

Introduction

If you picked up this book, opened it to this page, and started reading this sentence, chances are you are a person.

My assumption in writing this book is that its readers would be persons, i.e., human beings, actual flesh and blood people. I figured you might be a student, a professor, a lawyer, a business executive, a policymaker, an activist, or any other person who is interested in the role of corporations in our society today. What I did not contemplate is that the reader of this book would be a corporation.

Yet corporations are people too, or so the law says. As legal persons, they can conduct activities in and out of the marketplace in much the same way human individuals do. Corporations can enter into contracts, buy and sell property, sue and be sued, and make claims to some of the most fundamental rights guaranteed to all persons under the Constitution. Why shouldn't I assume that a corporation as a person can pick up this book and absorb its contents? A corporation cannot *read*, you reply; it is not a real person, its personhood under the law is a metaphor. But the corporation can *speak*, according to the United States Supreme Court. Indeed, its speech is entitled to First Amendment protection. And herein lies one of the most perplexing dilemmas in American law. The corporation is not a flesh and blood person, but it nonetheless seeks to be regarded as a person with all the legal rights that pertain to personhood. Courts over time have allowed corporations to be treated in much the same manner as human persons, but the justifications for doing so have not always been consistent nor clearly articulated, revealing a deep ambiguity over the idea that corporations are fellow persons in the eyes of the law.

The personhood of corporations has always been a vexing puzzle for legal scholars, but in the last few years the dilemma over corporate personhood has moved well beyond academic circles and has become a controversial topic among wide swaths of the American public. Perhaps the surge of interest in the subject can be attributed to recent Supreme Court decisions that have extended corporate political speech and religious exercise rights in unprecedented directions. For example, in 2010, the Court in *Citizens United v. Federal Election Commission* upheld the First Amendment right of corporations to use unlimited corporate funds

to support or oppose candidates in political elections.¹ In 2014, the Court in *Burwell v. Hobby Lobby Stores, Inc.* held that it is a violation of a corporation's right to religious freedom to require the company to provide employees with access to contraceptive methods that the corporation finds morally objectionable based on its religious principles.² Most recently, in 2018, the Court in *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Commission* upheld on very narrow grounds the right of a bakery business owner to refuse to bake a wedding cake for a same-sex couple because of his religious objections to same-sex marriage.³ The nation engaged in heated debate over these cases, questioning whether corporate entities can and should have the same status as human individuals to claim fundamental free speech and religious exercise rights.

The very notion that corporations can be persons under the Constitution has sparked outrage among a significant portion of the general public that believes corporations should not share the same constitutional rights of human beings. When former presidential candidate Mitt Romney famously stated, "Corporations are people," at the Iowa State Fair during his 2011 campaign, he found himself in the center of the corporate personhood controversy.⁴ Someone in the audience immediately shouted back, "No, they're not!" Romney replied, "Of course they are. Everything corporations earn ultimately goes to people. Where do you think it goes?" Romney's point was not that corporations themselves are persons, but that corporations are essentially collections of human individuals whose financial interests are always at stake. Nonetheless, his statement drew widespread ridicule and scorn from opponents who accused him of equating corporations with real persons and presumably revealing his bias in favor of large corporations.

As the Romney incident demonstrated, the concept of corporate personhood has touched a nerve for many people who question the legitimacy of corporations' status as persons under the law. When the Occupy Wall Street movement began to pick up momentum in late 2011, angry protesters waved banners that read "End Corporate Personhood" and "Corporations Are Not People."⁵ These slogans symbolized deep discontent over social and economic inequalities perceived to be the result of the

¹ *Citizens United v. FEC*, 558 U.S. 310 (2010).

² *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014).

³ *Masterpiece Cakeshop, Ltd. v. Colorado Civil Rights Comm'n*, 138 S. Ct. 1719 (2018).

⁴ Philip Rucker, *Mitt Romney Says 'Corporations Are People'*, WASH. POST (Aug. 11, 2011), www.washingtonpost.com/politics/mitt-romney-says-corporations-are-people/2011/08/11/gIQA8WZ38I_story.html [https://perma.cc/6LF6-BE5C].

⁵ Joel Bakan, *Psychopaths, Inc.: On Corporate Personhood*, in *THE OCCUPY HANDBOOK* 353, 354 (Janet Byrne ed., 2012) (noting sign at an Occupy protest reading "We the People, Not We the Corporations"); Jim Hightower, *Organize in 2012*, OTHER WORDS (Jan. 9, 2012), https://otherwords.org/organize_in_2012/ [https://perma.cc/W332-PL99] (displaying photo of Occupy Wall Street sign reading "Revoke Corporate Personhood"); Mark Trumbull, *Can 'Occupy Wall Street' Really Get Money out of Politics?*, CHRISTIAN SCI. MONITOR (Oct. 14, 2011), www.csmonitor.com/USA/Politics/2011/1014/Can-Occupy-Wall-Street-really-get-money-out-of-politics [https://perma.cc/A2XT-D8UJ] (displaying photo of protester holding a sign reading "End Corporate Personhood").

growing dominance of corporate power. Many people began to connect corporate personhood with the corrupting influence of money in politics and the widening gap between the “haves” and the “have nots.” Several activist organizations launched a popular movement to amend the Constitution to establish that the expenditure of corporate money is not equivalent to political speech and that human beings, not corporations, are the only persons entitled to constitutional rights.⁶ Numerous federal and state lawmakers, responding to pressures by their constituents, have openly expressed support for such a constitutional amendment to abolish the personhood of corporations. It is abundantly clear that corporate personhood is a significant issue that no longer occupies the attention of legal scholars alone, but has become a topic of considerable concern for many average Americans who decry “big business” and the overbearing influence of “corporate America.”

My interest in the concept of corporate personhood began almost twenty years ago when I wrote a law review article on a federal rule of evidence called the character evidence rule. Under that rule, evidence of a person’s character generally is not admissible in court to show that the person acted in conformity with that character on a particular occasion.⁷ It is deemed unfair, for example, to present evidence of a person’s prior misdeeds to prove that the person has a bad character and therefore must have committed the crime for which he is currently being tried. I wondered whether the character evidence rule applied to corporations in the same way it applies to individuals. I questioned first whether the corporation is even a “person” capable of having character for purposes of the character evidence rule, and second, even if the corporation could be regarded as a person, whether it could actually possess a “character” of its own, independent of the individual members of the corporation. After considerable research and thought, I answered both of those questions in the affirmative, but I ultimately concluded that the character evidence rule should not apply with equal force to corporations because they do not have the same moral status as human beings.⁸ My ideas were tentative at the time. I recognized even then that corporate personhood is complicated and that clear-cut conclusions about its implications were elusive.

For me, the inquiry I entertained in that law review article was the start of a decades-long interest in understanding more broadly what it means to say that a corporation is a person and why it matters. Over the years, I have learned how intractable the debate over corporate personhood is, largely due to the multidimensional nature of the topic. In the past, the subject of corporate personhood was of interest mainly only to a small group of legal academics who argued about the essential nature of corporate bodies.

⁶ *Move to Amend’s Proposed 28th Amendment to the Constitution*, MOVE TO AMEND, <https://movetoamend.org/wethepeopleamendment> [https://perma.cc/5AFB-5KVM]; *The Amendment*, FREE SPEECH FOR PEOPLE, <https://freespeechforpeople.org/the-amendment/> [https://perma.cc/YG7H-YMLP].

⁷ See FED. R. EVID. 404(a).

⁸ See Susanna M. Kim, *Characteristics of Soulless Persons: The Applicability of the Character Evidence Rule to Corporations*, 2000 U. ILL. L. REV. 763, 804–08.

However, with corporations playing an increasingly more visible and influential role in our global society, I have watched as the corporate personhood topic has entered the public consciousness and become the source of dismay among growing numbers of people. Some of the most provocative issues today arise in cases involving the corporation and free speech rights, corporate religious freedoms, and corporate racial identity. To the extent a corporation can be considered a person, how far will we go to say that the corporation then has its own speech, religion, and race, all of which are entitled to some measure of respect? These are pressing issues that defy easy answers. From the United States Supreme Court's sharp 5–4 division in many of the most significant recent corporate constitutional rights cases, it is clear that the Court is as divided as the rest of us on these contentious topics surrounding the legal status of corporations.

Mainstream presentations of corporate personhood tend to be binary and fairly simplistic. People have a tendency to jump quickly into “for” or “against” camps. If you favor corporate personhood, you are regarded as pro-corporation: you accept and embrace the expansion of corporate rights and the exercise of corporate power in society. If you oppose corporate personhood, you are viewed as anti-corporation: you lament the dominating presence of corporations in society and you demand greater corporate accountability rather than broad corporate rights. These simplistic interpretations and binary positions do not take into account the nuances and complexity of corporate personhood. If pressed, most people would likely say they want corporations to be treated as persons in some situations, but not in all. Yet if we are willing to call someone or something a person in one context, on what grounds can we conclude that that person is suddenly no longer a person when the context changes? It would help to understand what corporate personhood means and why it can or should be relevant in certain circumstances.

One of the reasons it is so difficult to make sense of corporate personhood is because the concept combines two terms that themselves are extraordinarily complex: “corporation” and “personhood.” The “corporation,” or the “corporate-ness” of the object, refers to the collective nature of the firm. The root of the word “corporation” comes from the Latin word *corpus*, which means “body.” The company represents the unified body of human individuals who together compose the collective association operating as one. This idea of many people coming together to form one person has always created tension and dichotomies in the law. We struggle to define exactly what a corporate body is. Is it simply the aggregate of individuals who contract with each other to utilize the firm for their mutual benefit? Or is it an entity, once created and thriving, that becomes something larger than the sum of its parts, taking on an identity and force of its own? If the corporation is merely the aggregation of its human participants, then the “rights and duties of an incorporated association are in reality the rights and duties of the persons who compose it,”⁹ and

⁹ 1 Victor Morawetz, *A TREATISE ON THE LAW OF PRIVATE CORPORATIONS* 3 (Boston, Little, Brown, & Co. 2d ed. 1886). Morawetz wrote that it is “self-evident that a corporation is not *in reality* a person or

the law should be structured to protect their individual rights and hold them directly accountable. If, however, the corporation is an independent entity, separate and apart from the individual shareholders and employees (who can come and go without changing the structure and identity of the corporation), then the rights and duties of the corporation may be fundamentally different in kind from those of its individual members.¹⁰ In that case, the law should allow the entity itself to exercise certain rights in pursuing its own goals and likewise be held accountable for its actions.

This tension between the “aggregate-ness” and the “separate-ness” of the corporation exists in all situations involving collective groups, including nation states. When we refer to “America,” do we mean the sum total of all individual Americans, or do we mean the national entity that has its own global identity? Can an America exist without individual Americans to act as its members?¹¹ By the same token, can there be individual Americans without an America existing *a priori*?¹² The corporate nature of any association of human beings poses a conundrum whenever we must decide whether the collective should possess rights or bear duties that go beyond those of the individuals who compose the collective.

At bottom, these two opposing positions represent the perennial clash between individualist and collectivist conceptions of human beings and their group associations. The individualist approach maintains that the individual is the only appropriate unit of social, political, legal, and economic analysis. The premise is that “society is constituted of autonomous, equal, units, namely separate individuals, and that such individuals are more important, ultimately, than any larger constituent group.”¹³ Individuals are always primary; ontologically they exist prior to any group or collective entity. Groups are secondary; their existence and significance arise out of the freely contracted arrangements of their human constituents. This reductionist viewpoint asserts that all group actions are reducible to and redescribable as individual actions. From this perspective, the corporation cannot exist or act without its human members. Those human beings alone are accountable for corporate actions, and they alone are entitled to claim any rights. The individualist approach extols

a thing distinct from its constituent parts. The word ‘corporation’ is but a collective name for the corporators or members who compose [it].” *Id.* at 2.

¹⁰ OTTO GIERKE: ASSOCIATIONS AND LAW: THE CLASSICAL AND EARLY CHRISTIAN STAGES 7 (George Heiman ed. & trans., 1977) (“The association, or group, is a living entity . . . Every group has a real and independent communal life, a conscious will, and an ability to act that are distinct from the lives and wills of its individual members.”).

¹¹ Cf. Patricia H. Werhane, PERSONS, RIGHTS, AND CORPORATIONS 51 (1985) (“Corporations have no reality over and above their constituents, because they are created by and function only because of them.”).

¹² Cf. Peter F. Drucker, CONCEPT OF THE CORPORATION 21 (rev. ed. 1972) (“The corporation is permanent, the shareholder is transitory. It might even be said without much exaggeration that the corporation is really socially and politically *a priori* whereas the shareholder’s position is derivative.”).

¹³ Alan Macfarlane, THE ORIGINS OF ENGLISH INDIVIDUALISM 5 (1978); see also May Brodbeck, *Methodological Individualisms: Definition and Reduction*, in READINGS IN THE PHILOSOPHY OF THE SOCIAL SCIENCES 280 (May Brodbeck ed., 1968).

individual autonomy, self-realization, and responsibility. It suggests that corporations are nothing more than the aggregate of their individual participants, and corporations' status as independent entities is merely a convenient fiction.¹⁴

In contrast, the collectivist conception embraces a social model of human activity. It asserts that human beings are inherently social. Individuals from the moment they are born are first members of families and groups, and it is in these settings that they learn to identify themselves in terms of their positions and roles vis-à-vis others.¹⁵ Individuals are always embedded in social contexts and derive their meaning from community. Groups are primary; they are an essential part of society. They are naturally occurring human institutions that arise out of the compelling human tendency to socialize and associate with others. People are continually absorbed into large and small groups of all kinds throughout their lifetime, and these groups are basic components of society that are themselves appropriate units of analysis. An organization as a whole can be greater than the sum of its parts; it can have an identity, a presence, and a life of its own. There are irreducible group level properties and processes that explain group phenomena in terms that cannot be redescribed solely as individual actions.¹⁶ Under this view, corporations are real and separate entities in their own regard. They can have rights and duties that apply to them on an organizational basis. The collectivist viewpoint suggests that corporations' independence and autonomy demand a measure of respect and restraint from the state.

The tension between the individualist model and the collectivist model of human activity is one of many dichotomies or dualities that are inherent in the corporate form. The conflict reveals the problem with trying to define the corporation in unitary terms. When individuals join together in collective arrangements, the group can be described as both a cause and a result of individual intention and activity. The continual paradox of the corporation as both the aggregate of its individual members and a separate entity with its own identity reflects the multidimensional nature of the corporation as a person. Thus, the "corporate" component of corporate personhood is complex and resistant to simplistic interpretations of its meaning.

The "personhood" component of corporate personhood is equally complex. What exactly does it mean to be a person? The origin of the word "person" comes from the Latin word *persona*, which originally referred to the masks worn by actors on a theatrical stage. The one wearing the mask took on a *persona* and played an identifiable role. Anyone can don the mask. So long as the mask is in place, the wearer is deemed by others to be the character he is playing. *Persona* thus signified an outward disguise, or shell, an empty slot that anyone can fill. In legal terminology,

¹⁴ See Christian List & Philip Pettit, *GROUP AGENCY: THE POSSIBILITY, DESIGN, AND STATUS OF CORPORATE AGENTS* 3, 74 (2011) (also referring to this individualist paradigm as "eliminativism" or "singularism").

¹⁵ See Robert C. Solomon, *ETHICS AND EXCELLENCE: COOPERATION AND INTEGRITY IN BUSINESS* 77–79 (1992).

¹⁶ See Deborah Perron Tollefsen, *GROUPS AS AGENTS* 4, 138 (2015); Andreas Georg Scherer, *Modes of Explanation in Organization Theory*, in *THE OXFORD HANDBOOK OF ORGANIZATION THEORY* 310, 326–27 (Haridimos Tsoukas & Christian Knudsen eds., 2003).

a legal person is anyone the law deems fit to act under the law and to play a particular role in the legal process. From this perspective, legal personhood is an empty slot into which the law can drop any object, including a corporation, in order to assign it various rights and duties.¹⁷ Many statutes, including the federal Dictionary Act, define the term “person” to include corporations, partnerships, and other associations, as well as individuals.¹⁸

Determining who or what should fit within the legal definition of person has not always been a simple endeavor. It is often mired in controversy and conflict because deciding who counts as a person is inevitably influenced by considerations that go beyond legal expediency. Philosophers and psychologists consider personhood to be the exclusive privilege of those with essential traits such as the capacity for reason, rational thought, free will, self-awareness, or phenomenal consciousness. Religious and moral conceptions of personhood emphasize the importance of possessing an inner conscience and the capacity to discern between right and wrong. Persons are often described as ends in themselves,¹⁹ having autonomy and moral rights that must be respected, as well as moral responsibilities for which persons must be held accountable. Political, social, and cultural assumptions and expectations also contribute to an understanding of persons as citizens who have a social and civic identity. They carry the capacities, rights, and duties that foster their meaningful participation in the political process and in the life of the community. All combined, our “notion of person, now bearing both a conscience and a civic identity, [has become] the foundation of modern political, social and legal institutions.”²⁰

Given the complexity of personhood, what sorts of living and non-living beings should qualify for personhood status? Debates over the personhood of fetuses, animals, artificial intelligence, and corporate bodies all raise strongly held beliefs and intuitions about the nature of personhood. In these situations, defining personhood is deeply controversial and is closely tied to legal, political, biological, and social conceptions of life, identity, autonomy, citizenship, and equality. To say that a corporation can be classified as a person arguably implies that it carries a certain

¹⁷ Richard Tur, *The ‘Person’ in Law*, in *PERSONS AND PERSONALITY: A CONTEMPORARY INQUIRY* 116, 121 (Arthur Peacocke & Grant Gillett eds., 1987); see also John Finnis, *Corporate Persons II: Persons and Their Associations*, in 63 *PROC. ARISTOTELIAN SOC’Y, SUPP. VOL.* 267, 274 (1989) (noting that the concept of *persona* as mask corresponds to “the law’s carefree attribution of legal personality to *anything* that figures as the subject of legal relations”); Andrew Vincent, *Can Groups Be Persons?*, 42 *REV. METAPHYSICS* 687, 700 (1989) (The term *persona* was “easily adaptable for use in the courts of law for those who were ‘playing’ particular roles (such as, plaintiff) in the legal process.”).

¹⁸ See 1 U.S.C. § 1 (2012). The American Law Institute defines “person” broadly to include an individual, a corporation, partnership, government agency, any form of association, or any other legal or commercial entity. See *PRINCIPLES OF CORPORATE GOVERNANCE: ANALYSIS AND RECOMMENDATIONS* § 1.28 (AM. LAW INST. 1994).

¹⁹ Immanuel Kant, *FOUNDATIONS OF THE METAPHYSICS OF MORALS* 53 (Robert Paul Wolff ed., Lewis White Beck trans., Bobbs-Merrill Co. 1969) (1785).

²⁰ *THE CATEGORY OF THE PERSON: ANTHROPOLOGY, PHILOSOPHY, HISTORY* at viii (Michael Carrithers et al. eds., 1985).

elevated status and is entitled to claim the legal and moral rights that belong to persons. This triggers difficult ethical and moral questions that the law alone does not satisfactorily resolve. Sophisticated philosophical theories of the meaning and value of persons provide insights into these issues but create yet another layer of complexity. Moral philosophers have puzzled over the extent to which a corporation can be considered a moral person such that it can be held ethically and morally responsible for its actions, apart from any legal liability under the law. If it is a moral person subject to duties to act morally and ethically, then by logical extension, would it not be entitled to the moral rights belonging to all persons, including the right to be treated as an end in itself?

Perhaps there is no reason to entertain any of these questions because the corporation should be viewed simply as a form of property, not a person. The corporation is owned by shareholders who are persons, but the corporation itself is merely a thing, a tool, an instrument through which real people pursue their financial interests. To view the corporation as a person is simply an exercise in anthropomorphism. Human beings have a natural tendency to anthropomorphize objects. We like to attribute human characteristics to pets, machines, moving shapes, and, of course, groups.²¹ But we should take care not to press the personhood analogies too far.

All the same, the corporation does not quite fit neatly or exclusively in the category of property either. It may arguably be owned by shareholders as their property, but at the same time the corporation as an independent person owns its own property. Scholars who view corporations as social actors argue that corporations are persons with the ability to act intentionally in pursuit of corporate goals, and that corporations can form their own identity and character separate from that of their individual participants. The two competing conceptions of the corporation as person and as property present another dichotomy within the corporation.²² The corporation plays dual roles, and as we shall see, this duality causes tension when trying to determine the appropriate scope of corporate rights and duties.

There is also a duality involving the public versus private orientation of the corporation. On the one hand, the corporation can be viewed as the product of the private initiative, private contracts, and private property arrangements of its human members. They are the ones who voluntarily come together to form the corporation and to utilize it to advance their personal interests. The purpose of the corporation is to further the goals of the individual members. They retain

²¹ See Steven J. Sherman & Elise J. Percy, *The Psychology of Collective Responsibility: When and Why Collective Entities Are Likely to Be Held Responsible for the Misdeeds of Individual Members*, 19 J. L. & POL'Y 137, 165 (2010).

²² See Katsuhito Iwai, *Persons, Things and Corporations: The Corporate Personality Controversy and Comparative Corporate Governance*, 47 AM. J. COMP. L. 583, 592–93 (1999); Ngaire Naffine, *Who Are Law's Persons? From Cheshire Cats to Responsible Subjects*, 66 MOD. L. REV. 346, 347 (2003); Jeffrey Nesteruk & David T. Risser, *Conceptions of the Corporation and Ethical Decision Making in Business*, 12 BUS. & PROF. ETHICS J., no. 1, Spring 1993, at 73, 76–77.

the prerogative to decide whether to continue the activities of the corporation or terminate them at any time. This viewpoint invites a measure of deference to the preferences of the private actors who make up the corporation. Individuals should be free to choose their own values and enter into mutual exchanges without government intervention. The law should support the contract and property rights of these private parties and avoid interfering with their consensual actions. The private oriented approach eschews heavy government regulation of corporate activities and relations in favor of the free market and private ordering. Private businesses and associations are not government enterprises and should not be subject to state control in the pursuit of their lawful private objectives.

On the other hand, it is also possible to describe corporations in public oriented terms. Individuals who wish to incorporate their businesses can do so only through state incorporation statutes that authorize the legal formation of corporations. Thus, a corporation is a creature of statute. It is a concession of the government. The corporation cannot exist and function without the permission of the state. Private activity and free markets always operate within a framework of legal rules that are publicly enforced by the state. These legal rules are enacted because they are deemed to have some social and public utility. Private individuals must rely on state law to afford them the advantageous features that accompany the corporate form, including limited liability for shareholders. Historically, the government permitted these features and selectively granted corporate charters only because early corporations had a public purpose and served the public interest, such as constructing a public road or canal. The public dimension of corporations justifies greater regulation of their activity for the common good. Since the corporation exists by the good graces of the state, the corporation is subject to the state's supervision of its operations, and the state may define the rights and duties of the corporation in the public interest.

These dueling perspectives regarding the private and public aspects of the corporation assume that the world can be divided into two separate and mutually exclusive realms of activity, but that distinction is unrealistic. Corporations have both private and public attributes combined.²³ The two contrasting orientations are not necessarily irreconcilable. To exist and operate effectively, corporations require the contributions and arrangements of private individuals as well as the authorization and infrastructure of state law. In recent years, the line between the private and public character of corporations has become significantly blurred as many private and government institutions have become increasingly integrated. With greater frequency, the state has allowed private organizations to perform what were traditionally public functions, including running prisons, providing military services and

²³ For a thorough discussion of the “public/private distinction” constituting “two faces of the business enterprise,” see Eric W. Orts, *BUSINESS PERSONS: A LEGAL THEORY OF THE FIRM* 109–31 (2013).

security, collecting garbage, and supplying education.²⁴ Moreover, the operations of private corporations can have considerable social consequences that affect the public welfare. The public and private dimensions can never be completely separated in practice. Considerations of both are needed to make meaningful determinations regarding the permissible scope of corporate activity and the appropriate delineation of corporate rights and duties.

This leads to a related point about the role and purpose of the corporation, or to put it differently, the justification for its existence. A private oriented view emphasizes the primacy of those who are deemed to be the owners of the corporation, i.e., the shareholders. For them, the main purpose of the business corporation is to create wealth and maximize their returns. That is the reason why the corporation exists. Proponents of the shareholder primacy model argue that the predominant role of the corporation is to pursue profits for the benefit of the owners. In contrast, a public oriented approach envisions a broader role for the corporation. It is more than merely a vehicle for shareholders to further their self-interests. It is a social entity that serves many important public purposes as well.²⁵ It supplies goods and services to satisfy consumer needs, provides job opportunities to workers, fosters economic growth and development, offers avenues for entrepreneurship that give non-wealthy individuals opportunities for upward social mobility, and even contributes to a sense of community through philanthropic corporate actions. Under this view, the corporation exists to benefit the interests of a variety of stakeholders, all of whom have a stake in the prosperity of the corporation.²⁶ The purpose of the corporation should not be narrowly construed to advantage only its private owners, but to promote the welfare of the larger public community that contributes to and benefits from its success.²⁷

One of the challenges with trying to isolate the main purpose of the corporation is that corporations can have multiple purposes simultaneously. They can further private interests and conduct activities that benefit the public as well. Moreover, there are many different types of entities that fit within the category of corporations,

²⁴ See *id.* at 116–17; Carl J. Mayer, *Personalizing the Impersonal: Corporations and the Bill of Rights*, 41 HASTINGS L.J. 577, 659 (1990); Christopher D. Stone, *Corporate Vices and Corporate Virtues: Do Public/Private Distinctions Matter?*, 130 U. PA. L. REV. 1441, 1446–48 (1982).

²⁵ See William T. Allen, *Our Schizophrenic Conception of the Business Corporation*, 14 CARDOZO L. REV. 261, 265 (1992).

²⁶ See R. Edward Freeman, *A Stakeholder Theory of the Modern Corporation*, in *ETHICAL THEORY AND BUSINESS* 56 (Tom L. Beauchamp & Norman E. Bowie eds., 6th ed. 2001).

²⁷ “Discourses of responsibility, citizenship, and commitments to serve public welfare . . . are the very ontological root of the corporation and its legal justifications for existence.” Joshua Barkan, *CORPORATE SOVEREIGNTY: LAW AND GOVERNMENT UNDER CAPITALISM* 113 (2013). In reply, shareholder primacy proponents argue that maximizing profits for shareholders is not incompatible with these public welfare goals. By maximizing profits, which creates wealth for the entire economy and promotes efficient resource allocation, the corporation ultimately benefits all of its constituencies and society as a whole. See Michael E. DeBow & Dwight R. Lee, *Shareholders, Nonshareholders and Corporate Law: Communitarianism and Resource Allocation*, 18 DEL. J. CORP. L. 393, 416–19 (1993).