



CORPORATE PURPOSE AND STAKEHOLDER GOVERNANCE

University of Helsinki, Faculty of law, 15 December 2022

Porthania, PII

Hybrid event | 09:00 - 16:00 (EET)

Ever since company law scholarship was eclipsed by economics there have been few serious challenges to the idea that the principal job of company directors – indeed their legal duty – is to maximize shareholder value. The majority opinion in most jurisdictions has been that this is the essence of company law as it stands and that is how the law should be also in the future. This status quo has been shaken in recent years by pressing calls for a new paradigm that would take better into account interests of all company stakeholders and the society at large. The revitalized debate about corporate purpose is part of a larger dialogue about responsive capitalism and the role of businesses in addressing climate change, inequality and other wicked problems of the twenty-first century. Most agree, however, that more than little tweaks in company laws and governance codes will be needed if the incentives of companies' boards and management are to be totally and effectively re-aligned with societal objectives. While such a reform programme is yet to emerge, it is clear that shareholder primacy is facing its most serious challenge so far. The agenda of "stakeholder capitalism" has spurred high-level policy manifestos, private-sector initiatives and even legislative reforms.

This conference brings together distinguished international academics to take stock of the ongoing corporate purpose debate and to assess the agenda's fate in the new political and economic climate.

Participation in the conference is free of charge. Please register using [this form](#) by December 5th, 2022 (also indicating whether you would like to participate in person or virtually).

The conference will be streamed [here](#).

The conference has been made possible by Lauri Cederberg Fund.

Programme and speakers

- 09:00-09:40** | Registration and coffee
- 09:40-10:00** | Opening remarks
Prof. Johanna Niemi, Dean of faculty of Law and Prof. Ville Pönkä
- Session 1: Keynote lectures**
Chair: Prof. Jukka Mähönen, University of Helsinki
- 10:00-10:30** | ***Purposeful Hope in Purposeful Wreckage***
Prof. David Kershaw, London School of Economics and Political Science
- 10:30-11:00** | Comments by Dr. Klaus Ilmonen (Hannes Snellman Attorneys Ltd) and discussion
- 11:00-11:30** | ***From the Pandemic to a Renaissance?***
Prof. Martin Gelter, Fordham University School of Law
- 11:30-12:00** | Comments by Dr. Heli Korkka-Knuts (University of Helsinki) and discussion
- 12:00-13:00** Lunch
- 13:00-13:30** | ***Pluralism as Key to the Corporate Purpose Debate – A German Company Law Approach***
Prof. Anne-Christin Mittwoch, Martin Luther University Halle-Wittenberg
- 13:30-14:00** | Comments by Dr. Matti Engelberg (Engelberg&Co Ltd) and discussion
- 14:00-14:15** Break
- Session 2: Perspectives from the Nordic countries and beyond**
Chair: Prof. Seppo Villa, University of Helsinki
- 14:15-14:45** | ***Profit Maximization and Corporate Sustainability – The Swedish Approach***
Dr. Jessica Östberg, Stockholm University
- 14:45-15:15** | ***Corporate Purpose and Stakeholders: the Finnish Perspective***
Attorney-at-law Manne Airaksinen, Roschier and University of Helsinki
- 15:15-15:45** | ***The Gentle Civilizer of Corporations***
Dr. Heikki Marjosola, University of Helsinki
- 15:45-16:00** Closing remarks by Prof. Ville Pönkä, University of Helsinki



Presentation of keynote speakers and their lectures

David Kershaw

As the 21st century's corporate purpose debate matures and decelerates in the face of predictable academic and political headwinds, we can take stock of the debate and ask whether it has deepened our understanding of what we mean by the corporation's purpose and what that purpose of the corporation should be? Has our modern debate gone beyond the insights offered by Berle and Dodd and their academic descendants? Or have we just recycled the existing claims and counterclaims, deployed the same argumentative moves, refashioned familiar claims to economic or social virtue, adopted the same rhetorical poses? In parallel to these doubts about the discipline's academic imagination, the drivers of the purposeful debate appear to have gone into reverse. The companies which provided the engine room of purpose-speak and excitement generated astonishing shareholder wealth whilst purporting to elevate societal missions and to send shareholder value further back in the queue. In their most ideal form, through their purposeful missions, these companies appeared to make money by partially rejecting money. But now, for many, the purposeful shine has been completely rubbed away.

Whilst at the beginning Google's was a transformational beacon of corporate hope, today, although few would doubt its transformational impact, we worry that it has done so by borrowing and manipulating our identities without us really noticing. Facebook and Twitter promised previously unimaginable forms of community and communication, only to leave us with bot driven threats to our democracy, the unveiling of worst aspects of human nature, and the generation of grave concerns about the well-being of our social-media addicted children. Other purposeful markers also seem in trouble. Celebrated ESG returns now appear fragile, perhaps illusory, in a tech downturn; the distributional consequences of elevating some non-shareholder interests and some ideas of the good run the risk of begetting a brutal political backlash.

So were we purposefully duped by these companies into merely regurgitating a conversation we have been having for a 100 years? Are these companies just corporate standard fare: pursuing value through innovation, deploying powerful public relations teams, and generating market power and externalities that require regulation? Does the modern purpose debate simply reveal our own disciplinary lack of imagination and ideas; a discipline carried away with transformational excitement fuelled by tech-talk and virtue signalling? Did we go tech and ESG native and re-cycle our debates in the service of our naivety? Or not? Is there a case to made that hidden in the recycling we can find innovation or insight about the modern nature and possibility of corporate purpose;



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a new and different understanding of corporate purpose? Is there a case to be made that whilst we were duped, these companies offered real purposeful hope only to be corrupted by power, size and status as well as the very thing—money—that they purported not to be that interested in? If so, what can be gleaned and saved from the wreckage of these purposeful failures. What if anything can be done through law and governance to increase the probability that purpose once born, thrives and survives; that it leads to value generation and success without being corrupted by it.

Previously, Edmund Schuster and I have argued that there is something distinctive about modern corporate purpose. It is, however, a distinctiveness that the modern debate continues to miss. This talk will argue that despite the dimming of these purposeful beacons there remains something of real purposeful value in this distinctive conception. Modern failures reveal only its (perhaps predictable) fragility and that identifying foundational corporate legal preconditions for purposeful success, although necessary, is some distance from sufficient. This talk will explore the ways in which it is, if at all, realistic to think that corporate governance can foster and stabilize this distinctive and valuable conception of a purposeful company.

About the speaker

David is the Dean of The London School of Economics and Political Science (LSE) Law School. He is also a member of LSE Council, the LSE's Governing Body, an Associate Member of Cornerstone Chambers and a former General Editor of the *Modern Law Review*. David holds a LLM and SJD from Harvard Law School and a LLB from the University of Warwick. He qualified as a UK Solicitor with Herbert Smith and is admitted to the New York Bar. Before becoming an academic he was an M&A lawyer with Shearman & Sterling in New York and London. He started his academic career as a Lecturer in Law at the University of Warwick in 2003 before joining the LSE Law School in 2006, becoming a full Professor of Law in 2010. In 2021 David became the Dean of LSE Law School.

David is the author of several books: *The Foundations of Anglo-American Corporate Fiduciary Law* (2018, Cambridge University Press), *The Principles of Takeover Regulation* (Oxford University Press, 2016) and *Company Law in Context: Text and Materials* (2012, 2nd eds, Oxford University Press). He has also published many articles in the fields of corporate law and governance, takeover regulation and accounting regulation. His most recent work considers Delaware's fiduciary imagination in the context of going-private transactions as well as a constitutional history project on the nature of the prerogative and the corporate nature of the crown.



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Martin Gelter

Since the 1930s, the debate about the proper purpose of the corporation has resurfaced periodically in the United States. Arguably, from the 1990s through the mid-2010s, the shareholder primacy perspective has dominated both academic debates and policy-making. Reasons include the apparent success of US capital markets and the trend of international convergence toward a shareholder model identified by leading scholars. Moreover, members of the American middle class had become “forced capitalists” through the dependence of their retirement wealth on investment in equity markets. This dependence has likely resulted in political support for pro-shareholder policies. Increasing shareholder power was seen as a panacea for corporate governance problems up to the 2008/2009 financial crisis.

The debate has changed significantly in recent years. The Business Roundtable, a lobbying organization for managers, published a statement promoting stakeholder orientation for public firms in 2019. Activist investors forced ExxonMobil to add two directors focused on sustainability to its board in 2021. The SEC issued a highly contested proposal for new rules requiring extensive climate-related disclosures in early 2022. Pressure from shareholder activists for firms to pursue ESG goals has increased.

What are the reasons for this development? First, share ownership structures are changing. Passive index funds hold increasing shares in large US firms. Corporate Governance scholarship is still debating the consequences of this development, but it seems clear that the Big 3 fund families pursue ESG goals on the portfolio level. Second, the political environment of corporate governance is shifting. The COVID-19 pandemic has exacerbated economic inequality, which had been growing already and has made it more difficult for educated millennials to save for retirement. The political pro-shareholder impetus may thus be giving way to other economic goals. Both publicly traded firms and issuers seek to adjust to remain resilient in this changing environment

About the speaker

Martin Gelter has been a professor at Fordham University School of Law in New York since 2009. His research focuses on comparative corporate law and governance, economic analysis of law, and law and accounting. Previously, he was a Conside Fellow in Law and Economics at Harvard Law School, a Visiting Fellow at the University of Bologna, and an assistant professor in the Department of Civil Law and Business Law at the WU Vienna University of Economics (Vienna, Austria). He also has been a Visiting Professor at the University of Paris-II (2013) and National Taiwan University (2018), and he regularly taught in training programs for members of the judiciary at the High School of Justice in Tbilisi (Republic of Georgia) between 2014 and 2017. He was appointed a research



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member of the European Corporate Governance Institute in 2006. He holds degrees in law from the University of Vienna (Mag.iur., Dr.iur.), in business administration from WU Vienna University of Economics (Mag.rer.soc.oec., Dr.rer.soc.oec.), an S.J.D. from Harvard Law School, and an M.A. in Quantitative Methods for the Social Sciences from Columbia University. He is a member of the New York bar.

Anne-Christin Mittwoch

Pluralist corporate governance systems offer important insights for corporate theory. It is a misconception that pluralist systems are primarily perceived as representatives of the stakeholder approach in contrast to the shareholder primacy approach. Both corporate governance systems are historically based on different developments. While the shareholder primacy doctrine is based on economic theories that have the corporation as a principal reference point, the development of German company law is to a large extent characterized by the relationship of the corporation and society, the latter being traditionally represented by the state or the public interest. To safeguard this public interest, institutes like the supervisory board and codetermination were introduced.

The interdependence of the corporation and society was so important for German company law that it was and still is the key to understanding the very nature and purpose of the company. In this vein, Gunther Teubner stresses that the purpose of the stock corporation is always in interaction with the everchanging understanding of civil society and its economic system.

Thus, the pluralist approach is much broader than the economic theories that form the basis of today's shareholder primacy and stakeholder model. These theories focus mainly on the object of the corporation and consider society, community, or state interests as different groups of its (external) stakeholders. German company law considers the relationship of the corporation and society or the public or community interest as a premise of the corporate governance discussion and thus offers a framework for understanding the corporation and its institutions. The shareholder-stakeholder dichotomy must thus not be transplanted uncritically to pluralist corporate governance systems. Conversely, pluralist approaches should be studied more closely and inform contemporary theories in corporate law. Broadening our view will help to tackle the challenges and the complexity of today's global corporate landscape.

About the speaker

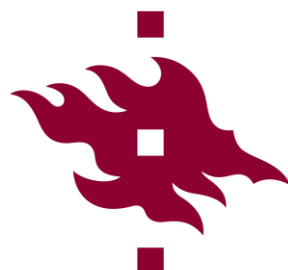
Anne-Christin Mittwoch is a professor at the faculty of Law, Economics and Business at the Martin Luther University Halle-Wittenberg (Germany). She holds the chair for Private Law, European and International Business Law and is Executive Director of the Institute for Economic Law. She is author



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of the monograph 'Vollharmonisierung und Europäisches Privatrecht' ('Full harmonization and European Private Law'), which was awarded the doctoral thesis award of the Society of European Private Law in 2013. She is also author of the monograph 'Nachhaltigkeit und Unternehmensrecht' ('Sustainability and Company Law') which was awarded the Förderpreis (Funding Award) of the Esche Schümann Commichau Foundation in 2022.

Anne-Christin Mittwoch studied law at the University of Passau where she obtained her first state exam in 2006. From 2006 until 2008 she completed her legal clerkship in Passau, Regensburg, Munich and Madrid (Spain). In 2013 she obtained her doctoral degree from Humboldt University Berlin. She worked as a postdoc at the university of Bremen. From 2014 to 2020 she worked as an assistant professor at the Philipps University Marburg. In 2020 she started to work as a visiting professor at Martin Luther University Halle-Wittenberg, where she was appointed full professor in October 2021. Her main research areas include company law, capital market law, European private law, private international law and comparative law.



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