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Corporations, Sustainability and Women

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1.1 Introduction

This volume of essays explores the relationship between three contemporary and significant intellectual ideas, namely, issues concerning unsustainable business practices and models, corporate law theory including corporate culture and governance, and the role of gender in relation to both. This collection includes contributions from female scholars who are lawyers, economists, sociologists and others who adopt a multidisciplinary approach. Our central focus is the corporation as the most influential business organisation of the twenty-first century, the actions of which affect human activities across the globe. Indeed, the corporation is not only an influential business organisation but also perhaps the most globally influential institution generally.[1] Corporations are propelled towards the pursuit of unsustainable business practices in a wide variety of ways, hence our focus on corporate law theory, corporate culture and governance. In considering the problems presented by activities of modern corporations, we have posed the question as to how issues relating to gender – and feminist theory more broadly described – interface with these problems. In answering this question, the authors in this collection consider a range of situations where corporate action,

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[1] For a popularised presentation, see the film *The Corporation.com* (available at www.thecorporation.com). There has been considerable interest in business sustainability in recent years. For example, the Brookings Institute based in Washington, DC, has focussed on this issue as one of its key policy programs in its Global Economy and Development program; see www.brookings.edu/topic/sustainable-development-goals 'Multinational corporations with operations spanning the globe, and in some cases capacities and networks that match those of governments, have a particularly important role to play in helping to spread the opportunities of globalization and in mitigating some of its risks.'

Independent organisations are also engaged with this issue. The Sustainable Business Commission based in London presents availability of investment funds in sustainable business; see http://businesscommission.org.

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unsustainable practices, and issues of gender have arisen in the particular
contexts described in their contributions. Our contributors present an
analysis of how issues relating to women and gender interweave with the
central questions of corporate function and sustainability.

As contributors, none of us is limited in our scholarship to gender
issues, and our focus in this volume is on business practice as it relates to
our original disciplines of law, economics, sociology and so on. The
question then became whether, in creating a more sustainable corpor-
ation, gender, or the actions of women, or feminist theory generally have
acted as agents for change up to now and whether they have the potential
to do so into the future. 'Corporate sustainability' in our collection rests
on a specific understanding of sustainability and is intended to describe
when corporations, and more generally, economic actors, create value in
a manner that is (1) *environmentally* sustainable in that it ensures the
long-term stability and resilience of the ecosystems that support human
life, (2) *socially* sustainable in that it facilitates the respect and promotion
of human rights and of good governance and (3) *economically* sustain-
able in that it satisfies the economic needs necessary for stable and
resilient societies.[2]

Sustainable development, or sustainability, as it is now commonly
referred to, is one of the most disputed and abused concepts of our time.
For the concept to be meaningful, we argue that it must take as its
starting point the recognition of ecological limits for human activity.
We see this expressed in the concept of planetary boundaries as first
expounded by Johan Rockström and colleagues,[3] which sets out and
elucidates the physical limitations we now face as a result of continued
human activity. As explained by Will Steffen, 'The concept of planetary
boundaries challenges the belief that resources are either limitless or
infinitely substitutable. It threatens the business-as-usual approach to
economic growth.'[4] The second vital component of sustainability, as

[2] B. Sjåfjell, 'When the solution becomes the problem: the triple failure of corporate
governance codes' in J. J. du Plessis & C. K. Low (eds.), *Corporate Governance Codes for
the 21st Century* (Springer, 2017), p. 28.

[3] This concept was first adopted by J. Rockström et al. 'Planetary boundaries: exploring
the safe operating space for humanity' (2009) *Ecology and Society*, 14(2), 32 (see https://
www.ecologyandsociety.org/vol14/iss2/art32/) and subsequently updated by: W. Steffen
et al. 'Planetary Boundaries: Guiding Human Development on a Changing Planet'
(13 February 2015) *Science* 347(6223), 736

[4] S. Will, 'Rio+20: Another step on the journey towards sustainability' (29 June 2012) *The
Conversation*.

reflected in the United Nations (UN) Sustainable Development Goals,[5] is the human dimension, where ongoing practices make it extraordinarily difficult for individuals to thrive. Our concern with unsustainable business practices therefore incorporates ideals of fair labour standards, sustainable manufacturing, sustainable consumer activity and ethical management. In 1987, the influential report *Our Common Future* (the Brundtland Report) emphasized that sustainability must encompass recognition of the environment as the basis of our existence, and must also include the goal of acceptable living conditions for people and the necessity of economic prosperity to provide for the former.[6] To date there has been a tendency in international and national policy-making to see economic prosperity, understood in the mainstream way as economic *growth*, as the overarching goal in relation to these additional aspirations. We see this reflected in the sustainable growth agenda of the European Union (EU) Commission which has been set out for 2020.[7]

With the aim of corporate sustainability in mind, it is our position that a different conception of corporate function and of the role of the corporate board and management can, and will, lead to change. Our case studies demonstrate that corporations can respond positively to calls for change, whether these are from those who are experiencing the effects of corporate action in their communities, from investors who have litigated

[5] UN General Assembly resolution 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, A/RES/70/1, (25 September 2015), see www.undocs.org/A/RES/70/1. Also see www.un.org/sustainabledevelopment/sustainable-development-goals.

[6] UN General Assembly, *Report of the World Commission on Environment and Development: Our Common Future* (1987). Transmitted to the General Assembly as an Annex to document A/42/427, *Development and International Co-operation: Environment*. [This is published as *World Commission on Environment and Development: Our Common Future* (Oxford University Press, 1987)]. Although criticised in some quarters for a variety of reasons, one of the strengths of the report is to regard poverty and social inequality as an aspect of sustainability. Critics have argued that the emphasis on economic growth is short sighted. See R. Heutig, 'The Brundtland Report: A Matter of Conflicting Goals' (1990) *Ecological Economics*, 2, 109–117, where the report is criticised for its emphasis on economic growth and for expressly linking poverty with unsustainability. J. Robinson 'Squaring the Circle? Some Thoughts on the Idea of Sustainable Development' (2004) *Ecological Economics*, 48, 369–384 notes criticisms of the report based on allegations of vagueness, and the criticism that the report is vulnerable to hypocritical interpretations and was accused of 'fostering delusions'. Nevertheless the same author seems to argue for a similar approach to sustainability which incorporates a 'recognition of the social construction of sustainable development'.

[7] European Commission, *EUROPE 2020 A Strategy for Smart, Sustainable and Inclusive Growth*, COM/2010/2020 final, and see further www.ec.europa.eu/europe2020/europe-2020-in-a-nutshell/priorities/sustainable-growth/index_en.htm.

to protect or bring about a different type of corporate action, or from
policy makers. There is nothing inherent in the legal structure of a
corporation which makes it necessarily resistant to changes regarding
more sustainable strategies, or resistant to legal changes, such as
increased reporting obligations, mandated diversity, or other regulations
intended to improve the effects that the corporation has on society.

Consequently, we then move to a consideration of the modern corpor-
ation as it is understood in this context, and to a consideration of some
initiatives which have already been implemented to render the modern
corporation more accountable, including measures relating to diversity
and sustainability reporting.[8] In general, we challenge these recent legis-
lative initiatives as being limited and somewhat constrained in compari-
son with more radical measures we witnessed in relation to gender
equality in the 1980s. We also consider alternative models of business
which are presented as more sustainable alternatives to the corporation.[9]
We then move to a critical assessment of core issues in corporate law and
discuss how these principles can be affected by a refashioning of theory
from a particularly feminist perspective. These three different areas of
enquiry raise the question as to whether women really are agents for
change, and our collection seeks to provide a thought-provoking but
non-presumptive answer to that question. In other words, we do not rush
to the conclusion that women really do act as agents for change; instead,
we present the reader with more considered conclusions and with tenta-
tive starting points from which the enquiry can continue. By constantly
connecting female experience with corporate law theory and sustainabil-
ity, we present a new, holistic way of going beyond a topical or descrip-
tive narrative. We wish to explore real potential for change derived from
a more considered feminist perspective on the appropriate role of law,
the effect of current corporate laws on corporate culture, and the com-
bined impact of these understandings on sustainability.

1.2   Three Parts of Our Collection

1.2.1   Women as Influencers of Corporate Action

The first part of our collection includes descriptions of how women have
interacted effectively to change particular corporate actions which were
damaging their environments. A number of reports have described how

[8] Ch. 5.   [9] Ch. 9.

unsustainable corporate actions can impact more adversely on women, particularly in the destruction of natural resources such as water sources, forests and agricultural holdings.[10] The broader understanding of sustainability also includes unsustainable practices which affect the ability of humans to thrive because of unfair or non-existent labour standards, unsustainable manufacturing, or consumer activity.[11] The essays from Lorraine Talbot (on (un)ethical supply chain practices and female activism to secure fair labour conditions) and Adaeze Okoye and Emmanuel Osuteye (on women advocating for protection for their local communities in developing countries) consider the role of women acting outside established perceptions of what the corporation can and ought to be.[12] In these two chapters, we present interesting case studies on how women interacted successfully with corporations to effect change, sometimes in the face of cultural limitations which at times seemed more powerful than the resistance of the corporation. In both cases, women changed attitudes both within their own cultural context and within the culture of the corporation. The significance of these case studies is that they are placed within a theoretical framework which identifies the effect of change from 'below'. In other words, for corporations to act sustainably, it is not necessary that these changes are always initiated from the top, from senior decision makers or from board level, or from institutionalised policy decisions. Rather, our Ghanaian case study identifies with De Sousa Santos's ideas that challenge preconceived notions of the corporation and of social roles assigned on a gendered basis. The case study illustrates how change can occur in a 'spontaneous non-institutionalized' way.[13] We are asking the reader to consider that much change over time

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[10] UN WomenWatch, *Women, Gender Equality and Climate Change* (2009), p. 3, see www.un.org/womenwatch/feature/climate_change; CEDAW, *Respect Rights of Rural Women, Recognize Their Vital Role in Development and Poverty Reduction, UN Experts Urge* (4 March 2016), press release see www.ohchr.org/EN/NewsEvents/Pages/Display News.aspx?NewsID=17148&LangID=E; See also Oxfam, *Impacts of Mining*, see www.oxfam.org.au/what-we-do/mining/impacts-of-mining, referred to in Ch. 3.

See also A. J. Sigot, 'Discourse on gender and natural resource management' in A. Sigot, L. A. Thrupp and J. Green (eds.), *Towards Common Ground: Gender and Natural Resource Management in Africa* (African centre for Technology Studies: Nairobi, 1995); referred to in Ch. 4.

[11] Ch. 2. See further the discussion on the concept of sustainability arising from the Brundtland Report in note 6.

[12] Chs. 2 and 4.

[13] B. D. S. Santos and C. A. Rodriguez-Garavito, *Law and Globalization from Below – Towards a Cosmopolitan Legality* (Cambridge: Cambridge University Press, 2005). B. D. S. Santos, *Towards a New common Sense: Law, Science and Politics in the*

does indeed occur in this way. Our description of how both workers and consumers can insist on the creation of ethical supply chains, using Bangladesh as an example, supports this argument. Finally, the consideration by Ragnhild Lunner of how women found a voice in relation to the extractive mining companies in the Lihir and Misima areas of Papua New Guinea shows how change is not the preserve of one particular stakeholder but sometimes results from a multi-faceted interaction within communities, and between corporations and communities, as women assert their non-traditional rights to represent themselves.[14] Chapter 3, based on a Habermasian[15] understanding of discourse, provides us with a theoretical framework in which we can understand that the inability to include, listen to and hear women's voices may deprive corporations of information, knowledge and opinions that may be vital to ensuring corporate sustainability. We present a theoretical framework in which to consider modes of discourse as a way of understanding how community activism can be more effective in achieving sustainable outcomes, and how such theories are reflected in institutionalised principles found in the international documents such as the United Nations Guiding Principles (UNGPs).[16] In terms of effecting real change, the actions described in these case studies illustrate how women changed cultural and corporate environments through activist measures.

We return to the interaction between culture, gender and the corporation in Part III.

1.2.2   Current Strategies for Corporate Sustainability

The theoretical analysis derived from Habermas in Part I is also applicable in Part II, which involves a geographical shift in focus to the liberal democracies of the west. This part includes essays on organisational change strategies, which are often initiated as legal responses to the types

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Paradigmatic Transition (Routledge, 1995). O. Amao, Corporate Social Responsibility, Human Rights and the Law (Routledge, 2011).

[14] Ch. 3.

[15] J. Habermas, Between Naturalism and Religion: Philosophical Essays (Cambridge: Polity, 2008), pp. 44–49, referred to in Ch. 3.

[16] The Guidelines, with accompanying and explanatory commentaries, can be read in: United Nations, Guiding Principles on Business and Human rights – Implementing the United Nations 'Protect, Respect and Remedy' Framework (Office of the High Commissioner for Human Rights, 2011), referred to in Ch. 3.

of acutely unsustainable business practices outlined in Part I. The change strategies range from encouraging the participation of women on boards of listed companies to presenting alternative, and allegedly more sustainable, business models. In contrast to change coming from 'below' as described in Part I, these change strategies have the apparent allure of being the outcome of sophisticated policy initiatives, often from government or, as in the case of the B-Corporation in the United States, private entities which have adopted a 'quasi-governmental' approach to change.[17] We present a critique of these strategies as a distraction from real problems with current understandings of corporate function. We use the term 'liberal structuralism' to describe these changes to the corporation.[18] We argue that rules on gender diversity on boards fit into this category, as do legal reporting requirements.[19]

Many readers will be familiar with initiatives, whether voluntary or regulatory, to include women on boards, particularly as a partial solution to excessive risk-taking post financial crisis. The emphasis on female business leadership is also a popular subject for media analysis.[20]

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[17] As described by Baumfield, the B-Corporation certification is the initiative of a private entity, B Lab, which has sought to promote an alternative to the traditional corporation (see Ch. 9, n. 35–39).

[18] In our concluding Ch. 14, we return to a discussion of several organisational change strategies derived from the work of K. Grosser.

[19] We consider rules described by Lynch Fannon in Ch. 6 such as the EU Draft Directive which has been passed by the European Parliament on gender quotas for non-executive board membership in European listed companies. See text of the European Parliament decision OJ C 436 24.11.2016, pp. 225–240. European Commission, *Proposal for a Directive of the European Parliament and of the Council on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures*, Draft Directive COM (2012) 614 final. A similar strategy is reflected in what are called 'triple bottom line' reporting requirements such as European Commission, EU Directive 2014/95/EU, see www.ec.europa.eu/finance/company-reporting/non-financial_reporting/index_en.htm; United States Securities Exchange Commission (SEC), *Report on Review of Disclosure Requirements in Regulation S-K* (December 2013) 42 (see www.sec.gov/News/PressRelease/Detail/PressRelease/1370540530982); Global Reporting Initiative (GRI), *About Sustainability Reporting*; and International Integrated Reporting Council, *Integrated Reporting*, see http://integratedreporting.org, all described in Ch. 5.

[20] For examples, see: J. Shankleman, '30 women shaping sustainable business' (28 March 2015) *GreenBiz*, see www.greenbiz.com/article/Apple-Nike-Google-30-women-shaping-sustainable-business; O. Balch, 'Women at the top is better for business and the environment' (27 April 2015) *The Guardian*, see www.theguardian.com/sustainable-business/2015/apr/27/women-top-better-business-environment-sustainable; and A. Learned, 'Where are the women leaders in sustainable business' (23 October 2013) *The Guardian*, see www.theguardian.com/sustainable-business/where-women-sustainable-business-leadership.

Ferrero-Ferrero et al. provide a powerful empirical analysis of the presence of women in leadership positions across a range of corporate sectors. The proposal for the EU Directive on Women on Boards, which was approved by the European Parliament in 2013, seeks to change the nature of corporate boards in EU listed companies. This initiative is based on the proposition that the corporation can be regulated to effect and reflect social change. This initiative is critiqued from a legal standpoint by Irene Lynch Fannon, as is the alleged 'business case' which supports this initiative.[21] Similarly, reporting obligations as introduced in a range of jurisdictions and described by Gill North present the same proposition[22] – that corporations can be regulated in large and small ways to effect the change we want. Whilst we are sceptical about some of the ambitious claims made for these sorts of changes, nevertheless our empirical studies show us that some, albeit mainly incremental, change has happened.[23]

Of interest to us regarding these initiatives are two bigger thematic questions. First we are concerned about resistance (often described in cultural terms) to even these small changes. We continue to be surprised at the strength of this resistance, encapsulated in the quote 'A Toad We Have to Swallow' in reference to women on boards.[24] The mandated inclusion of women's voices at sophisticated levels of business leadership in developed western economies is regarded with suspicion generated by a perception of over regulation, or is regarded as being unimportant. Similarly, scepticism about the efficacy of 'triple line reporting' surely reflects the reality of how these obligations are regarded in many corporations, rather than with the rules themselves. Our second thematic question raised in Part II concerns the potential for the role of legal rules and models in changing the corporation to achieve sustainability. We have certainly seen in western European countries and in countries such as Australia how corporations have been regulated to achieve inclusion of employees as stakeholders,[25] and we can similarly hypothesise that

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[21] Ch. 6.   [22] Ch. 5.   [23] Ch. 7.   [24] Ch. 6.
[25] I. Lynch Fannon, *Working within Two Kinds of Capitalism* (Oxford and Portland, OR: Hart Publishing, 2003). For a discussion of the contest between regulation and regulatory resistance see M. T. Moore, *Corporate Governance in the Shadow of the State* (Oxford: Hart Publishing, 2013). I. Lynch Fannon, 'CSR and Law's Empire: Is there a Conflict?' (2007) *Northern Ireland Legal Quarterly*, 58, 1–21. I. Lynch Fannon, 'Corporate responsibility and European corporate governance, the view from now' in A. Beck and S. Skeffington (eds.), *The Impact of European Law on the Corporate World* (The Irish Centre for European Law, 2010).

reporting obligations may over time affect changes in mindsets. How-
ever, this presupposes that the reporting rules are taken more seriously
and enforced by regulators, and that there is mandatory verification of
the reported information. As the reporting rules are formulated now,
they can justifiably be criticised as a compromise solution between those
who wish to see a shift towards corporate sustainability and those who
resist regulation.[26] Therefore, while law matters, we are concerned about
the limited type of change expressed at present in liberal rules, which in
part reflects regulatory capture by corporate lobbyists.[27] We can see that
cultural resistance broadly understood is reflected in all aspects of our
contributions.[28]

Similarly, Victoria Baumfield and Aikaterini Argyrou et al. turn a
critical eye to the creation of legal frameworks for alternative business
models, which we fear might serve as deflection devices avoiding neces-
sary structural reforms of corporations.[29] Arguably, these strategies are
not explicitly intended to avoid structural reform of the corporation.
However, we are concerned that these policies as currently constructed
serve as shallow 'quick fixes', or worse as the locus of shallow controversy
which never engages with real change nor with the law's capacity to effect
change. As described in Chapter 5 which considers 'triple bottom line'
reporting and variants thereof, the real question is whether the role of
corporations in society and their enormous and ongoing environmental
and social impacts on the planet are sufficiently prioritised.[30] Policy
reforms that require large companies to provide sustainability informa-
tion are emerging, but are these reforms adequate and appropriately
formulated to ensure that corporations ultimately act in the long-term
best interests of the communities in which they operate?

In considering these kinds of changes to the corporation, or alterna-
tives to the traditional corporation, one of the insights we present here is
that women have not, in general, been significant leaders of change in the
context of these particular initiatives. Whilst some women have been

[26] Ch. 5.
[27] See also B. Sjåfjell, 'Dismantling the legal myth of shareholder primacy: The corporation
as a sustainable market actor', in N. Boeger and C. Villiers (eds), *Shaping the Corporate
Landscape: Towards Corporate Reform and Enterprise Diversity* (Oxford and Portland,
OR: Hart, 2018), ch. 4. See https://ssrn.com/abstract=2912141.
[28] Path dependency theory is also relevant to this discussion. See O. Hathaway, 'Path
Dependence in the Law: The Course and Pattern of Legal Change in a Common Law
System' (2001) 86 *Iowa Law Review* 601.
[29] Chs. 8 and 9.   [30] Ch. 5.

proponents of progressive corporate initiatives, women in equal numbers have taken the opposing view on initiatives such as quotas for women on boards or diversity reporting. We also see that women have not been at the fore in developing alternative business models or indeed in utilising alternative business models.

1.2.3 Feminist Theories and Corporate Sustainability

Part III includes contributions which focus on ethics and theory and which consider a gendered critique of corporate cultures and the ethics of sustainability. Specifically, Catherine O'Sullivan and Roseanne Russell identify and reject the gendered understanding of corporate ethics which has emerged in current corporate cultures and policy initiatives.[31] This critique of gendered construction of ethics illuminates the path to bringing ethics back to a centre stage position in the development of corporate law rules.

We also illustrate that there are creative ways of approaching established corporate law doctrines, both from a theoretical perspective and with a focus on real world outcomes. Yue Ang describes new approaches derived from feminist theory – such as the ethics of care[32] and spatial justice theories[33] – which provide a different theoretical framework in which we can reconsider the development of even fundamental corporate law doctrines such as corporate personality. This signposts a new theoretical foundation for changing corporate law to bring about effective ways in which we can obligate corporate respect for planetary boundaries, and thus shape corporate behaviour into a more sustainable pattern. Her piece is a unique contribution to the rethinking of corporate law theory.

The essays in Part III build on Part II, leading the reader to additional insights on how current legal frameworks can and ought to be changed to create a space in which the corporation and its primary actors (whether these are board members, management, investors or stakeholders such as employees), can act in ways which are driven by the overarching ethic of

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[31] Chs. 11 and 12.
[32] Ch. 10. Also see Ang's powerful discussion of Kittay's ethic of care described in E. Kittay, *Love's Labor* (London: Routledge, 1999) and her consideration of spatial justice theories.
[33] A. Philippopoulos-Mihalopoulos, 'Law's Spatial Turn: Geography, Justice and a Certain Fear of Space' (2010) 7 *Law, Culture and the Humanities*, 188–189, referred to in Ch. 10.

sustainability. This is clearly as it should be. Parts I and II lead into this broader understanding of the ethical imperative.[34]

As a group of scholars, we understand what is at stake. Carol Liao indicates that gender (male) is linked to financial power, which in turn is protected by current conceptions of the corporation.[35] In her consideration of a number of feminist theories including those of Testy,[36] Liao makes the following observation which summarises very well the potential for this multidisciplinary scholarship:

> Intersectionality has gained in prominence as feminist scholars have promoted a more interconnected and multidimensional understanding of lived experiences; different social categorisations (including gender, race, class, sexual orientation, age, religion, disability/ability) are highly relevant in the context of power structures and different forms of privilege and oppression.[37]

In our concluding chapter, we bring the various contributions together to present the reader, and future researchers, with a road map for further thought.

1.3   Conclusion: Future Directions

The evolution of this text illustrates that women as participants in corporations, or indeed women as participants in other business models have not taken the leadership roles which one might have expected them to take. Other than in relation to the experiences of women activists described in Part I, this introductory chapter presents the view that women have not been particularly proactive in affecting corporate performance in sustainable ways. Indeed, our volume illustrates the significant intellectual pitfalls of identifying women in general as a force for effecting either positive corporate governance or performance. This is not intended to sound a pessimistic note, but simply to signpost a direction for future leadership opportunities. These leadership opportunities do not, however, belong exclusively to women, as we reject a gendered notion of good or bad corporate behaviour.

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[34] Ref K. Testy, 'Capitalism and Freedom – For Whom?: Feminist Legal Theory and Progressive Corporate Law' (2004) 67 *Law and Contemporary Problems* 87 at 108.

[35] Ch. 13.

[36] K. Testy, 'Linking Progressive Corporate Law and Progressive Social Movements' (2002) 76 *Tulane Law Review* 1228, referred to in Ch. 13.

[37] See Ch. 13, n. 60–61.

We do present one underlying 'big idea' – which is an optimistic one – that there are indeed opportunities to change the way the corporation as we know it presents itself or is understood by those who work within its structures.

Change may happen from below, and when it does it can be supported by policy documents which identify the importance of meaningful discourse. Change can happen by improving our understanding of corporate function as it currently exists, by demonstrating the falsity of certain understandings around shareholder primacy and the 'profit imperative' and by shining a light on the nature of some resistance to regulation. As Baumfield illustrates in her contribution, notions of profit imperative are overstated and misunderstood even in the context of extremely well developed litigation such as that which has occurred in the United States.[38] Alternative models of business organisation may be a distraction from this 'big idea' but nevertheless, as Argyrou et al. illustrate, there are opportunities here to understand and illuminate different approaches to business sustainability.[39] Law has been a positive force in achieving equality for women in developed countries, and with this gold standard in mind we can be critical of the limited progress made to date regarding women in business leadership, and critical of opposition to even timid attempts to change corporations in relation to mandating some opportunities for women. Our understanding of the relationship between law and ethics allows us to see opportunities for a revival of the discussion of an ethical imperative in corporate decision making[40] together with a move away from a gendered understanding of ethics as described by Russell and O'Sullivan.[41] Finally, a powerful piece from

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[38] Ch. 9. Contrast, as Baumfield does in the context of her discussion of the B-Corporation, the differing approaches to the complex issue of what shareholder primacy actually means in the decisions of the Chancery Court of Delaware in Newmark, *eBay Domestic Holdings, Inc v Newmark*, 16 A.3d 1 (Del. Ch. 2010) with the later and strictly speaking in terms of precedent, more authoritative decision of the US Supreme Court in *Burwell v Hobby Lobby Stores Inc*, 573 US ___ (2014); 134 S Ct 2751. See also the discussion in L. Johnson and D. Millon, 'Corporate Law after Hobby Lobby' (2015) 70 *The Business Lawyer* 1, 11. See further Ch. 14.

[39] Ch. 8.

[40] See I. Lynch Fannon, *The Ethical Corporation in Working within Two Kinds of Capitalism* (Hart Publications, 2003). See also W. Bratton, 'Confronting the Ethical Case against the Ethical Case for Constituency Rights' (1993) 50 *Washington and Lee Law Review* 1464. A. Berle, 'For Whom Corporate Managers are Trustees: A Note' (1932) 45 *Harvard Law Review* 1365.

[41] Chs. 11 and 12.

Ang demonstrates how legal theory can develop and change the way we think about fundamental concepts.[42] Change can happen by using existing legal and theoretical approaches and developing these in ways which have been enriched by the kind of scholarship we present in this volume.

Experience tells us that the corporation can be a vehicle for oppressive conduct until it is challenged, but when it is challenged there is nothing which acts as an imperative – either from the nature of the corporation, or from the laws which have created the corporation – preventing the corporation from responding positively to demands for change. Existing assumptions can be changed as we can see by the example of corporations which genuinely adopt broader social or sustainability agendas. Similarly, when faced with the type of pressure which was put on the corporations acting in Ghana or in Bangladesh,[43] none of the corporations were prevented from acting or responding on the basis of claims that the profit imperative constrained the changes which were made. Instead, obstacles to sustainable corporate conduct were created by cultural barriers in developing countries as they are here in western developed economies. The power of law – whether it is to create radically different labour standards, to incrementally change attitudes by insisting on new reporting obligations,[44] to create equal opportunities for women in terms of business leadership, or to change our understanding of corporate function – is that it responds to but also has the potential to effect change in cultures. Law has the potential to work as an agent for positive change. A theoretical framework driven by an ethical imperative serves as the basis for a critical analysis of existing legislative initiatives and will also provide ideas and inspiration for future, more radical change. We ask for sustainable and ethical corporate practices, and we also show how new ways of thinking (for example, the feminist ethic of care principle and spatial justice) allow us to see how legal rules can operate in ways which destroy current assumptions.[45] Even though there has been an ongoing critique of the corporation over the last three decades from progressive corporate scholars, there has been no unifying concept presented at its core. As Liao observes:

> there has been little developed under the flag of 'progressive corporate law' for some time now. The inability to find common terminology and consensus created a significant stumbling block to internal organisation

[42] Ch. 10.   [43] Chs. 2 and 4.   [44] Ch. 5.   [45] Ch. 10.

and cohesion. Other positions, such as more advanced versions of pro-gressive corporate law theory emanating from a pragmatic European perspective on corporate function, or the fact that nations have adopted more stakeholder-based models of governance, have not been recognised sufficiently in academic scholarship and have struggled to gain traction in popular discourse in order to overtake these entrenched normative beliefs.[46]

In describing the differing understandings of corporate function in a comparative context some years ago, Lynch Fannon observed:

> Historically the corporation has presented itself as a private actor. This view has ... been underlined by the theoretical analysis of the law and economics school. In the ethical context the microeconomic paradigm sees the primary ethical problem as 'the threat that state regulation poses to individual autonomy and private wealth creation'.[47]

Not much has changed since the progressive corporate lawyers began this discussion almost thirty years ago. Nevertheless, with new perspectives derived from the urgency of sustainability and our awareness of the potential impact of feminist theory, we propose that the corporation can and ought to be changed. If we are in agreement that corporations must act in more sustainable ways, the question remains as to how this can be achieved. What strategies will affect corporate decision making most effectively, whether these are made by corporate boards, managers, shareholders, stakeholders or a combination of all three? Regulation, the continued development of legal and cultural norms (including social mobilisation and 'bottom-up initiatives') and the continued development of new theoretical frameworks are all possible strategies.

In this collection, we present new feminist perspectives on this ques-tion. We describe the limitations of methods currently favoured by policy makers but move on to examples where women, questions regarding gender equality and feminist theories seem to have had influence in effecting change. Our intention is to question current assumptions about corporate function, about the regulation of corporations and about the role of ethics. We show that the theoretical framework within which the modern corporation operates can be expanded in innovative ways to support change. Most importantly, we all agree that the reason the corporation must change is to achieve a more sustainable future in the broadest sense.

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[46] Ch. 13.   [47] Lynch Fannon, *Working within Two Kinds of Capitalism,* 103.