investors and directors extensive opportunities to extract financial wealth, and ‘an improvement which involves their giving up these benefits will be resisted strenuously.’<sup>36</sup> Even where they *could* re-structure their companies to incorporate more democracy, they would usually choose not to because to do so would impinge on their personal financial opportunities.

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<sup>32</sup> <http://employeeownership.co.uk/what-is-employee-ownership/> (accessed 27 July 2017).

<sup>33</sup> *Ibid.*

<sup>34</sup> General Accounting Office, *Employee Stock Ownership Plans: little evidence of effects on corporate performance*, Washington: GAO, [www.gao.gov/assets/150/145909.pdf](http://www.gao.gov/assets/150/145909.pdf), p. 31.

<sup>35</sup> Michael Jensen and William Meckling, ‘Rights and Production Functions: an application to labor managed firms and codetermination’ 1979 *Journal of Business* 32, 469-506, 473.

<sup>36</sup> David Erdal, ‘Recognising Facts in Economic Democracy’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

Richard Wolff, similarly, rejects ‘claims that competition between capitalist and noncapitalist enterprises (including [employee-owned businesses]) necessarily must lead and always has led to the same result: dominance of the former and disappearance of the latter.’ Employee-owned enterprises are not, he argues, ‘somehow intrinsically unsuccessful competitors.’<sup>37</sup> Instead, they will thrive when economic, political, and cultural conditions are conducive, and if they are supported by appropriate business strategies. However, Wolff also reminds us that employee ownership and democratic governance are themselves diverse business forms. Not all these forms are what he refers to as fully ‘worker-directed’ enterprises. ESOPs for example turn employees into corporate shareholders and give them related rights, for example to appoint directors. But Wolff points out that although they incorporate employees in this way, these enterprises are not conceptually different from the conventional corporate form. In fact, ESOPs feature in many mainstream corporations, including major FTSE 100 businesses,<sup>38</sup> although they are sometimes unevenly distributed within the firm or easily reversible at the board’s discretion.<sup>39</sup> Wolff himself instead makes the case for more radical democracy within the firm – what he terms a worker-self-directed enterprise. In such an enterprise, he explains,

‘all of the workers who produce the surplus generated inside the enterprise function collectively to appropriate and distribute it.... They do this in conjunction – in a shared democratic decision-making process – with the surrounding communities at the local, regional and national levels.’<sup>40</sup>

## Cooperatives

Some *cooperatives* could be considered ‘worker-directed’ enterprises (although Wolff considers them to be distinct forms), but not all coops are employee owned. More generally, cooperative enterprises are co-owned by those who participate in the business (their members) – which may be employees, or consumers, residents, tenants, a group of artists, taxi drivers, farmers, etc. - and they are democratically governed by their members.<sup>41</sup> The cooperative tradition in Britain goes back to the mid-1800s, when the first cooperative in the town of Rochdale was established and set out what are today known globally as the seven cooperative principles: voluntary and open membership; democratic member control; members’ economic participation; autonomy and independence; education, training and information; cooperative among cooperatives; and concern for the community. These roots of the cooperative movement remain influential, although the variety of cooperative forms that exist in the British economy today has broadened out. Cooperatives UK for example, the largest cooperative membership association in Britain, tends to speak more generally of a ‘cooperative economy’ rather than a specific form of coop, and explains cooperatives very broadly as ‘organisations that give people ownership and control over the things that matter to

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<sup>37</sup> Richard Wolff, *Democracy at Work: A cure for capitalism*, Haymarket Books, 2012, p. 156.

<sup>38</sup> Douglas Kruse, Richard Freeman and Joseph Blasi, *Shared Capitalism and Work: Employee Ownership, Profit and Gain Sharing, and Broad-based Stock Options*, Chicago: University of Chicago Press, 2010.

<sup>39</sup> David Erdal, *Beyond the Corporation: Humanity Working*, London: The Bodley Head, 2011, p. 20; Blasi, Freeman, and Kruse, *The Citizen’s Share: Reducing Inequality in the 21st Century*, Yale University Press, pp. 195-223

<sup>40</sup> Richard Wolff, *Democracy at Work: A cure for capitalism*, Haymarket Books, 2012, p. 120.

<sup>41</sup> John Restakis, *Humanizing the Economy: Co-operatives in the Age of Capital*, New Society Publishers, 2010; Zamagni and Zamagni, *Cooperative Enterprise: Facing the Challenge of Globalisation*, Cheltenham: Edward Elgar Publishing, 2010.

them'.<sup>42</sup> It also highlights that the UK economy features cooperatives in almost every sector, from banking and energy to food, health and housing, with cooperative enterprises ranging from local to large scale.<sup>43</sup> The 'cooperative society' is a tailored legal form for cooperatives, but cooperative firms tend to choose whatever format meets their individual needs, incorporating variably as societies, partnerships and companies.

As with employee ownership discussed above, studies suggest that cooperation can boost innovation and productivity as well as wider democratic engagement.<sup>44</sup> There is market pressure on cooperatives to emulate standard corporate practices on pricing, wages and governance<sup>45</sup> but, as Flecha and Ngai point out, it is possible to adapt strategic business growth to maintain the character of the cooperative enterprise.<sup>46</sup> Still, despite an upward trend in cooperative membership, the UK's cooperative economy only takes up a small proportion of the wider economy.<sup>47</sup> Why, if there is a business case for cooperatives, are there not more of them? The arguments align to some extent with those around employee-ownership. One set of arguments considers the fact that the cooperative format is structurally (and therefore intrinsically) inefficient and therefore not economically viable or, as Jon Elster puts it simply, 'that workers prefer working in capitalist firms.'<sup>48</sup> Elster however points out that these explanations are not necessarily correct, and other explanations might have to be considered:

'It could be that the isolated cooperative in an otherwise capitalist economy suffers difficulties that would not arise within a fully cooperative context. This could happen in four ways: by endogenous preference formation, adverse selection, discrimination, and externalities.'<sup>49</sup>

To paraphrase these four arguments. For one, it may be that people do not choose cooperatives, quite simply because there are so few of them. Secondly, people who set up cooperatives tend to be reformers rather than skilled businessmen or -women. Further, in certain situations, cooperatives may be unfairly discriminated against (for example, they may struggle to satisfy requirements to access credit). And finally, and most seriously of all, the fact that so few cooperatives exist (they are,

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<sup>42</sup> Cooperatives UK, *The UK cooperative economy 2017*, <http://reports.uk.coop/economy2017/> (accessed 28 July 2017)

<sup>43</sup> Ed Mayo (ed.), *The Co-operative Advantage: Innovation, co-operation and why sharing business ownership is good for Britain*, Co-operatives UK, 2015.

<sup>44</sup> Cheney, Santa Cruz, Peredo and Nazareno, 'Worker cooperatives as an organizational alternative: Challenges, achievements and promise in business governance and ownership', *Organization* (2014) 21(5) 591-603; V Pérotin, *What do we really know about worker co-operatives?*, Co-operatives UK, 2016, available at: [http://www.uk.coop/sites/default/files/uploads/attachments/worker\\_co-op\\_report.pdf](http://www.uk.coop/sites/default/files/uploads/attachments/worker_co-op_report.pdf) (accessed 18 June 2017); Ed Mayo (ed.), *The Co-operative Advantage: Innovation, co-operation and why sharing business ownership is good for Britain*, Co-operatives UK, 2015.

<sup>45</sup> Chris Tomlinson, 'The false alternative of co-operative choice under capitalism', in Richard Harrison (ed.), *People over Capital: The co-operative alternative to capitalism*, New Internationalist Publications, 2013, pp. 202 – 219.

<sup>46</sup> Flecha and Ngai, 'The Challenge of Mondragon: Searching for the cooperative values in times of internationalization', *Organization* (2014) 21(5) 666 – 682.

<sup>47</sup> Cooperatives UK, *The UK cooperative economy 2017*, <http://reports.uk.coop/economy2017/> (accessed 28 July 2017)

<sup>48</sup> Jon Elster, 'From Here to There; or, If Cooperative Ownership Is So Desirable, Why are There So Few Cooperatives?', *Social Philosophy and Policy*, 6(2), 93-111.

<sup>49</sup> *Ibid.*, p. 96

as Elster puts it, 'isolated') renders those that do exist more vulnerable to be affected by 'the negative externalities created by capitalist firms' – in particular, the availability of cheap labour – but also 'by their failure to internalize positive externalities generated by themselves' (for example, because there are few cooperatives to cooperate with).<sup>50</sup> These are not insurmountable barriers, but neither are they negligible.

Their members are traditionally the primary beneficiaries of cooperatives but cooperative forms have also historically been more strongly orientated towards community values than investor-owned companies.<sup>51</sup> The cooperative principles expressly integrate 'concern for community'; and the international cooperative principles, formulated by the International Cooperative Alliance in 1995, include a commitment to contribute to the sustainable development of the whole community. Many cooperative models therefore are also social enterprises, and boundaries between the two labels are further blurred as 'social cooperatives' commit their enterprise explicitly to a specific social venture.<sup>52</sup>

A new and related development in the cooperative economy is the emergence of multi-stakeholder coops, including online 'open platform' cooperatives. The central idea behind this 'new cooperativism'<sup>53</sup> is to impart 'more emphasis on shared return and solidarity between stakeholders, and it places less emphasis on meeting the needs of a single stakeholder'.<sup>54</sup> As Ridley-Duff points out, whereas 'old cooperativism' confined discussion of a common bond (solidarity) to the social characteristics of a single stakeholder group (workers, consumers, producers etc.), new cooperativism assumes that, provided appropriate institutional arrangements are in place, solidarity can be forged between all these stakeholders.<sup>55</sup> An example of this trend is a set of "FairShares" model articles of association, devised by Ridley-Duff and others. These offer firms wishing to set up as a limited company, association or society a constitutional template for creating a multi-stakeholder cooperative enterprise, including a commitment to cooperative principles and a social or community purpose but also an opportunity to issue different *types* of shares to founders, investors, users and workers in the business, with democratically allocated voting rights (one person one vote). The central idea is to value different forms of investments in the firm, going beyond capital investment, so that 'just as a financial investor gets back both their original capital plus a dividend, so an intellectual (labour) investor gets back both their original capital plus any dividend to which they are entitled'.<sup>56</sup>

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<sup>50</sup> *Ibid.*, p. 98

<sup>51</sup> Rory Ridley-Duff, *The Case for FairShares: a new model for social enterprise development and the strengthening of the social and solidarity economy*, Charleston: CreateSpace Independent Publishing Platform, 2015, available at: <http://shura.shu.ac.uk/10198/> (accessed 18 June 2017).

<sup>52</sup> Italy for example has designated a legal form to social cooperatives, largely as a vehicle for providing community care services. See Defourny and Nyssens, 'Social Cooperatives: When Social Enterprises Meet the Co-operative Tradition', *Journal of Entrepreneurial and Organizational Diversity*, Vol 2(2) (2013), 11-33.

<sup>53</sup> Ridley-Duff, above fn. \*; Vieta, 'The New Cooperativism' (Editorial), *Affinities: A Journal of Radical Theory, Culture, and Action*, (2010) 4 (1), 1-11.

<sup>54</sup> Ridley-Duff, above fn. \*, pp. 17-19.

<sup>55</sup> Ridley-Duff, above fn. \*

<sup>56</sup> Ridley-Duff, above fn. \*, pp. 37-38. See <http://www.fairshares-association.com/index.html> (accessed 28 July 2017).

## Shaping the debate on corporate reform

We have seen that, despite the dominance of the corporation, in the UK alone there is a great diversity of alternative types of business enterprises that appear to be operating more socially responsibly than most corporations currently do. Despite their diversity, what appears to unite these business forms is their commitment to generating value that is measured not as (short- or long-term) financial return for shareholders, but defined in broader terms by taking account of the impact of the business, positively and negatively, on a wider set of stakeholders. Good performance generates value by maximising the positive impact on internal and external stakeholders while limiting negative impacts, with any trade-offs to be balanced against each other. This involves balancing the interests of various stakeholder groups, whom the business identifies, and who may be both internal to the business (investors, management and employees) and external, whether directly affected (e.g. consumers, suppliers, local communities, residents) or indirectly implicated (e.g. citizens in the welfare state, tax payers, the environment). These alternative corporate forms have built into their business different procedural mechanisms to ensure the commitment towards their stakeholders will be maintained in practice; such as, co-ownership and democratic governance in the cooperative and (some) employee-owned models, asset locks for most social enterprises or, more generally, a set of constitutional clauses to protect stakeholders, in the case of mission-led firms. Those procedural guarantees render these forms categorically different from conventional corporations, including those with voluntary CSR policies which are still ultimately committed to shareholder value. In this way, their governance provides some examples that may offer useful direction and impetus in the wider debate on corporate reform. The remainder of this section outlines an overview of some key contributions. These will be followed, in the final section, by a brief consideration of certain risks that we should bear in mind in developing inspiration from these alternatives.

### Ownership

In the first instance, we may draw especially on cooperative models that point towards possibilities of revising and reforming corporate ownership rights. In the conventional corporate form, shareholders' residual proprietary rights currently provide the central justification for the shareholder primacy model of corporate governance, and they are still widely used to justify the company directors' role as agents for their shareholders with a primary obligation to maximise returns for shareholders as valued by share price. The co-ownership structures we find in cooperatives and in some forms of employee-ownership, on the other hand, directly challenge the central corporate idea that financial investors hold exclusive proprietary rights in the firm. In these alternative models, ownership in the enterprise is instead vested in all members (i.e. the participants in the business) in equal shares and in the case of multi-stakeholder cooperatives, these comprise several different stakeholder groups. Fairness and solidarity between members replace shareholder primacy as guiding norms, and ideas of shared and collaborative ownership supplement the existence of individual proprietary rights, for example where the constitution provides for pooling of resources and/or IT.<sup>57</sup>

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<sup>57</sup> The *FairShares* model for instance commits member-shareholders to sharing any IP they generate through their joint enterprise and to distribute the return on these rights fairly.

## Directors' duties

Related to the debate over ownership, there exists today a widespread assumption that shareholder primacy, and the overriding duty for directors to maximise shareholder value, are derived directly from corporate law. These assumptions overstate the stringency of the law. In reality, as Sjøfjell reminds us, shareholder primacy remains a social norm rather than a strict legal obligation. Company laws mostly grant directors some flexibility to direct themselves towards a wider set of interests in the pursuit of their duty to promote the success of their company.<sup>58</sup> Thus, according to Sjøfjell:<sup>59</sup>

‘Within the current system, company law on a comparative basis provides considerable latitude to the board, and by extension the management, to shape business in a sustainable manner. However, boards generally do not choose environmentally friendly, low carbon options within the realm of the business case, let alone challenge the other boundaries of the scope to pursue profit in a sustainable manner by going beyond the business case. This is because of the social norm of shareholder primacy’.

The emergence of mission-led business appears to strengthen this view but it perhaps also signals an initial step towards a possible departure from, or at least a loosening of, the current assumptions around shareholder primacy in the corporate world. Mission-led businesses, we may recall, are defined as fully-profit-distributing corporate firms whose commitments, as we have seen with the B Corp certification option, are embedded in certain constitutional clauses. The fact that these exist today, without necessitating any specific legislative changes or reforms, suggests that it is in fact possible now to embed stakeholder interests in the corporate form by drafting constitutional documents in the appropriate manner. In other words, corporations are already free (and legally permitted) to act as mission-led businesses, and the fact that the vast majority of them (still) choose not to is not a matter of legal necessity, but a product of market forces and the individual business judgment of their directors. The recent surge in ‘B Corps’ and other forms of mission-led businesses in the UK, and the attention they have attracted, might imply that the tide on these issues could be starting to turn. However, ironically, these arguments have also come up as a criticism of the mission-led business ‘label’, on the basis that to brand these as somehow ‘new’ business forms is at best redundant, at worst misleading. In truth, it only reiterates what companies today can already, for the most part, legally achieve – but rarely choose to do.

Pointing out this legal flexibility should not stop us from considering further legal reform; whether it by way of introducing new corporate legal formats (see, for example, the ‘Benefit Corporation’) or by making changes to the general corporate law. Sjøfjell herself suggests distinct changes to the provisions on directors’ duties to make, as she argues, corporations more sustainable and therefore ‘fit for the 21<sup>st</sup> century’.<sup>60</sup> However, as a starting point for our debate on legal reform, it is conducive

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<sup>58</sup> In the UK, the relevant norm in this context would be section 172 of the 2006 Companies Act, setting out the principle of ‘enlightened’ shareholder value. For discussion of the interpretation of section 172, see Georgina Tsagas, ‘Section 172 of the Companies Act 2006: Desperate times call for soft law measures’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

<sup>59</sup> Beate Sjøfjell, ‘Dismantling the Legal Myth of Shareholder Primacy: the corporation as sustainable market actor’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

<sup>60</sup> Sjøfjell, above fn. [\\*](#).

to recognise that the law does already embed progressive models within it; we “simply” need to strengthen and accentuate these progressive elements within the law.

### Corporate purpose

One of the advantages, or perceived advantages, of the shareholder primacy model is its relative simplicity of pursuing a single goal (to maximise shareholder returns). Economic theorists suggest a single purpose model is efficient, avoiding difficulties for directors and investors in taking decisions where the interests of multiple stakeholders must be balanced. Instead, the idea is for wealth to be generated for shareholding elites that will eventually ‘trickle down’ to benefit everyone. We know today that the trickle-down effect is not happening, and instead wealth inequality is growing at pace. We also know that other externalities, especially environmental degradation, which have been aggravated as a result of the ‘single purpose’ approach to corporate governance, are not being addressed effectively by means of external regulation of corporate behaviour. Given these failures, we may turn directly to social (and mission-led) enterprises, and reconsider whether the more effective and sustainable model for corporate governance is in fact to embrace dual or multiple corporate purposes and responsibility to multiple stakeholders.

Social enterprises are, in their very essence, a form of ‘blended enterprise’ with a wealth of experience in serving multiple masters. Doubtless, this feature brings considerable challenges, as Brakman Reiser points out:<sup>61</sup>

‘Blended enterprises at times will pursue more profits over more social good, and at times will pursue more social good over more profit.... Thus, achieving and governing truly blended enterprise means consistently serving two masters which is notoriously difficult.’

But social enterprise proponents would argue that their dual (or multiple) purpose, and their responsibility towards multiple stakeholders, have not been an unsurmountable barrier for new business forms to establish themselves and grow, provided adequate structural support (including sufficiently adaptable legal forms and accessible financial instruments) and the necessary entrepreneurial leadership are in place. Much depends, Marjorie Kelly argues, on establishing an alternative corporate culture that centres on solidarity and ‘generative’ rather than ‘extractive’ wealth; in other words, moving from a corporate focus on extracting maximum amounts of financial wealth, towards one whose ‘aim is to generate the conditions for our common life to flourish’.<sup>62</sup> At the very least, as David Hunter points out, blended forms of enterprise underscore how the pursuit of profits to the exclusion of all else is ultimately self-defeating for corporations. Giving them instead a wider purpose, potentially provides the moderating effect necessary to prevent capitalism from sowing the seeds of its own collapse.<sup>63</sup>

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<sup>61</sup> Dana Brakman Reiser, ‘Blended Enterprise and the Dual Mission Dilemma’, (2011) 35 *Vermont Law Review* 105-116, 105.

<sup>62</sup> Marjorie Kelly, *The Architecture of Enterprise: Redesigning Ownership for a Great Transition*, The Great Transition Initiative, December 2012, available at: [http://www.greattransition.org/archives/perspectives/Perspective\\_Architecture\\_of\\_Enterprise.pdf](http://www.greattransition.org/archives/perspectives/Perspective_Architecture_of_Enterprise.pdf) (accessed 30 July 2017).

<sup>63</sup> David Hunter, *Never Mind the Bake Off, here’s the Great Business Bake In?*, University of Bristol Law School Blog, April 2017.

## Decision-making

Corporations are typically managed as hierarchical structures. Even where flatter, networked decision-making structures have been introduced (Google is an oft-cited example), the principle of competition tends to dominate their internal management as much as it defines their external operation on the market place. Hierarchy, or more generally differentiation of wealth and income (and status) in the corporate firm, are usually justified, as Martin Parker reminds us, by an assumption that ‘substantial pay differentials are required in order to attract and retain talent’.<sup>64</sup> They are used as drivers for efficiency, productivity and accountability and, arguably, greater morale but, as Charlotte Villiers remarks, they also result in ‘a less beneficent culture’ within the corporation and give rise to many of the cost cutting measures that impact (negatively) on corporate social responsibility.<sup>65</sup>

By contrast, the governance of many alternative business forms, especially of social enterprises and cooperatives, is neither intrinsically competitive, nor do they rely on differentiation as a motivator in the same way that most conventional corporations do. There are for example nowhere near the same levels of distributional inequalities between top managers in workers in social or cooperative enterprises as we find in conventional businesses, especially in large corporations. Instead, there are many useful examples of organisations whose governance structure differs fundamentally from the corporation because it relies less on individualistic motives and more on the relational principles of care, compassion and cooperation. In social enterprises, they usually derive from the commitment of staff towards a social mission, and to others in the business (and the wider social enterprise community) who share the same or similar commitments. In cooperatives, these features derive directly from their character as membership-based organisations, and their commitment to democratic governance and horizontally shared decision-making structures. Cooperative forms give their members more rights than corporate shareholders: each member enjoys an equal say in the organisation (one person, one vote) and, as owners, all members not only share equally in all the profits (avoiding the problem of unequal rewards) but they are also more involved in collective decisions and business practices. The equality in their membership rights also affects the governance of the firm: decision-making is more horizontally organised and evenly distributed across members.<sup>66</sup>

## Beware the glorification of the activist entrepreneur

These are promising connections that suggest we may draw on insights from alternative business forms, including social enterprises, cooperatives, mission-led and employee-owned firms, to develop our understanding of the opportunities for transforming the governance of the business corporation towards a more socially responsible form. We may go a little further in considering their (positive) impact. Behind these alternatives, a strong social movement appears to have developed that relies on individual entrepreneurs, or groups, to exercise their economic freedom – more particularly, their

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<sup>64</sup> Parker, above fn. \*.

<sup>65</sup> Charlotte Villiers, ‘Corporate Governance, Responsibility and Compassion: why we should care’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hart Publishing, 2017, forthcoming.

<sup>66</sup> Fabio Sabatini, Francesca Modena and Ermanno Tortia, ‘Do cooperative enterprises create social trust?’, *Small Business Economics*, 2014, (42)3, 621-641.

autonomy to set up a business and engage in economic activities – for activist means.<sup>67</sup> The purpose of their activism is to set up business organisations that, in their various forms, are both economically sustainable but also more socially responsible than the conventional business corporation, be it in a more directed way (set up for a specific social etc. purpose) or in a broader sense (committed to take account of stakeholders’ interests more widely). Either way, their setting up and their operation challenges the existing liberal market order and its underlying ideology.

Achieving wider corporate reform may not be the express or immediate purpose of all alternative business enterprises (although the B Corp’s slogan – “B the Change” – suggests that some of them certainly will brand themselves in this way). But in any case, the motivations that drive them, and the structures that hold them, indirectly contribute towards the case for reforming the conventional corporate form, precisely because they manifest viable alternatives (in terms of ownership, duties, purpose and decision-making) to that form. The more they succeed, the more they put the failures of the corporation into relief. Eventually, their successes may begin to loosen too the stronghold that the corporate form (being the *standard* form) holds over our normative assumptions for business – that scale improves efficiency; extractive wealth, and wealth differentials, are perfectly legitimate; hierarchy acceptable; shareholder maximisation and overriding duty; and so on.<sup>68</sup> And at that point, we may begin to have a genuine political discussion that weighs the advantages and drawbacks of various business forms that is not fundamentally dominated (and distorted) by the existing power of the business corporation and neoliberal economic theory.

But at the same time, we must beware of the risk of glorifying the activist entrepreneur and the idea that business can and must operate as a force for good because these ideas may, ultimately, lead us once more to cede too much power to the business enterprise over crucial social, political and economic choices. People become activist entrepreneurs for different individual reasons – to change their careers, annoy their parents, impress their friends, make the world a better place, and so on. For most, these decisions involve a process of deep reflection that results in their resolve to take responsibility for some form of social change, and to use their entrepreneurial creativity to do so. They are therefore mostly very motivated individuals or groups with a certain social vision or passion and a sense of purpose. But they are still business entrepreneurs – in fact many of them are particularly “hands on” entrepreneurs precisely because they have a strong social, environmental etc. commitment to drive their business as a “force for good”. For example, many social enterprises choose to keep a small board that will help directors (often the business owners), keep their focus on the enterprise’s mission as well as ensure quick, purposeful decision making.<sup>69</sup> In many of these organisations, therefore, decisions that concern the interests of stakeholders and their balancing vis-à-vis one another are left broadly in the hands of directors and business owners who may be committed to engaging with relevant stakeholders, but who, ultimately, will retain power over key decisions.

This, we may consider, is how a social business can be most efficiently managed. And many of these organisations will be highly effective and innovative in developing entrepreneurial responses to

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<sup>67</sup> Nina Boeger, ‘The New Corporate Movement’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hard Publishing, 2017, forthcoming.

<sup>68</sup> Parker, above fn. \*

<sup>69</sup> Boeger, Burgess and Ellison, above fn. \*

social concerns. However, leaving these responses at the behest of a social entrepreneur or a management board potentially feeds a beast that is all too well-known in conventional corporate structures: the overpowering voice of the corporate director-manager who will, eventually, take the “right” decision for all in the firm. But because these are now acting as *social* entrepreneurs, a trustworthiness may be implied that is genuinely dangerous for our democratic societies: it implies that we may “trust” socially responsible business entrepreneurs in addressing some of the most pressing social and environmental concerns of our time – ‘relax, I’m a good guy’. Our focus in shaping corporate reform therefore must not be drawn exclusively, or primarily, towards the purpose or mission of business. The important other, complementary challenge is to incorporate genuinely democratic elements in our firms: stakeholder accountability, democratic (or cooperative) decision-making, horizontal structures and shared, and genuinely ‘generative’, ownership. It is necessary to avoid a situation where, by encouraging social enterprise and socially responsible business, we may end up augmenting corporate power but without guaranteeing our societies (and their various stakeholders) ultimate control over it.

This suggest we need to reinforce specific reforms to ensure the *democratic* governance of our corporations and other business forms, in addition to developing a wider (social) mission for business. We need to, as I have argued elsewhere, ensure that the voices that are heard really do embed the interests of society in the firm.<sup>70</sup> Cooperative forms and ‘worker-directed’ enterprises as Richard Wolff has modelled them, therefore have a fundamental place in directing the trajectory for developing (more) socially responsible business forms. But these concerns also force us to reconsider how business models will guarantee that their accountability towards their stakeholders is impactful, including effective mechanisms for enforcement. Social impact reporting and accounting provides one tool to improve both transparency and accountability. In terms of transparency it is important to ensure that businesses are required to report the full impact of the business’ activities rather than focus on financial results. Further, to guarantee genuine accountability, Stuart Cooper argues that ‘it is not sufficient for accountors to provide transparent and good information quality information to accountees.’ In addition, stakeholders must be able to ‘enter into a discussion with the corporation’s management and other stakeholders’ and, most importantly, through these discussions they must be given the power to ‘influence decisions’. Without power to change corporate behaviour, accountability (as well as transparency), remains an empty promise.<sup>71</sup>

But even where stakeholder accountability is embedded in the business constitution, it merits a closer look. For example, inclusion of stakeholder concerns in the constitutional object clause of a mission-led business will certainly enable directors on occasion to depart from their usual focus on shareholder value. But without offering these stakeholders an express route (judicial or else) of enforcing their right to be considered, these objects, even though they may be enshrined in the constitution of the business, remain potentially ineffective and marginal. Importantly, they provide for accountability to stakeholders only at the behest of directors and shareholders (who may hold

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<sup>70</sup> Nina Boeger, *Embedding Society in the Firm: the role of social and cooperative enterprise in shaping capitalism*, UNSW Law Research Paper Series, Working Paper No. 50, July 2017, available at <http://ssrn.com/abstract=3008987> (accessed 1 August 2017).

<sup>71</sup> Stuart Cooper, ‘Can Reduced Shareholder Power enable Corporate Stakeholder Accountability? The case of Triodos Bank’, in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hard Publishing, 2017, forthcoming.

directors to account). These are arguments which the B Corp certification currently still has not formulated conclusive answers to. The process currently requires a modification of companies' constitutional documents but without guaranteeing stakeholders any form of redress. In the UK for example, the relevant constitutional text includes a specific disclaimer that none of the relevant constitutional provisions will be 'intended to or shall create or grant any right or any cause of action to, by or for any person (other than the Company)'.<sup>72</sup> Hardly an assurance for stakeholders that they will be able effectively to hold the company to account.

## Conclusion

This chapter has made the argument that enterprise diversity can and should be a driver for change in the ongoing critical debate on corporate reform. Identifying alternative forms of the business enterprise – including social enterprises, cooperatives, mission-led and employee-owned firm – and the diversity of legal and governance models they entail, can help develop corporate reforms that nurture how corporations can do good (and well), tackling the global challenges for which they are currently, in large measure, responsible. The chapter outlined four areas – ownership, directors' duties, corporate purpose and decision-making - where alternative business forms currently provide some impetus for structural changes to the corporate form. As a theme, the need for further *democratisation* of our corporations runs through all of these. And why should we be surprised? As much as we take pride in our *political* democracies, we have widely neglected this feature in our business corporations including (and especially) those operating as large multinational enterprises. Yet, the corporation is the one institution that, as Colin Mayer remarks, 'has the opportunity to transform our lives around the world even further'.<sup>73</sup> By focusing on developing democracy in all our businesses, we can unlock this potential but avoid the pitfall that I have referred to as the 'glorification of the activist entrepreneur'. As much as we need strong leadership from enterprising individuals, sustainable corporate reform is about how to better reflect our collective choices, as a society, in the business enterprise.

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<sup>72</sup> Hunter, above fn. \*.

<sup>73</sup> Colin Mayer, 'Foreword', in Nina Boeger and Charlotte Villiers (eds.), *Shaping the Corporate Landscape: towards corporate reform and enterprise diversity*, Oxford: Hard Publishing, 2017, forthcoming.